
AMENDED AMERICAN HEALTH CARE ACT POSES NEW THREAT TO PEOPLE LIVING WITH HIV, LGBT PEOPLE

By Tim Wang and Sean Cahill

Introduction

Republicans in Congress are finalizing a new amendment to the American Health Care Act (AHCA), offered by Rep. Tom MacArthur (R-NJ) with help from Chairman of the Freedom Caucus Rep. Mark Meadows (R-NC), in an effort to garner enough votes for the health care bill to pass. The new amendment takes aim at popular Affordable Care Act (ACA) provisions, including a ban on preexisting condition discrimination and essential health benefits, which were left intact in the previous version of the AHCA. These provisions are important for people living with HIV (PLWH) and lesbian, gay, bisexual, and transgender (LGBT) people. The amendment would allow states to waive these regulations by allowing them to charge higher premiums to Americans with chronic diseases and opt out of requirements to provide essential health benefits guaranteed by the ACA. The MacArthur Amendment poses a grave threat to the ability of PLWH and other chronic diseases, and the ability of LGBT people, to access health care.

Preexisting Condition Discrimination

- The MacArthur Amendment specifically states that “nothing in this act shall be construed as permitting health insurance issuers to limit access to health coverage for individuals with preexisting conditions.”¹ But health care policy experts are concerned that this is what will effectively happen because of the waivers permitted under the amendment.²
- The ACA ended the practice of health insurers’ use of individual ratings to estimate how much it would cost to insure someone applying for insurance in the individual market. Individual market applicants were required to answer detailed questionnaires about their health, and these individual ratings led to prohibitively high health insurance premiums for people with preexisting conditions. The ACA replaced this practice with community ratings, in which health insurance premiums were set for the entire community of people buying coverage, regardless of preexisting health conditions. This drove down the cost of health insurance premiums for people with chronic diseases and raised costs for healthy people. The MacArthur Amendment would allow states to waive the community rating requirement.³
- The MacArthur Amendment would require states seeking a waiver from the community rating requirement to participate in the Patient and State Stability Fund, which is a pool of money which

could be used to help pay insurance costs for people who have higher health care needs, such as those with preexisting conditions such as HIV. However, it is unclear if states will be required to use such funds to set up a high-risk pool for those with high health care costs, and some experts believe that states will not have to use monies in the Patient and State Stability Fund to offset high premiums for people with preexisting conditions.⁴

- States that file for a waiver from the ACA's community rating requirement could be allowed to charge people with serious health conditions higher premiums. This would likely lead to decreases in coverage for PLWH in states that waive out of community rating requirement.

Essential Health Benefits

- The amendment would also allow states to opt out of requiring coverage of the essential health benefits of the ACA, which mandates full coverage of services including preventive care (such as STI and cancer screenings), maternity care, prescription drugs, and mental health/substance use treatment.⁵
- States are allowed to opt out of mandating that insurance fully cover essential health benefits if they can show that the change would reduce average premium costs for insurance in the state, which it inevitably will, as consumers pay more out of pocket.
- The amendment also includes "default approval" for waivers which means that applications for a waiver are automatically approved. The burden would be on the federal government to reject these applications within 60 days if the state was not fulfilling its obligations.⁶
- Experts believe that this sets a low bar for eliminating essential health benefits because of the automatic approval process, as well as the fact that eliminating coverage for these benefits would almost certainly lower the average premium for health insurance simply due to fewer services being covered.⁷
- This newly amended bill would be especially harmful to LGBT people, PLWH, and many other vulnerable populations that experience health disparities. LGBT people and PLWH experience widespread discrimination in health care, which can act as a barrier to seeking routine and emergency medical care.⁸ Compared to heterosexual individuals, lesbian and bisexual women are less likely to receive preventive cancer screenings;⁹ and gay and bisexual men represent two-thirds of new HIV infections in the United States, with Black and Latino men who have sex with men (MSM) experiencing the highest HIV burden among all sub-populations.¹⁰ Transgender people, especially transgender women of color, are disproportionately burdened by high rates of HIV and other STIs,¹¹ as well as high prevalence of victimization and mental health issues, including suicidality.¹² LGBT people are also disproportionately affected by risk factors that contribute to poorer health outcomes, such as poverty,¹³ homelessness,¹⁴ and substance abuse.¹⁵ All of these access issues are exacerbated for LGBT and PLWH of color as members of racial and ethnic minority groups experience a myriad of health disparities at the patient, provider, and system level.¹⁶
- Required coverage of mental health, substance use, and behavioral health care is critical for expanding access to care and reducing these disparities. LGBT people are disproportionately

burdened by mental health issues and substance use issues.¹⁷ PLWH also experience disproportionate behavioral health burden.¹⁸ Preventive services, including HIV/STI testing, and chronic disease treatment are key essential health benefits which are especially important for preventing HIV infection and improving the health and well-being of PLWH.

Other Elements of Concern

The newly amended version of the AHCA also keeps many of the harmful provisions of the original bill, introduced by House Republicans in March, including:

- Ending Medicaid expansion in 2020;
- Cutting Medicaid funding by switching to a per-capita cap funding system;
- Replacing the individual insurance mandate with a continuous coverage penalty which could disproportionately penalize PLWH and others with chronic conditions who experience lapses in health insurance coverage;
- Reduce subsidies for many low-income and older Americans, which would disproportionately harm those living in rural areas where the costs of health care are higher;
- Defunding Planned Parenthood, which provides a wide array of family planning and sexual health services.¹⁹

Medicaid expansion has played a key role in reducing the uninsurance rate among PLWH and LGBT people. The percentage of PLWH on Medicaid increased from 36% in 2012 to 42% in 2014.²⁰ Between June/September 2013 and December 2014/March 2015, the percentage of LGB adults without health insurance decreased from 22% to 11%.²¹ The amended AHCA currently before Congress poses a grave threat to the ability of PLWH and LGBT people to access health care.

Acknowledgments

Authors:

Tim Wang, MPH
Health Policy Analyst
The Fenway Institute

Sean Cahill, PhD
Director of Health Policy Research
The Fenway Institute

References

¹ Text of the “Amendment to the American Health Care Act Offered By Mr. MacArthur of New Jersey,” Available online at: <http://www.politico.com/f/?id=0000015b-a790-d120-addb-f7dc0ec90000>

- ² Bade R, Haberkorn J, Dawsey J. April 25, 2017. "Republicans finalize new Obamacare repeal proposal." Politico. Available online at: <http://www.politico.com/story/2017/04/25/republicans-obamacare-repeal-237609>
- ³ Kliff S. April 25, 2017. "Republicans' new health amendment lets insurers charge sick people more, cover less." Vox. Available online at: <http://www.vox.com/2017/4/25/15422478/gop-ahca-amendment>
- ⁴ *Ibid.*
- ⁵ *Ibid.*
- ⁶ Bade R, Haberkorn J, Dawsey J. April 25, 2017. "Republicans finalize new Obamacare repeal proposal." Politico. Available online at: <http://www.politico.com/story/2017/04/25/republicans-obamacare-repeal-237609>
- ⁷ Kliff S. April 25, 2017. "Republicans' new health amendment lets insurers charge sick people more, cover less." Vox. Available online at: <http://www.vox.com/2017/4/25/15422478/gop-ahca-amendment>
- ⁸ Lambda Legal. *When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination against LGBT People and People with HIV*. New York: Lambda Legal. 2010.
- ⁹ Kerker BD, Mostashari F, Thorpe L. Health care access and utilization among women who have sex with women: Sexual behavior and identity. *J Urban Health*. 2006. 83(5):970-979.
- ¹⁰ Centers for Disease Control and Prevention. "Half of black gay men and a quarter of Latino gay men projected to be diagnosed within their lifetime." Press release. February 23, 2016.
- ¹¹ Herbst JH, Jacobs ED, Finlayson TJ, et al. "Estimating HIV prevalence and risk behaviors of transgender persons in the United States: A systematic review." *AIDS Behav*. 2008. (12):1-17.
- ¹² Kenagy GP. "Transgender health: Findings from two needs assessment studies in Philadelphia." *Health Soc Work*. 2005. 30(1):19-26.
- ¹³ Sears B, Badgett L. "Beyond Stereotypes: Poverty in the LGBT Community." The Williams Institute. June 2012. Available online at: <http://williamsinstitute.law.ucla.edu/headlines/beyond-stereotypes-poverty-in-the-lgbt-community/>
- ¹⁴ Durso LE, Gates GJ. *Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth who are Homeless or At Risk of Becoming Homeless*. The Williams Institute. True Colors Fund. The Palette Fund. 2012.
- ¹⁵ Cochran, S.D., Sullivan, J.G. & Mays, V.M. "Prevalence of mental disorders, psychological distress, and mental health services use among Lesbian, Gay, and Bisexual adults in the United States." *Journal of Consulting and Clinical Psychology* 2012. 71(1): 53-61.
- ¹⁶ Wheeler SM, Bryant AS. March 2017. "Racial and Ethnic Disparities in Health and Health Care." *Obstet. Gynecol. Clin. North Am*. 2017 Mar; 44(1): 1-11.
- ¹⁷ Institute of Medicine. 2011. *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*.
- ¹⁸ Keuroghlian A. February 28, 2017. "Expanding Access to Behavioral Health Care of People Living with HIV/AIDS." National Center for Innovation in HIV Care. Available online at: <https://careacttarget.org/library/expanding-access-behavioral-health-care-people-living-hiv-aids>
- ¹⁹ Wang T and Cahill S. April 2017. "What the American Health Care Act means for LGBT people and people living with HIV." The Fenway Institute, Fenway Health. Boston, MA. Available online at: <http://fenwayhealth.org/wp-content/uploads/2017/03/Policy-Brief-What-AHCA-means-for-LGBT-PLWH-final.pdf>
- ²⁰ CDC/KFF analysis of MMP, 2012 and 2014. Cited in Belluz J (2017, February 15. "Why Obamacare repeal would be devastating to people with HIV." Vox. Available online at: <http://www.vox.com/2017/2/8/14532310/obamacare-aca-repeal-hiv-aids>
- ²¹ Karpman M, Skopec L, Long S. "QuickTake: Uninsurance Rate Nearly Halved for Lesbian, Gay, and Bisexual Adults since Mid-2013." Health Reform Monitoring Survey. April 2015. Available online at: <http://hrms.urban.org/quicktakes/Uninsurance-Rate-Nearly-Halved-for-Lesbian-Gay-and-Bisexual-Adults-sinceMid-2013.html>