



Congressional Plans to Repeal the ACA Will Harm Victims of Black Lung

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The Affordable Care Act (ACA) made it easier for coal miners suffering from black lung disease (pneumoconiosis) to get benefits. It also provided for lifetime benefits to surviving dependents. If these provisions are repealed, it will be harder for miners and their survivors to qualify for benefits. In addition, cases approved after the ACA's changes to the benefits program are likely to be reopened by litigious coal companies, putting the benefits of thousands of people at risk. These changes would come at a terrible time because advanced black lung cases are surging to unprecedented levels.

Black Lung Rates are Skyrocketing

Experts believed that black lung was all but gone after federal protections went into place in the late 1960s and mining safety improved. But, public health and worker safety experts have been warning over the past decade that rates of the disease have been rising at epidemic rates.¹ According to a recent investigation by National Public Radio (NPR), rates of black lung – particularly the severe, progressive form of the disease known as “complicated” black lung – are rising at rates that stun experts.² An epidemiologist from the National Institute of Occupational Safety and Health (NIOSH) told NPR, “The current numbers [of severe cases] are unprecedented by any historical standard” and have never been seen “in history of central Appalachia.”³ These conclusions are based in part on a study from NIOSH finding high levels of progressive black lung throughout the country.⁴ Even worse, the NPR investigation found nearly 10 times the number of cases reported by NIOSH based on data NPR obtained from clinics in Virginia, West Virginia, Pennsylvania and Ohio. Moreover, these numbers are likely low, because many clinics did not respond to NPR's requests for data.⁵

Experts theorize that the spike in cases has two causes. First, contemporary mining is more dangerous. This is because wide seams of coal have mostly been mined, and current Appalachian mining efforts focus on narrow seams embedded in rock. This means that coal mining involves much more cutting through stone than it has in the past. This in turn means mining produces dramatically higher levels of the chemical compound silicon dioxide (silica), which is highly toxic to lung tissue.⁶ In addition, there are likely more coal workers seeking treatment because they are unemployed. Many miners believe they will be fired or pushed out if their employer finds out they have lung disease. Therefore, they wait until they are no longer working before seeking diagnosis and treatment for the

disease. However, thousands of coal workers have lost jobs over the past decade and no longer have anything to lose by seeking benefits and treatment.⁷

Federal Black Lung Benefits and Improvements made by the ACA at Risk

The Black Lung Benefits Act (BLBA) of 1973 authorizes monthly payments and medical coverage for coal miners who are totally disabled by black lung and other lung diseases resulting from employment “in and around coal mines.”⁸ Before the ACA, it was notoriously difficult to qualify for this benefit, as coal companies fought claims vigorously and sometimes with underhanded tactics.⁹ Amendments to the ACA (so-called “Byrd Amendments” after West Virginia Senator Robert Byrd) made it easier for miners to prove they qualified for benefits. Notably, the amendments create a presumption that black lung cases in coal workers who worked at least 15 years in coal mining were caused by mining. In addition, if a miner wins a claim, his surviving spouse automatically gets benefits.¹⁰

If these ACA provisions are repealed, coal workers will again face an uphill battle to obtain benefits and their surviving spouses will no longer qualify for benefits. But, repeal would not only affect new cases. The financial and medical benefits of thousands of coal mine workers and their families are also at risk, as litigious coal companies are likely to petition to open claims decided under the ACA standard.¹¹

Members of Congress have recognized that these provisions would be a casualty of an ACA repeal and have introduced legislation that would preserve the improvements made by the Byrd Amendment if the ACA is repealed.¹² There is no guarantee, however, that any legislation that ultimately results from efforts to repeal the ACA would include these protections. Moreover, other consequences of repealing the ACA could be equally harmful to miners, yet have not been widely discussed.

Other Harmful Impacts of ACA Repeal – Loss of Medicaid Expansion

The ACA allows states to expand Medicaid to childless adults who do not otherwise qualify for Medicaid and have incomes under 133% of the federal poverty level (a percentage that, after required income disregards comes to about 138% of FPL or about \$33,465 annually for a family of four).¹³ Eliminating the Medicaid expansion would hurt coal workers with black lung and their families. Most coal mining takes place in the Appalachian Mountains in Ohio, Pennsylvania, West Virginia, Virginia, and Kentucky; not surprisingly, the majority of black lung cases are found in these states.¹⁴ All of these states except Virginia have expanded Medicaid. And, while there are no statistics on how many people who rely on expanded Medicaid have black lung, the facts indicate that a significant number of coal miners and their families do.

First, unemployment rates in coal country are sky-high.¹⁵ This is due in part to the fact, that over the past five years, major Appalachian mining companies have declared bankruptcy and closed dozens of mines.¹⁶ As a result, coal workers suffering from black lung are likely to have incomes low enough to qualify for Medicaid. They are likely to be unemployed. Many suffering from black lung and other lung diseases are too sick to work. Even those who qualify for BLBA benefits may have incomes below

Medicaid's eligibility level. In 2017, the annual BLBA benefit was \$15,622 annually for a family of four or larger – less than half of the income limit for qualifying for Medicaid for a family of four – and even less for a larger family.¹⁷ Some may qualify benefits such as Social Security Disability Income, however, it can take years after applying application to be awarded a benefit.

In addition, those eligible for Medicaid expansion coverage have little alternative sources for health insurance if the expansion is repealed. If unemployed, they have no employer insurance. Medicare fills some of the gap. However, Medicare only covers those over age 65 or those who have been found disabled, and many coal miners with black lung are much younger or have not yet completed the two-year waiting period for disability coverage under Medicare.¹⁸ The poorest would not be eligible for subsidies to buy individual policies on the Marketplace, as those are available only to those above 100% of poverty.¹⁹ In any case, the threat of repeal hangs over the subsidies as well.

Moreover, though medical benefits are covered by BLBA, Medicaid coverage will still be needed by those who qualify. As noted above, it is difficult to obtain BLBA benefits in part due to the willingness of coal companies to fight claims. Although the ACA made the standard more favorable to claimants, the coal companies' legal teams continue to fight even meritorious claims, delaying sick miners access to BLBA's medical benefits.²⁰ Thus, this population of sick and likely unemployed coal workers will need alternative coverage while waiting for their claims to be settled.

In any case, the medical benefits covered by BLBA will likely not meet all medical needs. While the BLBA medical benefit covers most services related to black lung, such as doctor and hospital visits and prescription drugs, it does not cover treatment related to any other condition. So, if a coal worker is suffering from diabetes, arthritis, or heart disease – or injuries resulting from working in the mines – treatment of those conditions is not covered. For a miner in the late stages of complicated black lung who needs total care, the home health benefit covered is very limited and does not include, for example, home health aides.²¹

Moreover, there are serious fears about the viability of the Black Lung Disability Trust Fund, which pays out benefits. The fund is nearly \$6 billion dollars in debt. This is due in part to the fact that it has taken on nearly 1,000 claims from bankrupt mining companies that would otherwise have paid those claims. And, the coal excise tax that supports the fund is scheduled for significant cuts in the next two years.²²

Conclusion

Coal country has a lot to lose if the ACA is repealed. Many are aware that the repeal of the Byrd Amendment protections for Black Lung Benefits poses a threat to miners and their families. It is less recognized, however, the harm that the loss of Medicaid could cause. Elected officials in Appalachia need to be aware of this less-recognized benefit of the Medicaid expansion and act to protect it.

ENDNOTES

- 1 Howard Berkes, “As Mine Protections Fail, Black Lung Cases Surge,” *All Things Considered* (National Public Radio (NPR) broadcast July 9, 2012), <http://www.npr.org/2012/07/09/155978300/as-mine-protections-fail-black-lung-cases-surge>.
- 2 Howard Berkes, “Advanced Black Lung Cases Surge In Appalachia,” *All Things Considered* (NPR broadcast, Dec. 16, 2016), <http://www.npr.org/2016/12/15/505577680/advanced-black-lung-cases-surge-in-appalachia>.
- 3 *Id.*
- 4 David J. Blackley et al., *Resurgence of Progressive Massive Fibrosis in Coal Miners – Eastern Kentucky, 2016*, 65 MORBIDITY AND MORTALITY WEEKLY 1385, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6549a1.htm>.
- 5 Berkes, “Advanced Black Lung Cases Surge in Appalachia,” *supra* n. 2.
- 6 *Id.*; Berkes, “As Mine Protections Fail, Black Lung Cases Surge,” *supra* n. 1.
- 7 Berkes, “Advanced Black Lung Cases Surge in Appalachia,” *supra* n. 2.
- 8 30 U.S.C. § 901. See also U.S. Dep’t of Labor, *Employment Law Guide*, “Health Benefits, Retirement Standards, and Worker’s Compensation: Black Lung Compensation” <https://www.dol.gov/COMPLIANCE/GUIDE/blklung.htm> (last visited Feb. 10, 2017).
- 9 The Center for Public Integrity’s Pulitzer-winning investigations revealed the collusion of law firms and doctors in the coal companies’ fight to deny deserving miners BLBA benefits. See Center for Public Integrity, <http://www.pulitzer.org/winners/chris-hamby> (last visited Feb. 10, 2017).
- 10 30 U.S.C. 936(a).
- 11 Kara Lofton, “Obamacare Repeal Threatens a Health Benefit Popular in Coal Country,” *Morning Edition* (NPR broadcast Jan. 24, 2017), <http://www.npr.org/sections/health-shots/2017/01/24/510668899/obamacare-repeal-threatens-a-health-benefit-popular-in-coal-country>.
- 12 *Id.*
- 13 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII).
- 14 Eighty percent of all current BLBA claims are paid to beneficiaries in West Virginia, Kentucky, Pennsylvania, Virginia, and Ohio. Dep’t of Labor, “Division of Coal Mine Worker’s Compensation (DCMWC), Distributions of Black Lung Claims and Disbursements, by State, FY 2016,” <https://www.dol.gov/owcp/dcmwc/statistics/bls2016/DistributionOfClaimsByState2016.htm> (last visited Feb. 10, 2017).
- 15 Terence P. Jeffrey, “U.S. Has Lost 191,000 Mining Industry Jobs Since September 2014,” CBSnews.com, (May 6, 2016), <http://www.cbsnews.com/news/article/terence-p-jeffrey/us-has-lost-191000-mining-jobs-september-2014>; Annie E. Lowery, *What’s the Matter with Eastern Kentucky?* NEW YORK TIMES (June 26, 2014); Steve Goldstein, “The Only State Where Less than Half of All Civilians Work” *Market Watch* (Mar. 19, 2015).
- 16 See, e.g., Clifford Kraus, *Coal Miners Struggling to Survive in an Industry Battered by Layoffs and Bankruptcy*, N.Y. TIMES (July 17, 2015).
- 17 U.S. Dep’t of Labor, Office of Workers Comp. Progs., Div. of Coal Mine Wkrs. Comp., “Compliance Guide to the Black Lung Benefits Act,” <https://www.dol.gov/owcp/dcmwc/regs/compliance/blbenact.htm> (last visited Feb. 10, 2017).
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- 19 U.S. Dep’t of Health and Human Servs., “Subsidized Coverage,” <https://www.healthcare.gov/glossary/subsidized-coverage/> (last visited Feb. 13, 2017).
- 20 Lofton, “Obamacare Repeal Threatens a Health Benefit Popular in Coal Country,” *supra* n. 11.
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- 22 Berkes, “As Mine Protections Fail, Black Lung Cases Surge,” *supra* n. 1.