Making Medicaid Work for All Americans: Gender Affirming Care under Medicaid

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Context

Medicaid is a program in the United States that provides health care coverage to eligible low-income adults (including those with disabilities, those who are pregnant, and the elderly) as well as children. It is structured by federal requirements, but Medicaid programs are administered by the individual states. Funding comes from both the states as well as the federal government[1].

Starting in 2014, the Affordable Care Act gave states the ability to expand the eligibility for Medicaid to citizens under 65 in families with incomes below 133 percent of the Federal Poverty Level. Since its passage in 2014, all but eleven states have expanded their Medicaid programs under the ACA[2]. The impact of the ACA on the accessibility of healthcare cannot be understated. As referenced above, the ACA expanded the pool of citizens who could now claim Medicaid benefits. This is particularly salient in the LGBT community. A Kaiser Family Foundation study found that since the implementation of the ACA, the amount of those without insurance decreased among LGBT adults, representing an estimated 369,000 fewer uninsured LGBT individuals. In addition, Medicaid coverage increased, representing an estimated 511,000 more LGBT individuals with Medicaid coverage[3].

Another element of the ACA and expansion of the ACA is the personal mandate. As a provision of the ACA, individuals who do not purchase insurance may be required to pay an "individual Shared Responsibility Payment[4]" as a part of their federal tax return. This applied to plans under the ACA through 2018. The fee would be less than the cost of the lowest tier plan on the healthcare marketplace. Essentially, this provision would increase the pool of lower-cost enrollees in healthcare plans[5]. But this would levy an additional burden onto those who may have a precarious financial situation. However, this only considers the role of a financial incentive to purchase insurance. If people don't want to have to pay the fee, they will have to get coverage. But if a population is already dissuaded from seeking health insurance because of concerns about coverage; then this personal mandate would exacerbate the gaps in access to coverage. This compounds when looking at access to government-subsidized healthcare. If transgender

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[1] *Medicaid*, Medicaid.gov, https://www.medicaid.gov/medicaid/index.html.

[2] "Status of State Medicaid Expansion Decisions: Interactive Map." *KFF*, KFF.org, 8 Oct. 2021, https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/.

[3] L. Dawson, J. Kates, and A. Damico. (2018). Kaiser Family Foundation. *The Affordable Care Act and Insurance Coverage Changes by Sexual Orientation. https://www.kff.org/disparities-policy/issue-brief/the-affordable-care-act-and-insurance-coverage-changes-by-sexual-orientation/*

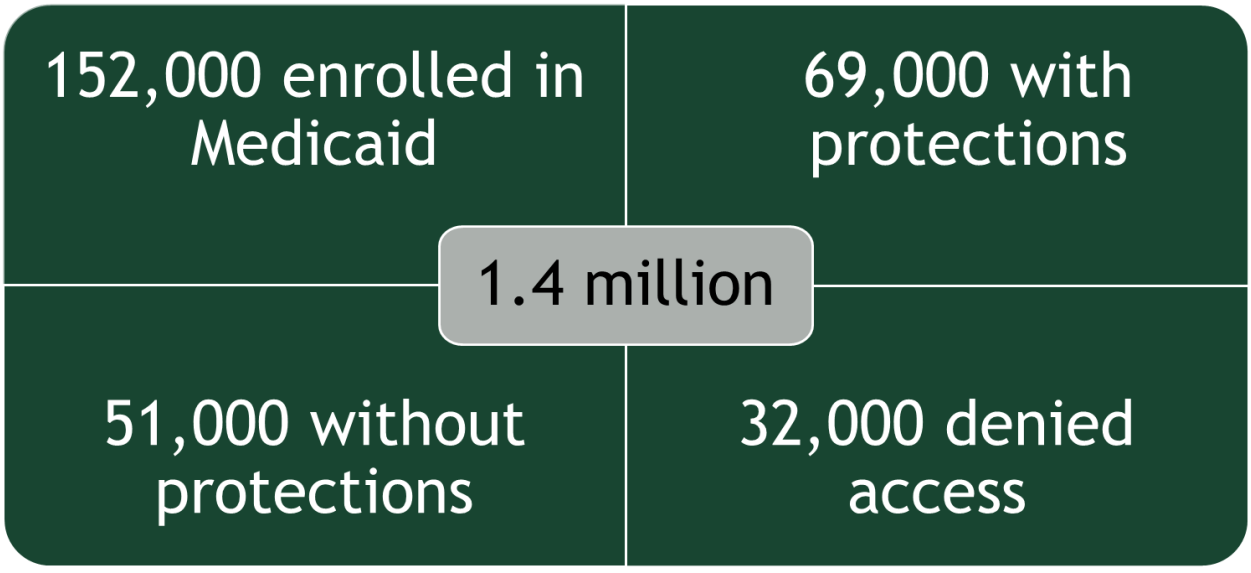
[4] "Individual Mandate Penalty You Pay If You Don't Have Health Insurance Coverage." *HealthCare.gov*, https://www.healthcare.gov/fees/fee-for-not-being-covered/

[5] Norris, Louise. "Is There Still a Penalty for Being Uninsured?" *Healthinsurance.org*, 18 June 2021, https://www.healthinsurance.org/faqs/is-there-still-a-penalty-for-being-uninsured/.

Americans understand their state statutes to be discriminatory, they would understandably be led away from seeking aid.

Protection for pre-existing conditions is another tenet of the ACA that has been one of its major selling points. Healthcare companies cannot deny a person coverage or charge more for coverage because of a medical condition that they had before the start of their health insurance coverage[6]. Without the protections for pre-existing conditions, LGBT Americans could be denied coverage because of a diagnosis of HIV, previous issues with mental health, or a history of seeking gender-affirming care. Aside from the medically specific barriers to care, the ACA attempts to mitigate the impact of discriminatory practices within the healthcare field. Preexisting condition clauses have specifically denied coverage to LGBT individuals. This could manifest through specific exclusions for conditions like HIV/AIDS or for treatment for trans individuals that may be seen as an undue burden of a cost. Additionally, transgender people have been denied coverage unrelated to their gender transition because of perceived difficulties in providing care in a situation that a medical professional may not be able or willing to do[7].

Despite the expansion of the ACA and its protections, many Medicaid beneficiaries face a series of challenges due to the lack of cohesion on coverage for gender-affirming care. Gender-affirming care can include surgical procedures or hormone therapies as a part of medical gender transition. It also includes medical care, in general, that affirms a person's gender identity. This can manifest as respect for a person's identity or pronouns as well as a welcoming environment that is conducive to a transgender individual seeking and receiving healthcare.



[6] "42 U.S. Code § 18001 - Immediate Access to Insurance for Uninsured Individuals with a Preexisting Condition." *Legal Information Institute*, Cornell University, https://www.law.cornell.edu/uscode/text/42/18001.

[7] Human Rights Campaign. Health Insurance Discrimination for Transgender People.

Problem

Transgender Americans deserve the same degree of treatment (medical or social) that is provided to cisgender Americans. According to a study from UCLA Law's Williams Institute, an estimated 1.4 million adults in the United State identify as transgender while 152,000 of those are enrolled in Medicaid. It is estimated that less than half of trans Medicaid beneficiaries have explicit access to coverage for gender-affirming care under state Medicaid statutes. 51,000 Medicaid beneficiaries live in states where there is a lack of language that explicitly covers or denies treatment. 32,000 transgender Medicaid beneficiaries live in states that explicitly deny coverage for gender-affirming care[8].

Analysis

Of the 19 states that have protections for gender affirmative care under Medicaid, 17 of them came about through state departments of health. These are issued regulations, not passed legislation. These regulations were issued in the latter half of the 2010s. In the face of the incoming Trump administration and perceived threats to protections, departments of health released regulations and bulletins that enshrined coverage in their state Medicaid laws. In addition to these protections through DHS regulations, court rulings have invalidated a 1990s regulation that excluded gender affirmative care.

The 12 states that have explicit exclusions for gender affirmative care for Medicaid recipients vary to a greater degree. Over half have policies from before a similar period (the late 2010s) where many protections have occurred in other states. These regulations are still in effect with outdated and offensive language referring to transgender people and their healthcare. Forty percent of states that have exclusionary language have achieved this through Medicaid Provider Manuals in the 2010s. These are guidelines that have appropriate language unlike their counterparts from the 20th century. However, they achieve the end of denying healthcare to transgender Americans.

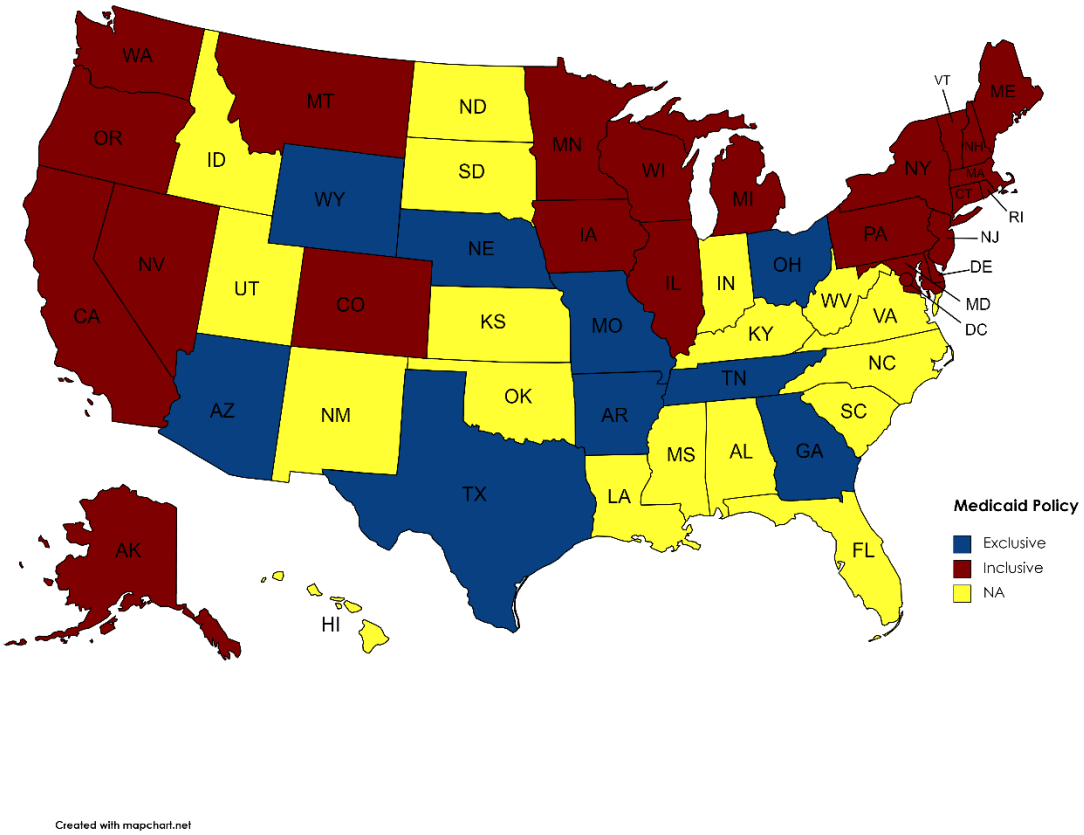
Recommendations

This lack of protection for transgender Americans is not something that is a relic of the past that we must wrestle with. This bigotry is continuing to fester throughout this country. States continue to bring forward legislation that would restrict the accessibility of Medicaid. This manifests as cuts to Medicaid spending, work requirements, or language that explicitly targets transgender Americans. If states adopted a uniform standard for Medicaid coverage, then transgender Americans' health would not be predicated on where they live. Removing the explicit restrictions on transgender Americans seeking Medicaid coverage as well as removing

[8] Mallory, Christy, and William Tentindo. "Medicaid Coverage for Gender-Affirming Care." *William's Institute*, UCLA, https://williamsinstitute.law.ucla.edu/wp-content/uploads/Medicaid-Gender-Care-Oct-2019.pdf.

barriers such as requiring identification documents would increase the efficacy of the Medicaid program by allowing more transgender Americans to receive benefits.

A change to the structure of Medicaid where the ability for states to restrict access to coverage is modified would help ensure greater protections for gender-affirming care. The partisanship of state agencies has allowed for Medicaid Provider Manuals and DHS guidelines to be decided at the will of elected officials. An expanded standard for protections for access to care would help alleviate the issue of access in the face of disruptive state policy. Additionally, a national Medicaid Provider Manual would circumvent the exclusions sought by states looking to deny access to gender-affirming care.



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