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Commentary: The Senate Health Bill Must Meet At Least Four Requirements to Pass the “Kimmel Test”

By Sarah Lueck

When late-night television host Jimmy Kimmel shared his experience of having a child who needed life-saving surgery for a serious heart ailment, he prompted an outpouring of public support for making sure that people with serious and chronic conditions can obtain affordable health coverage that meets their needs. Now as the House health care bill heads to the Senate, there is already talk of the need for any Senate bill to meet the “Kimmel test,” as Senator Bill Cassidy (R-LA) recently dubbed it.¹

The House health care bill blatantly violates the Kimmel test by allowing insurers to charge people with pre-existing conditions unaffordable premiums based on their medical histories. But ensuring health care is affordable for people with pre-existing conditions requires more than just maintaining the Affordable Care Act’s (ACA) key consumer protections — it requires avoiding the House bill’s other fundamental flaws. To meet the “Kimmel test,” a Senate health bill must:

Maintain a strong Medicaid program, including for adults and children with disabilities.

The House bill would cap and cut federal funding for virtually the entire Medicaid program, by imposing a per capita cap or letting states opt into a block grant. The per capita cap would set annual limits on federal funding per beneficiary that would grow more slowly than actual health care costs, which would significantly cut federal funding, relative to current law, with the cuts growing deeper with each passing year. Faced with these large cuts in federal Medicaid funding, states would have no choice but to sharply cut their programs. Home- and community-based services, an optional Medicaid benefit that most states already limit based on available funds, would be at particular risk. These services, which include nursing and home health care and help with chores, meals, transportation, and other services, let people with serious health problems remain in their homes instead of having to be placed in a nursing home. Under the House bill, tens of millions of people with pre-existing conditions would face the significant risk of losing Medicaid coverage or going

¹ Kristine Phillips, “Does it pass the Jimmy Kimmel test?” asks GOP senator who authored proposal to replace Obamacare,” *Washington Post*, May 6, 2017, https://www.washingtonpost.com/news/the-fix/wp/2017/05/06/does-it-pass-the-jimmy-kimmel-test-asks-senator-who-authored-proposal-to-replace-obamacare/?utm_term=.c70a07dc9bad.

without needed care as states scaled back eligibility, covered benefits, and provider payments over time. This group includes millions of children with special health care needs and disabilities.²

Protect the Medicaid expansion. Under the House bill, the federal government would no longer provide enhanced funding for new Medicaid expansion enrollees after 2019, forcing most or all of the 31 states and Washington, D.C. that have adopted the ACA’s Medicaid expansion to drop it. The Medicaid expansion now covers 11 million people — and that group has high rates of pre-existing conditions.³ For example, almost 30 percent of those benefitting from the Medicaid expansion have a mental illness or substance use disorder.⁴ The House bill would effectively end the Medicaid expansion starting in 2020, leaving millions of people with pre-existing conditions without coverage.

Protect older people, who often have costly health care needs. Some 84 percent of people age 55-64 have pre-existing health conditions.⁵ Even before it was amended to let states waive protections for people with pre-existing conditions, the House bill let insurers charge older people in the individual market premiums that are five times more than they charge younger consumers (or even more), and older people would also receive much smaller subsidies than they do today to help them afford insurance. For example, a 60-year-old woman with \$22,000 of annual income who faced the national average benchmark premium would pay \$8,200 more in premiums after tax credits than she does now.⁶ The Congressional Budget Office projects that uninsured rates for people age 50-64 would double due to the House bill.⁷

Maintain existing private-insurance protections. Of course, a Senate health bill would need to maintain the ACA’s key consumer protections. Ensuring that people with pre-existing conditions are protected when they seek coverage in the individual insurance market doesn’t only mean barring insurers from denying plans based on health status or prohibiting exclusions of people’s health conditions from coverage. It also means barring insurers from charging higher premiums based on health status or pre-existing medical conditions, requiring that plans cover a comprehensive set of benefits (including core benefits such as maternity services and mental health care), and capping

² Aviva Aron-Dine, “\$8 Billion Comes Nowhere Close to Meeting Republican Commitments to People with Pre-Existing Conditions,” Center on Budget and Policy Priorities, May 3, 2017, http://www.cbpp.org/research/health/8-billion-comes-nowhere-close-to-meeting-republican-commitments-to-people-with-pre#_ftn7.

³ Jamie Ryan and Melinda K. Abrams, “Medicaid Cuts Would Affect Older, Sicker Americans,” The Commonwealth Fund, April 6, 2017, <http://www.commonwealthfund.org/publications/blog/2017/apr/medicaid-cuts-would-affect-older-sicker-americans>.

⁴ Judith Dey *et al.*, “Benefits of Medicaid Expansion for Behavioral Health,” Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, March 28, 2016, <https://aspe.hhs.gov/system/files/pdf/190506/BHMedicaidExpansion.pdf>.

⁵ Office of the 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>.

⁶ 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>.

⁷ Congressional Budget Office, “Cost Estimate for the American Health Care Act,” March 13, 2017, <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/americanhealthcareact.pdf>.

how much people with expensive health care needs have to pay out-of-pocket.⁸ The House bill would roll back these existing ACA protections, returning to the highly flawed pre-ACA individual market that made it impossible for people with health conditions to get adequate, affordable health coverage. Moreover, the House bill would once again allow insurers to place annual and lifetime limits not only on individual and small-group plans but also on coverage that people get from their employers, leaving millions of people with costly pre-existing conditions to once again worry about exhausting their benefits.⁹

The Kimmel test is an exacting standard. The House bill fails that test — and so does legislation that Sen. Cassidy himself introduced, which would weaken private-market protections for people with pre-existing conditions and incentivize states not to expand Medicaid or to drop Medicaid expansions they have in place.¹⁰ Crafting a Senate health care bill that passes the Kimmel test would mean ensuring that people with medical conditions can get the affordable health coverage they need — no matter what state they live in, their means, and whether they get their coverage from a private source or Medicaid. As Jimmy Kimmel put it: “Don’t let their partisan squabbles divide us on something every decent person wants. We need to care for each other.”

⁸ Sarah Lueck, “Eliminating Federal Protections for People with Health Conditions Would mean Return to Dysfunctional pre-ACA Individual Market,” May 3, 2017, <http://www.cbpp.org/research/health/eliminating-federal-protections-for-people-with-health-conditions-would-mean-return>.

⁹ 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/>.

¹⁰ Sarah Lueck, “Cassidy-Collins Proposal Would Weaken ACA’s Coverage and Consumer Protections,” Center on Budget and Policy Priorities, March 15, 2017, <http://www.cbpp.org/research/health/cassidy-collins-proposal-would-weaken-acas-coverage-and-consumer-protections>.