Federal Proposal Seeks to Allow Discrimination in Health Care

The change targets LGBT people and those with chronic conditions. Here's how patient groups and Lambda Legal respond.

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Once again, the Trump administration has attacked health care protections. And on cue, advocates for patients have launched a counterattack. Specifically, the Department of Health and Human Services (HHS) issued a proposed rule change to Section 1557 of the Affordable Care Act (ACA, or Obamacare). This section prohibits discrimination in health care based on race, color, national origin, sex, age or disability.

The HHS proposal seeks to also allow insurance plans to limit or deny coverage, impose cost-sharing, restrict coverage for people with a disability, and use discriminatory marketing practices and insurance benefits, according to a press from I Am Essential, a coalition of patient groups.

"We are deeply concerned that the proposed removal of these protections, if finalized, will increase the likelihood that insurers will…discriminate against people with serious and chronic health care conditions," said Carl Schmid, deputy executive director of The AIDS Institute and member of I Am Essential, in the press release.

"Absent robust anti-discrimination regulations and enforcement, insurers have the ability to design benefits that do not cover certain treatments, place all drugs for certain conditions on the highest cost-sharing tier, require excessive step therapy and prior authorization, or charge excessively high out-of-pocket costs," added Laura Weidner, vice president of government relations and advocacy for the Epilepsy Foundation. "The proposed regulatory changes will make it much harder for people with serious and chronic health conditions to afford and get what they need, resulting in worse health outcomes and likely higher overall health care expenditures."

What's more, the HHS proposal allows those in the health care industry to discriminate based on sex—in other words, against LGBT people, explained Lambda Legal, a nonprofit legal defense group that fights for HIV and LGBT communities, in a separate press release.

"The proposed rule seeks to carve out LGBT people from the ACA's nondiscrimination protections, inviting health care workers, doctors, hospitals and health insurance companies that receive federal funding to refuse to provide or cover health care services critical to the health and

wellbeing of LGBT people and people living with HIV," wrote Lambda Legal.

Both Lambda Legal and I Am Essential submitted their own comments to the DDH objecting to the proposed rule change (links to the letters are included in their press releases). Among the signatories to the I Am Essential letter are the American Cancer Society Action Network, Arthritis Foundation, Hepatitis B Foundation, National Alliance on Mental Illness, Lupus Foundation of America and the Michael J. Fox Foundation for Parkinson's Research.

"Although HHS cannot change the law through the Proposed Rule," wrote Lambda Legal in its letter to HHS secretary Alex Azar, "the Proposed Rule sends a dangerous message to those who wish to discriminate that they can do so without consequence.… Before the ACA, people with chronic health conditions were often denied care or paid exorbitant prices for substandard care. The protections against discriminatory benefit design has been lifesaving for many LGBTQ people.… The Proposed Rule unreasonably and unjustifiably would disproportionately impact LGBTQ people, especially LGBTQ people of color living with disabilities and chronic conditions."

For more background about Section 1557 of the ACA and HHS's proposed changes, check out the detailed issue brief by the Henry Kaiser Family Foundation.

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