

Apparently repealing Obamacare could violate international law



By **Dana Milbank** Opinion writer April 25

We've already seen that repealing Obamacare is politically perilous. Now there's a new complication: It may also violate international law.

The United Nations has contacted the Trump administration as part of an investigation into whether repealing the Affordable Care Act without an adequate substitute for the millions who would lose health coverage would be a violation of several international conventions that bind the United States. It turns out that the notion that "health care is a right" is more than just a Democratic talking point.

A confidential, five-page "urgent appeal" from the Office of the U.N. High Commissioner on Human Rights in Geneva, sent to the Trump administration, cautions that the repeal of the Affordable Care Act could put the United States at odds with its international obligations. The Feb. 2 memo, which I obtained Tuesday, was sent to the State Department and expresses "serious concern" about the prospective loss of health coverage for almost 30 million people, which could violate "the right to social security of the people in the United States."

The letter urges that "all necessary interim measures be taken to prevent the alleged violations" and asks that, if the "allegations" proved correct, there be "adequate measure to prevent their occurrence as well as to guarantee the accountability of any person responsible."

OHCHR requested that copies of the letter be shared with majority and minority leadership in both chambers of Congress and proposed that "the wider public should be alerted to the potential implications of the above-mentioned allegations."

Apparently that didn't happen. House Minority Leader Nancy Pelosi's office and Senate Minority Leader Charles E. Schumer's office said they didn't receive the letter, and officials in House Speaker Paul D. Ryan's and Senate Majority Leader Mitch McConnell's offices said Tuesday that they were unaware of it. The letter did make its way to the Department of Health and Human Services, where an employee leaked it to congressional Democratic leadership. A State Department spokesman said my inquiry was "the first I'm hearing of this."

A spokesman for the U.N.'s human rights office in Geneva confirmed the authenticity of the letter, which was sent by Dainius Puras, a Lithuanian doctor who serves the United Nations under the absurdly long title “Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

The spokesman, Xabier Celaya, said Puras cannot comment on his Obamacare inquiry until it becomes public at the next session of the Human Rights Council in June.

None of this, of course, will deter President Trump and congressional Republicans, who are again attempting to get a repeal bill through the House. They scoff at lectures from U.N. bureaucrats, particularly on domestic affairs, and the world body has no practical way to impose its will on Congress. There's also a logical question: If repealing Obamacare violates international law, wasn't the country in violation before Obamacare? Puras addresses this by writing that the U.N. Committee on Economic, Social and Cultural Rights “notes that there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible.”

Though of questionable legal value, the U.N. letter is at least a bit of moral support for those defending Obamacare. Those attempting to deny health care to tens of millions of Americans would hurt their own constituents in a way that falls short of the standards we hold for ourselves and other countries.

Specifically, Puras writes that Article 25 of the Universal Declaration of Human Rights “establishes everyone's right to a standard of living adequate for the health and well-being, including food, medical care and necessary social services.” He notes that Article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994, calls on states to “guarantee the right of everyone,” including “the rights to public health, medical care, social security and social services” without regard to race or color.

The special rapporteur also cites Article 12 of the International Covenant on Economic, Social and Cultural Rights, under which states have “the core obligation to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups.” The agreement was signed but not ratified by the United States, which is still “obliged to refrain from acts that would defeat the covenant's object or purpose, in conformity with Article 18 of the Vienna Convention on the Law of Treaties.”

The Trump administration has shown its contempt for such considerations by failing to pass along the U.N. letter to congressional leaders. But you don't have to care about international law to know that the essence of the OHCHR criticism is true: Taking away health coverage from millions without an adequate replacement is abject cruelty.

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