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If Senate Republican Health Bill Weakens Essential Health Benefits Standards, It Would Harm People with Pre-Existing Conditions

By Sarah Lueck

Some Senate Republicans are suggesting that their emerging legislation to “repeal and replace” the Affordable Care Act (ACA) will protect people with pre-existing medical conditions because it won’t allow states to charge such people higher premiums than others who buy the same policies. Yet like the House bill, the emerging Senate bill reportedly *will* let states waive essential health benefits (EHB) standards that require plans in the individual and small-group insurance markets to cover a comprehensive set of health benefits, including mental health services, maternity care, treatment for substance use disorders, and prescription drugs.¹ As a practical matter, that would leave many people with pre-existing conditions without access to the benefits they need at an affordable price.

If states scale back EHBs, many insurers will offer plans with skimpier coverage and lower premiums to attract young and healthy people. As a result, individuals with significant medical conditions might not be able to find plans with the comprehensive coverage they need. And if they were able to find such plans, the plans would charge much higher premiums — because, by and large, only less healthy people would enroll in them.

In analyzing the House bill provision allowing states to waive the EHB requirements, the Congressional Budget Office (CBO) estimated that states with half the nation’s population would do so. In those states, individual and small-group market coverage could end up as skimpy as it was before the ACA. Letting states roll back EHBs would once again let insurers eliminate or severely limit coverage for various costly medical services that now are covered, and would thereby raise out-of-pocket costs for services that people with costly health needs use much more heavily than other people. Many insurers would, as noted, reduce and restructure the benefits they cover to entice healthy people to enroll while discouraging those in poorer health or with pre-existing conditions from signing up. CBO predicts, for example, that many insurers would exclude mental health services, maternity care, and treatment of substance use disorders.

¹ Caitlin Owens, “Senate health bill likely to have state waivers,” Axios, June 6, 2017, https://wwwaxios.com/senate-health-bill-is-beginning-to-take-shape-2434844765.html?utm_medium=linkshare&utm_campaign=organic.

What's more, eliminating the EHB standards would weaken other core ACA protections, including some that apply to people who work for large employers. That's because the ACA's prohibition on annual and lifetime limits — and the requirement for most employer plans to cap enrollees' out-of-pocket spending each year — *are tied to the definition of EHBs*. These consumer protections *do not apply* to health services not included under a state's EHB standard. Weakening or repealing the EHB standard thus could render these protections meaningless for many people, putting many Americans who have medical conditions and rely on employer-based health insurance coverage — not just those with individual or small-group market coverage — at risk.

In short, if the emerging Senate Republican bill lets states eliminate or weaken EHBs as news reports suggest it is likely to do, it simply won't protect people with pre-existing medical conditions, despite claims to the contrary. Even if the bill maintains existing ACA rules that bar insurers from denying coverage to applicants based on health status and charging higher premiums to people with pre-existing medical conditions than to others buying the same policies, many people with pre-existing conditions won't be able to access or afford various benefits they need. As the American Cancer Society Cancer Action Network warns, "If insurers may offer stripped down policies that lack EHB standards, there is no incentive for insurers to offer comprehensive coverage to individuals who have a pre-existing health condition."²

EHB Waivers Would Lead to Skimpy Plans that Fail to Meet People's Needs

Federal minimum standards now require that all individual and small-group health plans cover ten EHBs: emergency services; hospitalizations; outpatient care; maternity and newborn care; mental health and substance use disorder treatment; prescription drugs; rehabilitation services; laboratory services; preventive services and chronic disease management; and pediatric care. Most people purchasing health insurance probably assume that it covers these basic services. But before the ACA, it frequently didn't. For example, in 2011, among people in the individual market:

- 62 percent had plans that didn't cover maternity care;
- 34 percent had plans that didn't cover substance use treatment;
- 18 percent had plans that didn't cover mental health; and
- 9 percent had plans that didn't cover prescription drugs.³

If states could waive EHBs, states with about half of the nation's population would do so, according to the CBO analysis of the House-passed bill. Some states would eliminate certain services entirely. Other states might give insurers greater leeway to offer plans that vary in the "scope and type of benefits they include," for example by specifying that a plan provide only "major

² Letter to the Honorable Paul Ryan and the Honorable Nancy Pelosi from Christopher W. Hansen, March 24, 2017, <https://www.acscan.org/sites/default/files/National%20Documents/AHCA%20EHB%20letter%203-24-17%20FINAL.pdf>.

³ Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, "Essential Health Benefits: Individual Market Coverage," December 16, 2011, https://aspe.hhs.gov/basic-report/essential-health-benefits-individual-market-coverage#_edn2.

“medical” benefits or not specifying any minimum requirements at all.⁴ Under such waivers, individual and small-group market plans in many places would quickly revert to benefit packages much like what they offered prior to the ACA. In practice, this would mean plans once again could:

- **Leave people who have pre-existing conditions without the coverage they need.** People with pre-existing conditions often wouldn’t be able to find the coverage they need at any price, much less an affordable one. Pre-existing conditions protections might still exist on paper; reportedly, the Senate Republican bill wouldn’t allow insurers to deny coverage to people with pre-existing conditions or charge them higher premiums. But that wouldn’t matter much if people with medical conditions couldn’t find any plans that covered the health care benefits they need. Without EHB standards, insurers would likely stop covering those services as a way to discourage enrollment by sicker, costlier enrollees. Or, if plans did cover such costly treatments, they would charge exorbitant premiums because only those with pre-existing conditions would enroll in them.

CBO, in its analysis of the House health care bill, found that allowing states to waive EHBs would lead insurers to scale back the benefits they cover: “As a result of the narrow scope of benefits, enrollees who use the services no longer covered or for which coverage was limited would face increases in their out-of-pocket costs. Some people would have increases of thousands of dollars in a year.”⁵

Notably, CBO concluded that mental health and substance abuse treatment are among the EHB standards most likely to be dropped. Behavioral health disorders such as mental health conditions and substance use disorders (SUDs) are among the most common pre-existing conditions, affecting 45 million Americans.⁶

- **Require women to pay more than men.** Allowing states to waive EHBs means that women could once again be charged more than men, since they’d have to pay more for plans with maternity coverage — if they could find them. If insurers aren’t required to cover maternity benefits as an essential benefit, they would likely strip them out. They might then offer a “rider” so that someone could add the missing benefit. As CBO noted, in the case of maternity coverage, such a rider could cost more than \$1,000 per month, since insurers would price it with the expectation that people buying the benefit would use it. Or insurers could offer a less comprehensive rider for a lower cost, with a limit on what the insurer would pay out. “Either type of rider would result in substantially higher out-of-pocket health care costs for pregnant women who purchase insurance in the nongroup market.”⁷
- **Curtail access to treatment for SUDs, including for people who are addicted to opioids.** Millions of people who buy plans in the individual and small-group markets have gained coverage for SUDs because of its inclusion as an EHB. As noted, about one-third of

⁴ Congressional Budget Office, “H.R. 1628, American Health Care Act,” May 24, 2017, <https://www.cbo.gov/publication/52752>.

⁵ CBO, *op cit.*

⁶ Assistant Secretary for Planning and Evaluation, “Health Insurance Coverage for Americans with Pre-Existing Conditions: the Impact of the Affordable Care Act,” Department of Health and Human Services, January 5, 2017, <https://aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf>.

⁷ CBO, *op cit.*

enrollees in the individual market in 2011 had plans that lacked coverage of SUD treatment. Now all enrollees with plans that meet ACA standards have this coverage. Eliminating the federal EHB standard would curb coverage of SUD treatment for people with private health insurance, just as there is growing recognition — including at the highest levels of government — of the importance of such coverage.⁸

Weakening EHB Would Raise Out-of-Pocket Costs — Including for People with Large Employer Coverage

Before the ACA, millions of people had health insurance that wouldn't actually cover them if they got sick. Plans often had annual and lifetime limits on coverage and no limits on individuals' out-of-pocket costs, and they omitted key services.⁹ The ACA fixed this by prohibiting annual and lifetime limits and setting an annual limit on what enrollees could be required to pay out-of-pocket in deductibles, copayments, and other cost sharing. But allowing states to waive the EHB standards would make these rules meaningless. That's because the prohibition on annual and lifetime limits applies only to EHBs, and the cap on out-of-pocket costs *applies only to covered benefits — not to costs related to services that insurers decide to drop.* That means insurers in waiver states could again cap the amount they would pay for a consumer with a high-cost or long-term health need such as cancer treatment. Just like before the ACA, people *with health insurance* would often be surprised, discovering too late that their health plan wouldn't cover treatments they need, leaving them with staggering out-of-pocket costs — or even in medical bankruptcy.

Moreover, if just *one* state decides to waive EHBs, then large employer plans in *every state* could return to imposing lifetime and annual limits on coverage as well. As a Brookings analysis explains, that's because the ACA's ban on lifetime and annual limits only applies to essential health benefits, and large employers (even those that don't have employees in multiple states) are free to decide which state's EHB definition they want to adopt.¹⁰ Before the ACA, 70 million people covered by large employers, including millions of children, faced lifetime limits on benefits, meaning that their health insurance coverage could end — for good — in the middle of a serious illness.¹¹

⁸ Peggy Bailey, “Building on ACA’s Success Would Help Millions with Substance Use Disorders,” Center on Budget and Policy Priorities, April 11, 2017, <http://www.cbpp.org/research/health/building-on-acas-success-would-help-millions-with-substance-use-disorders>. Notably, Medicaid coverage is extremely important in providing access to treatment for SUDs. Senate Republicans are said to be considering cutting and capping federal funding for Medicaid.

⁹ Thomas D. Musco and Benjamin D. Sommers, “Under the Affordable Care Act, 105 Million Americans No Longer Face Lifetime Limits on Health Benefits,” Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, March 2012, <https://aspe.hhs.gov/basic-report/under-affordable-care-act-105-million-americans-no-longer-face-lifetime-limits-health-benefits>.

¹⁰ Matthew Fiedler, “Allowing states to define ‘essential health benefits’ could weaken ACA protections against catastrophic costs for people with employer coverage nationwide,” Brookings, May 2, 2017, <https://www.brookings.edu/2017/05/02/allowing-states-to-define-essential-health-benefits-could-weaken-aca-protections-against-catastrophic-costs-for-people-with-employer-coverage-nationwide/>.

¹¹ Musco and Sommers, *op cit.*

State Waivers Would Prompt Widespread Weakening of EHB Protections

Allowing states to waive EHBs might seem very different from repealing federal EHB protections altogether. But in fact, both approaches would leave decisions about EHB standards to states. And under the Republican proposal, states would likely face heavy pressure to take such waivers, and many would do so.

If, as expected, the Senate version of the House bill also eliminates the individual mandate to have coverage or reduces or restructures the federal subsidies available to people with low and moderate incomes so that they no longer keep up with people's actual cost of buying a decent health plan in the individual market, states would likely look for ways to reduce premiums, including by scaling back or eliminating the EHB standards. This dynamic led the CBO, in its analysis of the House health care bill, to estimate that about half of the U.S. population would live in states that would waive EHBs or, under another House provision, allow insurers to charge people with pre-existing conditions higher premiums if they have had a gap in coverage. (Senate Republicans have said they would not include the waiver allowing premiums based on health status in their bill.¹²)

Prior to the ACA, states were free to adopt ACA-style protections for people with health conditions, *but few did*. Robust protections for people with pre-existing conditions weren't sustainable for states without the rest of the ACA package: an individual mandate that people get health coverage or pay a penalty and robust subsidies that keep individual-market premiums affordable. The House ACA repeal bill would eliminate the individual mandate, increasing premiums by an estimated 20 percent in 2018. And starting in 2020, it also would sharply cut premium subsidies and repeal cost-sharing subsidies without providing any substitute, increasing total out-of-pocket costs (premiums, deductibles, copays, and coinsurance) by thousands of dollars for millions of people. This would put considerable pressure on states to eliminate the ACA's protections for people with pre-existing conditions and allow insurers to reinstitute harmful practices from the past.¹³

Conclusion

Protecting people who have pre-existing medical conditions doesn't just mean ensuring that insurers have to offer them a plan or charge them the same premium as everyone else. It also means ensuring that people in every state continue to have access to plans in the individual and small-group markets that cover a comprehensive set of benefits and protect against high out-of-pocket costs when enrollees have a baby, seek mental health services, or need treatment for a costly illness. The ACA's essential health benefits, along with related bans on annual and lifetime limits and the cap on annual out-of-pocket spending by enrollees, ushered in a new era of improved health coverage for millions of people. As Senate Republicans work on their health care bill, they should reject the structure of the fundamentally flawed House-passed bill.¹⁴ To protect people with pre-existing conditions, they must not only maintain the full range of protections that exist now for people with pre-existing medical conditions in the private market but also preserve the ACA's coverage expansions and reject radical changes to Medicaid.

¹² Owens, *op cit.*

¹³ Aviva Aron-Dine and Tara Straw, "House GOP Health Bill Still Cuts Tax Credits, Raises Costs by Thousands of Dollars for Millions of People," Center on Budget and Policy Priorities, March 22, 2017, <http://www.cbpp.org/research/health/house-gop-health-bill-still-cuts-tax-credits-raises-costs-by-thousands-of-dollars>.

¹⁴ Center on Budget and Policy Priorities, "The House-Passed Health Bill Can't Be Fixed," updated May 26, 2017, <http://www.cbpp.org/research/health/the-house-passed-health-bill-can-t-be-fixed>.