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## Cruz Amendment Would Worsen Already Harmful Senate Health Bill for People with Medical Conditions

By Sarah Lueck

Senator Ted Cruz has proposed modifying the Senate Republican health bill to allow any insurer that offers at least one plan satisfying the Affordable Care Act's (ACA) market reforms and consumer protections to also sell other plans in the individual market that do *not* comply with these standards. That would eviscerate protections for people with pre-existing conditions, which the Senate bill as drafted would already drastically weaken.

As it currently stands, the Senate bill already would roll back critical ACA protections for people with pre-existing conditions. It would let states set rules to allow insurers to exclude core benefits and dramatically raise deductibles and other out-of-pocket costs in the individual and small-group markets — leaving many people who have pre-existing medical conditions without affordable access to needed medical services.

The Cruz amendment would go even further. Some of the details of the proposal aren't yet available, but it's clear that one of its primary effects relative to the current Senate bill would be to permit insurers in the individual market to offer plans (dubbed “Consumer Freedom” plans) for which they can charge higher premiums — or deny coverage altogether — based on an individual's health status, as long as they also offer one “ACA-compliant” plan.<sup>1</sup> That would undermine protections for people with pre-existing conditions, because people who are healthier would enroll overwhelmingly in the “Freedom” plans, which could offer them lower premiums because the plans would deny coverage or charge much higher rates to people with a variety of illnesses and likely would exclude coverage for various costly services. Meanwhile, people in poorer health would enroll in the ACA-compliant plans, which would offer more comprehensive coverage and would have to accept these patients.

This segmentation of the insurance market into separate healthy and unhealthy enrollee risk pools, a dynamic known as “adverse selection,” would have serious consequences for the compliant plans. It would drive up those plans' premiums to levels that would likely be unaffordable for many people

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<sup>1</sup> See Margot Sanger-Katz, “Ted Cruz Has an Idea for How to Cover High-Risk Patients,” *New York Times*, July 5, 2017, <https://www.nytimes.com/2017/07/05/upshot/ted-cruz-has-an-idea-for-how-to-cover-high-risk-patients.html?mwrsm=Twitter&r=0> and Robert Pear, “White House Backs Conservative Health Plan, but GOP Leaders Are Leery,” *New York Times*, July 5, 2017, <https://www.nytimes.com/2017/07/05/us/politics/white-house-trump-conservative-health-proposal-ted-cruz.html>.

with pre-existing conditions. While individuals with pre-existing conditions technically would still be able to purchase such plans, in practice the cost would effectively shut out of coverage many people with incomes above 350 percent of the poverty line (\$42,000 for an individual, the level at which premium subsidies end under the Senate bill). The Cruz amendment consequently would violate the pledge that a number of Senate Republicans have made to avoid reinstating coverage denials or charging higher premiums based on health status.

This could be especially devastating for moderate-income adults between ages 50 and 65, the majority of whom have pre-existing conditions and who already would face much higher premiums under the current Senate bill than they do today. People with incomes below 350 percent of the poverty level would apparently receive tax-credit subsidies to help them afford the premiums. (It has been reported that the Cruz proposal would maintain the underlying Senate bill's subsidy structure.) *But the Senate bill's subsidies are tied to premium costs for plans with deductibles of \$6,000 or more.* Consumers with pre-existing conditions and limited incomes who seek a plan *without* such high deductibles — i.e., who seek a plan similar to one they have through the marketplace today — would face a harsh choice: be responsible for the first \$6,000 a year in health costs before insurance kicks in or pay much more out of pocket in premium costs for a plan with a more reasonable deductible. And subsidized consumers who sought to buy a plan with a lower deductible would have to pay even more in premiums.

## Underlying Senate Bill Uses Waivers to Roll Back Core Consumer Protections

Even without the Cruz amendment, the Senate bill would allow states to obtain waivers that would weaken or eliminate most consumer protections and standards in the individual and small-group markets and thereby expose many people with pre-existing medical conditions to high out-of-pocket costs and restrict their access to needed health services and treatments. (See Table 1 for a comparison of several key elements of the House-passed bill, the Senate bill unveiled June 22, and the Senate bill with the Cruz amendment added.)

As now drafted, the Senate bill would let states seek sweeping “1332” waivers,<sup>2</sup> which the Department of Health and Human Services would be required to approve *virtually automatically*, to:

- **Eliminate or weaken the ACA's essential health benefits (EHB) standard**, meaning that plans no longer would have to cover (or could sharply limit coverage of) services such as maternity care, mental health treatment, treatment for substance use disorders, and prescription drugs. This also would allow insurers to impose annual or lifetime limits on any health services that no longer meet a state's pared-back EHB list. Before the ACA, most states' rules allowed insurers to offer plans that lacked important benefits.
- **Remove or raise the cap on out-of-pocket costs**, allowing plans to charge people exorbitant amounts in deductibles and other cost-sharing for the benefits that would still be covered — far more than the annual cap of about \$7,300 per individual in out-of-pocket

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<sup>2</sup> For more on the Senate bill's 1332 waivers, see: Jason Levitis, “Changes to state innovation waivers in the Senate health bill undermine coverage and open the door to misuse of federal funds,” Brookings Institution, June 23, 2017, <https://www.brookings.edu/blog/up-front/2017/06/23/changes-to-state-innovation-waivers-in-the-senate-health-bill-undermine-coverage-and-open-the-door-to-misuse-of-federal-funds/> and Nicholas Bagley, “Crazy waivers: the Senate bill invites states to gut important health insurance rules,” Vox, June 23, 2017, <https://www.vox.com/the-big-idea/2017/6/23/15862268/waivers-federalism-senate-bill-essential-benefits>.

costs that's in place today under the ACA. Or plans could have *no* limit at all on out-of-pocket costs.

- **Eliminate the minimum standards for how comprehensive plans must be**, so insurers could offer plans far skimpier than even today's "bronze" plans, which generally have deductibles of \$6,000 or more.
- **Eliminate the requirement that insurers offer lower-deductible, more comprehensive plans** (specifically, in ACA terms, at least one "gold" and one "silver" plan). Without that requirement, many insurers would likely stop offering these plans entirely.

Questions remain about the Cruz amendment's details. It isn't clear, for example, whether it would *allow* states to let insurers establish the "Consumer Freedom" plans that could flout protections against denials and higher premiums based on health status, or whether the Cruz amendment would *require* states to allow insurers to do so. There has also been talk of somehow "connecting" the two separate pools without explaining how that would work.<sup>3</sup> But the conclusion is inescapable that in combination with the underlying Senate bill, the Cruz amendment would undermine or eliminate most protections that now help people with pre-existing medical conditions obtain affordable, decent-quality coverage.

It remains to be seen whether Senate Republicans will include the Cruz amendment, or some version of it, in their health care bill. But even without Cruz, the Senate bill would have devastating effects on people with pre-existing medical conditions.

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<sup>3</sup> Burgess Everett, Jennifer Haberkorn, and Josh Dawsey, "GOP struggles to revamp ailing Obamacare repeal bill," *Politico*, July 10, 2017, <http://www.politico.com/story/2017/07/10/senate-republican-health-care-bill-july-schedule-240363>.

TABLE 1

**GOP Health Proposals Would Weaken Consumer Protections**

	House-passed Bill, in states with a MacArthur waiver <sup>a</sup>	Senate Bill, in states with a 1332 waiver	Cruz “Consumer Freedom” plans
<b>Eliminates federal Essential Health Benefits standards</b>	Yes	Yes	Yes
<b>Removes or raises cap on out-of-pocket costs</b>	No	Yes	Yes
<b>Eliminates requirement that insurers offer lower-deductible plans</b>	Yes	Yes	Yes
<b>Allows insurers to deny coverage based on health status</b>	No	No	Yes
<b>Eliminates federal bar on charging higher premiums due to health status</b>	Yes	No	Yes

<sup>a</sup>The MacArthur amendment, a provision in the House bill, creates state waivers that would permit insurers to set premiums based on health status, among other changes. See Jacob Leibenluft, “MacArthur Amendment Would Mean Return to Pre-ACA Law for People with Pre-Existing Conditions,” Center on Budget and Policy Priorities, April 27, 2017, <http://www.cbpp.org/blog/macarthur-amendment-would-mean-return-to-pre-aca-law-for-people-with-pre-existing-conditions>.