



April 24, 2017

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

Dear Speaker Ryan, Minority Leader Pelosi, Majority Leader McConnell, and Minority Leader Schumer:

On behalf of the American College of Physicians (ACP), I am writing to urge Congress to move away from the harmful changes to patient care that would occur if the American Health Care Act (AHCA) were to become law, and to instead work for bipartisan solutions to improve the Affordable Care Act (ACA) rather than repealing and replacing it. We believe that the AHCA, which would repeal and replace the most important coverage and consumer protections created by the ACA, is so fundamentally flawed that it cannot be made acceptable. We understand that the leadership in the House of Representatives continues to explore ways to bring a modified version of the AHCA to a vote, based on a draft amendment reportedly being developed by Representatives MacArthur and Meadows, a summary of which was made available to the public through news organizations. This amendment would make the harmful AHCA even worse by creating new coverage barriers for patients with pre-existing conditions and weakening requirements that insurers cover essential benefits.

The American College of Physicians is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 148,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

The draft MacArthur-Meadows amendment would create what is known as the “Limited Waiver Option” that would allow states to eliminate or severely weaken vital ACA Title I consumer protections—specifically, community rating and essential health benefits (EHBs)—returning the country to the pre-ACA days when persons with pre-existing “declinable” medical conditions in most states were priced out of the market and the insurance products available in the individual market did not cover medically necessary services.

Specifically:

The MacArthur-Meadows amendment would create an option for states to obtain Limited Waivers from certain federal standards that would gut existing law consumer protections. Based on a summary of the draft amendment, states could seek Limited Waivers for:

- Essential Health Benefits (EHBs)
- Community-rating rules, except for the following categories, which are not waivable: Gender or Age (except for reductions of the 5:1 age ratio previously established) or Health Status (*unless* the state has established a high-risk pool or is participating in a federal high-risk pool)

To obtain the waiver, states would only need to “attest that the purpose of their requested waiver is to reduce premium costs, increase the number of persons with healthcare coverage, *or advance another benefit to the public interest in the state*, including the guarantee of coverage for persons with pre-existing medical conditions. The Secretary shall approve applications within 90 days of determining that an application is complete.” [Emphasis added in italics].

In other words, as long as a state attested that there was a “benefit to the public,” insurers would be once again allowed to charge more to people with pre-existing conditions, or decline to cover needed benefits like physician and hospital visits, maternity care and contraception, mental health and substance use disorder treatments, preventive services, and prescription drugs.

This would take us back to the days when people had to fill out intrusive insurance company applications to document their previous health history, even before being advised what the premium would be based on their individual health risk. Unlike community rating, which bases premiums based on the expected costs associated with all persons in the insurance pool (adjusted only by age, tobacco use, and family size), the Limited Waiver would again allow insurers in states that obtain a waiver to **again charge people exorbitant and unaffordable premiums for their pre-existing conditions.**

Before the ACA, insurance plans sold in the individual insurance market in all but five states typically maintained lists of so-called “declinable” medical conditions—including asthma, diabetes, arthritis, obesity, stroke, or pregnancy, or having been diagnosed with cancer in the past 10 years. Even if a revised bill would not explicitly repeal the current law’s *guaranteed-issue* requirement—which requires insurers to offer coverage to persons with pre-existing conditions like these—*guaranteed issue without community rating allows insurers to charge as much as they believe a patient’s treatment will cost*. The result would be that many patients with pre-existing conditions would be offered coverage that costs them thousands of dollars more for the care that they need, and in the case of patients with expensive conditions like cancer, even hundreds of thousands more.

An amendment to the AHCA reported out of the Rules Committee on April 6th to establish a “Federal Invisible Risk Sharing Program,” which would create a fund that states could use to reimburse insurers for some of the costs associated with insuring sicker patients, would not offset the harm done to patients with pre-existing conditions by allowing the Limited Waiver of community rating and essential benefit protections. The pre-ACA experience with high-risk pools was that many had long waiting lists, and offered inadequate coverage with high deductibles and insufficient benefits. Unless a national high-risk pool is supported with a massive infusion of funding it will not be sufficient to cover the

millions of people with pre-existing conditions that would be denied or charged more for coverage under the AHCA. One paper [estimates](#) that a national high-risk pool would cost \$178.1 billion a year, roughly \$176.4 billion more than the annual funding provided to the Invisible Risk Sharing Program. Also, shifting people out of the existing health insurance marketplace to a high-risk pool would undermine the assurance that enrollees could keep their existing coverage.

The Limited Waiver Option will also allow states to seek waivers from the essential health benefits required of all plans sold in the individual insurance market, with the result that millions of patients will be at risk of losing coverage for essential services like maternity care, cancer screening tests and treatments, prescription drugs, preventive services, mental health and substance use disorder treatments, and even physician visits, prescription drugs and hospitalizations.

Prior to [passage](#) of the ACA, 62% of individual market enrollees did *not* have coverage of maternity services, 34% did *not* have substance-use disorder-services, 18% did *not* have mental-health services and 9% did *not* have coverage for prescription drugs. A [recent independent analysis](#) found that the AHCA's repeal of current law required benefits would result in patients on average paying \$1,952 more for cancer drugs; \$1,807 for drugs for heart disease; \$1,127 for drugs to treat lung diseases; \$1,607 for drugs to treat mental illnesses; \$4,940 for inpatient admission for mental health; \$4,555 for inpatient admission for substance use treatment; and \$8,501 for maternity care. Such increased costs would make it practically impossible for many patients to avail themselves of the care they need. The result will be delays in getting treatment until their illnesses present at a more advanced, less treatable, and more expensive stage, or not keeping up with life-saving medications prescribed by their physicians.

Allowing states to eliminate the EHB will threaten our nation's fight against the opioid epidemic. A [study](#) concluded that with repeal of the ACA, "approximately 1,253,000 people with serious mental disorders and about 2.8 million Americans with a substance use disorder, of whom about 222,000 have an opioid disorder, would lose some or all of their insurance coverage." Finally, allowing states to drop important benefits like maternity, substance use disorder treatment, and preventive services will do little to reduce premiums. A [report](#) by Milliman found that the main drivers of premium costs were ambulatory patient services, hospitalization, and prescription drugs. These are crucial services that form the core of any health insurance plan.

To be clear: while some younger and healthier persons might be offered lower premiums in states that obtained a "Limited Waiver" of community-rating and essential health benefits, it would be at the expense of making coverage unaffordable for those who need it most, older and sicker persons, and result in skimpy "bare-bones" insurance for many others that does not cover the medical care they would need if and when they get sick.

Finally, even without the Limited Waiver Amendment, ACP continues to believe that the AHCA has numerous other provisions and policies that that will do great harm to patients including:

- The phase-out of the higher federal match in states that have opted to expand Medicaid and the ban on non-expansion states being able to access the higher federal contribution if they choose to expand Medicaid;

- Converting the shared federal-state financing structure for Medicaid to one that would cap the federal contribution per enrollee;
- Providing states with a Medicaid block grant financing option;
- Eliminating EHBs for Medicaid expansion enrollees;
- Imposing work or job search requirements on certain Medicaid enrollees;
- Regressive age-based tax credits, combined with changes that will allow insurers to charge older people much higher premiums than allowed under current law;
- Continuous coverage requirements for patients with pre-existing conditions;
- Legislative or regulatory restrictions that would deny or result in discrimination in the awarding of federal grant funds and/or Medicaid and Children’s Health Insurance Program funding to women’s health clinics that are qualified under existing federal law for the provision of evidence-based services including, but not limited to, provision of contraception, preventive health screenings, sexually transmitted infection testing and treatment, vaccines, counseling, rehabilitation, and referrals, and;
- Elimination of the Prevention and Public Health Fund, which provides billions in dollars to the Centers for Disease Control and Prevention to prevent and control the spread of infectious diseases.

The College strongly believes in the *first, do no harm* principle. Therefore, we continue to urge that Congress move away from the fundamentally flawed and harmful policies that would result from the American Health Care Act and from the changes under consideration—including the proposed “Limited Waiver” amendment—that would make the bill even worse for patients. We urge Congress to instead start over and seek agreement on bipartisan ways to improve and build on the ACA. The College welcomes the opportunity to share our ideas for bipartisan solutions that would help make health care better, more accessible, and more affordable for patients rather than imposing great harm on them as the AHCA would do.

Sincerely,



Jack Ende, MD, MACP
President

Cc: Members of Congress