

# MEDICAID AS AN LGBTQ REPRODUCTIVE JUSTICE ISSUE

*A Primer*



# INTRODUCTION

Reproductive Justice is a social movement rooted in the belief that all individuals and communities should have the resources and power they need to make their own decisions about their bodies, genders, sexualities, families, and lives.

Reproductive justice is the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities.

The reproductive justice framework incorporates an intersectional, social justice lens to dismantle inequalities at the root of reproductive oppression, and complements the reproductive health framework—which focuses on health care service delivery—and reproductive rights framework—which defends the legal right to personal decision-making.

“Medicaid as an LGBTQ Reproductive Justice Issue: A Primer” (Primer) is an educational resource intended to provide advocates and policy makers with information about the importance of the Medicaid program for LGBTQ people, including lesbian, gay, bisexual, transgender, queer, nonbinary, and gender nonconforming individuals and communities. The Primer provides an overview of the following topics:

- [Why Medicaid is an LGBTQ issue](#)
- [Gender-Affirming Care in Medicaid](#)
- [Legislation Advancing LGBTQ Access to Medicaid](#)
- [Why the Hyde Amendment Hurts LGBTQ Communities](#)

The Primer is a joint project of the National Health Law Program, National Latina Institute for Reproductive Health, National Asian Pacific American Women’s Forum, In Our Own Voice: National Black Women’s Reproductive Justice Agenda, and the National LGBTQ Task Force. All\* Above All also contributed to the section on the Hyde Amendment.

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# WHY MEDICAID IS AN LGBTQ<sup>1</sup> ISSUE

Medicaid is the nation's largest public health insurance program, covering over 72 million individuals with low-incomes. Nearly 60 percent of Medicaid enrollees are people of color.<sup>2</sup>

## WHAT IS MEDICAID?

**Medicaid is a critical health insurance program that provides coverage for many individuals and families living with low incomes.**

- Medicaid operates as a cooperative federal-state program, meaning that the federal government reimburses participating states for a specified percentage of program expenditures. In exchange, states agree to comply with federal Medicaid requirements. For example, states must cover certain groups of individuals and certain categories of services. States have flexibility to cover additional groups of individuals and additional services. As a result, Medicaid programs vary from state to state.
- While participation is voluntary, all 50 states, the District of Columbia, and five U.S. territories operate Medicaid programs.<sup>3</sup>
- Medicaid covers a wide range of health care services, including primary and acute care; family planning services; STI testing and treatment; pregnancy-related care including prenatal services, childbirth, and postpartum care; long-term services and supports; and hospitalization.<sup>4</sup>
- Medicaid covers a significant number of individuals who are in poor health due to systemic barriers and discrimination, including lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals; people of color and women of color; single parents; and people with disabilities in particular.<sup>5</sup>

**The Affordable Care Act (ACA) strengthened the Medicaid program by expanding coverage and enhancing Medicaid services and benefit packages.**

- After U.S. Supreme Court's decision in *National Federation of Independent Business v. Sebelius*, states have the option to extend Medicaid coverage to uninsured adults whose incomes are at or below 138% of the federal poverty level (FPL) (approximately \$28,676 per year for a family of three and \$16,753 per year for an individual) to enroll in coverage.
  - Prior to the ACA and Medicaid expansion, many LGBTQ individuals were ineligible for Medicaid coverage.
- To date, 37 states and the District of Columbia have expanded their Medicaid programs.<sup>6</sup>
  - This expansion allows for more individuals, who were previously ineligible for Medicaid, to enroll in coverage and access the health care services they need.
- In addition to pre-existing civil rights laws, the ACA explicitly prohibits discrimination in health programs and activities (including Medicaid) based on race, ethnicity, national origin, age, disability, and sex.<sup>7</sup>
  - This law provides important protections to help ensure that individuals can receive coverage and care without discrimination.



## WHAT IS THE IMPORTANCE OF MEDICAID FOR LGBTQ COMMUNITIES?

**Medicaid is a vital program for reducing health disparities and providing care for the LGBTQ community.**

- Many LGBTQ individuals rely on Medicaid for health coverage, especially among people of color and transgender individuals.
  - According to The Williams Institute, approximately 1,171,000 LGBT adults ages 18-64 years old have Medicaid as their primary source of health insurance.<sup>8</sup>
  - In a 2014 nationwide survey of LGBT people with incomes less than 400% of the FPL, 61% of all respondents had incomes in the Medicaid expansion range—including 73% of African-American respondents, 67% of Latinx respondents, and 53% of white respondents.<sup>9</sup>
  - According to the 2015 U.S. Transgender Discrimination Survey, transgender, nonbinary, and gender nonconforming people are three times as likely to have a household income under \$10,000 and three times as likely to be unemployed as the typical person in the U.S.<sup>10</sup>
- Medicaid is the largest source of coverage for persons living with HIV, who are disproportionately Black and Latinx,<sup>11</sup> covering more than 40% of individuals living with HIV in 2014.<sup>12</sup>

## WHAT SERVICES DOES MEDICAID COVER?

**Federal law requires states to provide coverage for certain services in their Medicaid programs and gives states the option to cover additional services.**

- Mandatory services include primary and acute care, reproductive and sexual health care—including family planning (but not abortion care except in cases of life endangerment, rape, and incest)—behavioral health, treatment for substance use disorders, and mental health.
- State Medicaid programs must also cover emergency and non-emergency transportation, which is an important tool for accessing health care services, especially for those who live in rural areas and/or do not have access to transportation.
- All states have also elected to provide robust prescription drug coverage for most FDA-approved medications through their Medicaid programs, with limited cost sharing to help ensure access for low-income persons.

**Under federal law, state Medicaid programs must cover a broad range of gender-affirming services when they are medically necessary. However, not all states are following the law.<sup>13</sup>**

- Currently, 19 states and the District of Columbia explicitly cover gender-affirming care.<sup>14</sup>
  - According to a recent study, 49% of the LGBT population lives in a state that explicitly covers gender-affirming care in its Medicaid program.<sup>15</sup>
- Nine states are in violation of the Medicaid Act and exclude coverage of gender-affirming care.<sup>16</sup>



## ENDNOTES

- <sup>1</sup> Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people, including nonbinary (NB), gender nonconforming (GNC), and/or genderqueer individuals. LGBT is used where the data being cited refers only to Lesbian, Gay, Bisexual, and Transgender individuals.
- <sup>2</sup> Kaiser Family Found., *Distribution of the Nonelderly with Medicaid by Race/Ethnicity*, <https://www.kff.org/medicaid/state-indicator/distribution-by-raceethnicity/> (last visited May 20, 2019).
- <sup>3</sup> Unlike in the 50 states and D.C., federal Medicaid funding for the U.S. territories is subject to a statutory cap and fixed matching rate.
- <sup>4</sup> Kaiser Family Found., *Medicaid's Role for Women*, <https://www.kff.org/womens-health-policy/fact-sheet/medicaid-roles-role-for-women/> (last visited April 19, 2018).
- <sup>5</sup> Kaiser Fam. Found., *supra* note 1.
- <sup>6</sup> The ACA provided additional temporary Medicaid funding to the territories, however those funds are set to expire in 2019.
- <sup>7</sup> 42 U.S.C. § 18116.
- <sup>8</sup> Kerith J. Conron & Shoshana K. Goldberg, The Williams Inst., *LGBT Adults with Medicaid Insurance 1* (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Medicaid.pdf> (last visited May 02, 2019).
- <sup>9</sup> Kellen E. Baker et al., Ctr. for Am. Progress, *The Medicaid Program and LGBT Communities: Overview and Policy Recommendations 4* (2016), <https://cdn.americanprogress.org/wp-content/uploads/2016/08/08125221/2LGBT-MedicaidExpansion-brief.pdf>. “LGBT” is used where the data being cited refers only to Lesbian, Gay, Bisexual, and Transgender individuals.
- <sup>10</sup> Nat’l Ctr. for Transgender Equal., *2015 U.S. Transgender Survey 140-43* (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.
- <sup>11</sup> Ctrs. for Disease Control and Prevention, *U.S. Statistics*, <https://www.hiv.gov/hiv-basics/overview/data-and-trends/statistics> (last visited May 8, 2019).
- <sup>12</sup> Kaiser Family Found., *Medicaid and HIV 1* (2016), <http://files.kff.org/attachment/Fact-Sheet-Medicaid-and-HIV> (last visited May 17, 2019).
- <sup>13</sup> For a list of Medicaid coverage policies for transition-related care by state, see Movement Advancement Project, *Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care* (Apr. 2019), <https://www.lgbtmap.org/img/maps/citations-medicaid.pdf>.
- <sup>14</sup> Movement Advancement Project, *Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care*, [http://lgbtmap.org/equality-maps/healthcare\\_laws\\_and\\_policies](http://lgbtmap.org/equality-maps/healthcare_laws_and_policies) (last visited May 2, 2019).
- <sup>15</sup> *Id.*
- <sup>16</sup> *Id.* However, on April 23, 2019, a District Court in Wisconsin issued a preliminary injunction invalidating the state’s categorical exclusion of coverage for medically necessary gender-affirming care and treatments for transgender Medicaid beneficiaries. *Flack v. Wis. Dep’t Health Servs.*, No. 3:18-cv-00309 (W.D. Wis. Apr. 23, 2019)

# GENDER-AFFIRMING CARE IN MEDICAID

Medicaid is a vital program providing health coverage for millions of people with low incomes, including LGBTQ individuals.<sup>17</sup> Medicaid covers a broad range of health services, including medically necessary gender-affirming treatments for transgender, nonbinary, and gender nonconforming individuals. Unfortunately, a few states are not following the law and do not provide the full range of gender-affirming care in their Medicaid programs.

## WHAT IS GENDER-AFFIRMING CARE?

Some transgender, nonbinary, and gender nonconforming people experience gender dysphoria, and there are various medical options available to help alleviate that distress.

- Under the standards of care for treating gender dysphoria, the appropriate treatment depends on the needs and desires of the person seeking treatment.<sup>18</sup>
- The World Professional Association for Transgender Health (WPATH) Standards of Care are the most widely recognized clinical guidelines for treating gender dysphoria.<sup>19</sup>
- Together, the health care services included in the guidelines are known as gender-affirming care and are medically necessary to treat gender dysphoria.
- Notably, not all people with gender dysphoria seek all health care services, and some may seek none.

**Gender dysphoria** is the clinically significant distress caused by a conflict between a person's assigned gender and the person's gender identity.<sup>20</sup>

## WHAT SERVICES ARE INCLUDED IN GENDER-AFFIRMING CARE?

Gender-affirming health care interventions include mental health services, surgical procedures, and a range of other services. These can include some or none of the following:

- Gender-affirming hormone therapy, hair removal (electrolysis), voice therapy, and surgeries like chest augmentation or reduction, vaginoplasty, phalloplasty, hysterectomy, and more.

## DOES MEDICAID COVER GENDER-AFFIRMING TREATMENTS?

**Under federal law, state Medicaid programs must cover a broad range of gender-affirming services when medical professionals attest that they are medically necessary. However, not all states are following the law.**<sup>21</sup>

- As of May 2019, 19 states and the District of Columbia have laws or policies explicitly requiring Medicaid coverage of gender-affirming care, and courts have recently ordered two other states (Iowa and Wisconsin) to cover medically necessary gender-affirming care.<sup>22</sup>
- California was the first to cover gender-affirming services by court order in cases seeking individual relief in the 1970s.





- In 2001, a California judge struck down the state's policy of categorically denying Medicaid coverage for gender-affirming surgeries.<sup>23</sup>
- The state's Medicaid agency then issued guidance in 2013 (and again in 2016) to providers and managed care plans clarifying the scope of coverage for treatment related to gender dysphoria.<sup>24</sup>
- In the last decade, several other states have added Medicaid coverage of gender-affirming care.<sup>25</sup>

**Unfortunately, nine states explicitly exclude coverage of certain gender-affirming services.<sup>26</sup>**

- Despite current widespread medical consensus supporting gender-affirming services as medically necessary, many of these exclusions date back to the early 1980s when transition-related care was considered a “cosmetic” or “experimental” service.
- Since the early 2000s, these discriminatory policies in Medicaid and in private insurance have started to erode.

The remaining states have no explicit Medicaid policy related to gender-affirming care and therefore may not provide coverage at all, may not cover the full range of medically necessary gender-affirming services, or may not cover services consistently.

## FAST FACTS

Medicaid is a vital health program for low-income LGBTQ communities. According to the 2015 U.S. Transgender Discrimination Survey, transgender, nonbinary, and gender nonconforming people are three times as likely to have a household income under \$10,000 and three times as likely to be unemployed as the typical person in the U.S.<sup>27</sup>

- 19% of Black respondents reported a household income of less than \$10,000 per year.<sup>28</sup> This is 7% higher than the rate for respondents of all races (12%), roughly twice the rate for the overall Black population rate (9%), and 4.75 times the general U.S. population rate (4%).<sup>29</sup>
- 43% of Latinx respondents reported living in poverty compared to 12% of the overall U.S. population.<sup>30</sup>
- 41% of Native American respondents reported living in poverty.<sup>31</sup>
- 40% of multiracial respondents reported living in poverty.<sup>32</sup>
- 32% of Asian and Native Hawaiian/Pacific Islander respondents reported living in poverty.<sup>33</sup>

## ARE THERE OTHER BARRIERS TO SEEKING GENDER-AFFIRMING CARE?

- Even with Medicaid coverage, many transgender, nonbinary, and gender nonconforming people face barriers to care.
- Transgender, nonbinary, and gender nonconforming individuals often experience stigma, discrimination, or mistreatment from their health providers when seeking health care.<sup>34</sup>
- These disparities are compounded for transgender, nonbinary, and gender nonconforming people of color and immigrants, who are more likely to live in poverty, be unemployed, and experience mistreatment from a health provider than white transgender, nonbinary, and gender nonconforming individuals.<sup>35</sup>

Transgender, nonbinary, and gender nonconforming people on Medicaid may struggle to secure needed care.



- Some surgeons and insurers will not provide or cover certain gender-affirming surgical procedures without letters of referral from two or more mental health professionals. This can create a barrier to care, as getting the letters may be a long-term process requiring many appointments with mental health professionals.
- Relatively few providers offer gender-affirming care, particularly in more rural areas.
- Additionally, health care providers and the facilities they practice in may not use inclusive language in their verbal and/or written communications, which can create negative experiences and deter people from seeking care.
- Some providers and health care institutions, like Catholic hospitals, openly discriminate against transgender, nonbinary, and gender nonconforming people by refusing to provide or to allow gender-affirming services to be provided in their facilities.

## WHAT NONDISCRIMINATION PROTECTIONS EXIST UNDER MEDICAID?

### All state Medicaid programs are bound by federal nondiscrimination laws.

- These include Section 1557 of the Affordable Care Act, which prohibits health programs and activities receiving federal financial assistance (including state Medicaid agencies, Medicaid managed care plans, and Medicaid providers) from discrimination on the basis of race, ethnicity, national origin, age, disability, and sex.<sup>36</sup>
- Section 1557 is the first-ever federal ban on sex discrimination in health care.
- Regulations promulgated in 2016 make clear that Section 1557 prohibits discrimination on the basis of gender identity and sex stereotypes.<sup>37</sup> However, a federal court issued an injunction prohibiting the Department of Health and Human Services (HHS) from enforcing the portion of the regulations that protects against discrimination on the basis of gender identity or termination of pregnancy.<sup>38</sup>
- In response, HHS' Office of Civil Rights proposed new regulations on June 14, 2019 that seek to reverse parts of the agency's existing interpretation of Section 1557.
  - The proposed regulation includes the elimination of nondiscrimination protections based on sex and gender identity.

## WHAT CAN I DO TO PROMOTE GENDER-AFFIRMING CARE IN MEDICAID?

1. Submit a public comment opposing the June 24, 2019 proposed changes to the ACA Section 1557 final rule. Visit [regulations.gov](https://www.regulations.gov) to review the proposed rule and submit your comment letter.
2. If your state has an exclusion on gender-affirming care or does not explicitly provide Medicaid coverage of gender-affirming treatments, advocate with your state Medicaid agency to remove those exclusions and issue a policy to affirmatively cover these services.<sup>39</sup>
3. Work with your state Medicaid agency and Medicaid providers to ensure services are delivered in the most inclusive and culturally sensitive ways.
  - For example, the New York State Department of Health hosts a webpage with a list of resources to help providers deliver LGBTQ appropriate care<sup>40</sup> and includes suggestions and recommendations for staff sensitivity trainings, creating a welcoming environment, addressing confidentiality concerns, and guidelines for creating inclusive intake forms.<sup>41</sup>





## ENDNOTES

<sup>17</sup> Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people, including nonbinary (NB), gender nonconforming (GNC), and/or genderqueer individuals. LGBT is used where the data being cited refers only to Lesbian, Gay, Bisexual, and Transgender individuals.

<sup>18</sup> World Prof. Org. Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People [WPATH SOC] (2012), <https://www.wpath.org/publications/soc>

<sup>19</sup> Transgender Services, Medi-Cal Provider Manual

[http://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/transgender\\_m00o03.doc](http://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/transgender_m00o03.doc); World Prof. Org. Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (2012), <https://www.wpath.org/publications/soc>.

<sup>20</sup> What Is Gender Dysphoria?, Am. Psychiatric Ass'n (Feb. 2016), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

<sup>21</sup> For a list of Medicaid coverage policies for transition-related care by state, see Movement Advancement Project, *Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care* (Apr. 2019), <https://www.lgbtmap.org/img/maps/citations-medicaid.pdf>.

<sup>22</sup> These states are California, Colorado, Connecticut, District of Columbia, Hawaii, Iowa, Illinois, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Movement Advancement Project, *Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care*, <https://www.lgbtmap.org/img/maps/citations-medicaid.pdf>.

<sup>23</sup> Doe v. Bonta, Sacramento Superior Court of the State of California (case no. 00CS00954, January 29, 2001).

<sup>24</sup> See Abigail Coursolle, Nat'l Health Law Prog., *California Pride: Medi-Cal Coverage of Gender-Affirming Care Has Come a Long Way* (June 2018), <http://www.healthlaw.org/blog/732-california-pride-medi-cal-coverage-of-gender-affirming-care-has-come-a-long-way>.

<sup>25</sup> See *Cruz v. Zucker*, 218 F.Supp.3d 246 (S.D. New York Jul. 29, 2016), *Good v. Iowa*, 924 N.W.2d 853 (Ia. S. Ct. 2019).

<sup>26</sup> States that explicitly exclude coverage are Alaska, Georgia, Maine, Missouri, Nebraska, Ohio, Tennessee, Wisconsin, and Wyoming. Movement Advancement Project, *Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care*, <https://www.lgbtmap.org/img/maps/citations-medicaid.pdf>. However, on April 23, 2019, a District Court in Wisconsin issued a preliminary injunction invalidating the state's categorical exclusion of coverage for medically necessary gender-affirming care and treatments for transgender Medicaid beneficiaries. *Flack v. Wis. Dep't Health Servs*, No. 3:18-cv-00309 (W.D. Wis. Apr. 23, 2019).

<sup>27</sup> Nat'l Ctr. for Transgender Equal., *2015 U.S. Transgender Survey 140-43* (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

<sup>28</sup> *Id.* at 144.

<sup>29</sup> *Id.* at 143-44.

<sup>30</sup> *Id.* at 144.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 145.

<sup>34</sup> Nat'l Ctr. for Transgender Equity, *The Report of the 2015 Transgender Survey 98* (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>. See also Jaime M. Grant et al., Nat'l Ctr. for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey (2011)*, [http://www.transequality.org/sites/default/files/docs/resources/NTDS\\_Report.pdf](http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf).

<sup>35</sup> Nat'l Center for Transgender Equality, *2015 U.S. Transgender Survey*, <http://www.ustranssurvey.org/reports>.

<sup>36</sup> 42 U.S.C. § 18116 (ACA § 1557). See also HHS OCR, Section 1557: Frequently Asked Questions, <https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html>.



<sup>37</sup> See 45 C.F.R. part 92. See also Jennifer Lav, Nat'l Health Law Prog., *Q&A on Section 1557 of the Affordable Care Act: Protections for Transgender Individuals*, <https://healthlaw.org/resource/q-a-section-1557-of-the-affordable-care-act-protections-for-transgender-individuals/>.

<sup>38</sup> However, individuals still can challenge discrimination on the basis of gender identity in the courts.

<sup>39</sup> Please contact the National Health Law Program if your state continues to refuse Medicaid coverage of gender affirming care.

<sup>40</sup> New York State Dep't of Health, *Lesbian, Gay, Bisexual and Transgender Health webpage*, <https://www.health.ny.gov/diseases/aids/consumers/lgbt/>.

<sup>41</sup> For example, bisexual men and women often face the stigma that they are “promiscuous, high-risk, dangerous” because they may have sex with people of different genders but that providers should still make sure that they have the knowledge to make safe sexual decisions.



## LEGISLATION ADVANCING LGBTQ ACCESS TO MEDICAID

The pieces of legislation highlighted below are current bills (introduced in the 116th Congress) that advance access to health care, especially Medicaid, for LGBTQ<sup>42</sup> individuals. This list is not exhaustive but provides examples of pieces of legislation that uphold reproductive justice values by recognizing intersecting identities and centering those most impacted by attacks on health care coverage. While not all of our organizations endorse all of these bills due to our respective focus areas, the lack of endorsement is not reflective of the value of each piece of legislation.<sup>43</sup>

### Prohibition of Medicaid Funding for Conversion Therapy Act (H.R. 1981)

- *Summary:* Prohibits the use of Medicaid funding for conversion therapy, including all Medicaid plans and plans under Medicaid waivers.
- *Need for the bill:* An individual's bodily autonomy and sexuality should be placed in their own hands and not in the hands of fake doctors.

### Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act (H.R.1692/S.758)

- *Summary:* Ensures coverage for abortion for every person regardless of how much they earn or how they are covered by health insurance. Removes the Hyde Amendment, a harmful barrier to abortion care that disproportionately impacts people of color, LGBTQ individuals, and people living with low incomes.
- *Need for the bill:* Abortion care is health care, and access to services are critical for all people to have bodily autonomy and live with dignity.

### The Equality Act (H.R.5/S.788)

- *Summary:* Builds on existing anti-discrimination protections to explicitly include sexual orientation and gender identity in employment, housing, credit, education, public spaces and services, federally funded programs, and jury service.
- *Need for the bill:* Discrimination against LGBTQ individuals creates barriers to every aspect of life, including in services critical to the health and well-being of all people. Providing consistent and explicit non-discrimination protections for LGBTQ individuals will ensure access to critical resources, allowing individuals to live with dignity.



## MOMMA Act (H.R. 1897)

- *Summary:* Extends Medicaid and CHIP coverage for postpartum women to one year after birth, creates grant programs to collect and evaluate maternal safety data, and authorizes funding to provide implicit bias trainings for providers.
- *Need for the bill:* Pregnancy-related deaths and conditions are more likely to occur in the weeks following a birth than during pregnancy or delivery.<sup>44</sup> Extending postpartum coverage ensures that every person, including people of color, LGBTQ individuals, and people living with low incomes, is able to access the health care and support they need.

## Healthy MOMMIES Act (H.R.2602/S.3494)

- *Summary:* Improves the Medicaid and CHIP program for pregnant and postpartum women, including extending coverage to 365 days postpartum, enhancing the types of Medicaid benefits available (including oral health coverage and doula care), and increasing the federal medical assistance percentage (FMAP) to 100%.
- *Need for the bill:* Comprehensive pregnancy and postpartum coverage and care are necessary for healthy pregnancies and reducing maternal health disparities.

## Territories Health Equity Act of 2019 (H.R.1354)

- *Summary:* Improves the treatment of U.S. territories under the Medicaid and Medicare programs, including lifting funding and federal matching assistance caps and providing Medicaid waiver authority.
- *Need for the bill:* This legislation would help ensure that all people with federally funded insurance will have the same coverage, regardless of whether they live in a U.S. state or territory.

## ENDNOTES

<sup>42</sup> Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people, including non-Binary (NB), Gender non-conforming (GNC), and/or Genderqueer individuals.

<sup>43</sup> The Health Equity and Accountability Act (HEAA) has not yet been reintroduced this session, but is another important piece of legislation that would reduce racial and ethnic health disparities and serve as the benchmark of how health equity advocates and Congress seek to comprehensively achieve health equity in the U.S. Similarly, HEAL for Immigrant Women and Families Act would broaden immigrants' eligibility for health coverage and access to care by removing existing barriers to Medicaid, the Children's Health Insurance Program, and other programs. HEAL (bill number H.R. 2788 in the 115th Congress) has yet to be reintroduced in the 116th Congress.

<sup>44</sup> Alison Stuebe, et. al, "Extending Medicaid Coverage For Postpartum Moms, *Health Affairs* (May 6, 2019), <https://www.healthaffairs.org/doi/10.1377/hblog20190501.254675/full/>.



# WHY THE HYDE AMENDMENT HURTS THE LGBTQ COMMUNITY

The Hyde Amendment restricts the ability of people living with low incomes to obtain an abortion, and has a disproportionate impact on communities of color.

## **LGBTQ people are deeply harmed by the injustices of the Hyde Amendment.**

- This onerous restriction was first introduced by Representative Henry Hyde III (R-IL) in 1976.
- The original amendment banned federal Medicaid coverage of abortion, and has since expanded to exclude abortion coverage for people enrolled in Medicare, CHIP, or Indian Health Services; federal employees and their dependents; Peace Corps volunteers; individuals in federal prisons and detention centers, including those detained for immigration purposes; military personnel and veterans; and the District of Columbia.
- The Hyde Amendment has narrow carve outs for rape, incest, and when the life of the pregnant person is in danger, however some states are not in compliance with this requirement.<sup>45</sup>

LGBTQ individuals are more likely to have low incomes and are more likely to rely on Medicaid for health care. They are also less likely to be able to afford an abortion out-of-pocket.

- On average, poverty rates are higher among those more likely to need access to abortion care, including lesbian and bisexual women, transgender men, and nonbinary and gender nonconforming people assigned female at birth.
  - More than 28% of lesbian and bisexual women are living in poverty,<sup>46</sup> and 29% of transgender, nonbinary, and gender nonconforming people overall are living in poverty.<sup>47</sup>

Unplanned pregnancies are equally as common, if not more common, for cisgender lesbian and bisexual women as for cisgender heterosexual women.<sup>48</sup>

- A majority of cisgender lesbian and bisexual women have had intercourse with cisgender men, and at least 30% have been pregnant.<sup>49</sup> At least 16% have had one or more abortions.<sup>50</sup>

Additionally, transgender men and nonbinary and gender nonconforming people assigned female at birth experience unintended pregnancies.<sup>51</sup>

- Many transgender, nonbinary, and gender nonconforming people have intercourse with partners who have the ability to get them pregnant.<sup>52</sup>
  - For example, in one study of almost 200 transgender men, 17% became pregnant and roughly 12% of those who became pregnant had an abortion.<sup>53</sup>

## **The Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act is needed to eliminate the Hyde Amendment and related abortion funding restrictions.**

EACH would ensure that everyone receiving insurance through the federal government will have coverage for abortion services. The bill is crucial for the LGBTQ community, as it would ensure critical access to abortion services and coverage.

- This bill would restore coverage for abortion care to people enrolled in a government health insurance plan, as listed above.<sup>54</sup>
- Additionally, this bill would remove the bans on abortions at facilities or locations owned or operated by the federal government.



## ENDNOTES

<sup>45</sup> U.S. Gov't Accountability Office, "CMS Action Needed to Ensure Compliance with Abortion Coverage Requirements." GAO-19-159 (Jan 4, 2019)(publicly released: Feb 4, 2019), <https://www.gao.gov/products/GAO-19-159>.

<sup>46</sup> The Kaiser Family Foundation, "Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S." (June 2016), <http://files.kff.org/attachment/Health-and-Access-to-Care-and-Coverage-for-LGBT-Individuals-in-the-US>.

<sup>47</sup> Nat'l Ctr. for Transgender Equality, THE REPORT OF THE 2015 U.S. TRANSGENDER DISCRIMINATION SURVEY (2016) at 144. Notably, this statistic is an average for all respondents and could be lower or higher for those assigned female at birth.

<sup>48</sup> Caroline S. Hartnett, Lisa L. Lindley and Katrina M. Walsemann, *Congruence across Sexual Orientation Dimensions and Risk*, WOMEN'S HEALTH ISSUES JOURNAL (2016).

<sup>49</sup> J.M. Marrazzo & K. Stine, *Reproductive Health History of Lesbians: Implications for Care*, AM. J. OF OBSTETRICS AND GYNECOLOGY (2003).

<sup>50</sup> Elizabeth M. Saewyc, Linda H. Bearinger, Robert Wm. Blum & Michael D. Resnick, *Sexual Intercourse, Abuse and Pregnancy Among Adolescent Women: Does Sexual Orientation Make a Difference?*, 31 FAMILY PLANNING PERSPECTIVES 127 (1999).

<sup>51</sup> Porsch, L. M., Dayananda, I., & Dean, G., *An Exploratory Study of Transgender New Yorkers' Use of Sexual Health Services and Interest in Receiving Services at Planned Parenthood of New York City*, TRANSGENDER HEALTH, Vol. 1 (1) (2016), <https://doi.org/10.1089/trgh.2016.0032>; see also Obedin-Maliver, J., & Makadon, H. J., *Transgender men and pregnancy*, OBSTETRIC MEDICINE, Vol. 9(1) (2015), <https://doi.org/10.1177/1753495X15612658>.

<sup>52</sup> Porsch, et al., *supra* note 7.

<sup>53</sup> Alexis Light, et al., *Family planning and contraceptive use in transgender men*, CONTRACEPTION JOURNAL, Vol. 9 (4) (2018), <https://doi.org/10.1016/j.contraception.2018.06.006>.

<sup>54</sup> All\* Above All, THE EQUAL ACCESS TO ABORTION COVERAGE IN HEALTH INSURANCE (EACH Woman) ACT: Groundbreaking Legislation for Reproductive Justice (2019), <https://allaboveall.org/wp/wp-content/uploads/2019/02/EACH-Woman-Act-Fact-Sheet-.pdf>.





## ABOUT THE AUTHORS



Founded in 1969, the National Health Law Program (NHeLP) protects and advances the health rights of low-income and underserved individuals and families. NHeLP advocates, educates and litigates at the federal and state levels. For more information, please contact: Priscilla Huang at [huang@healthlaw.org](mailto:huang@healthlaw.org).

The National Latina Institute for Reproductive Health is the only national reproductive justice organization dedicated to advancing health, dignity, and justice for the 28 million Latinas, their families, and communities in the United States. Our vision is to create a society in which Latinas have the economic means, social capital, and political power to make and exercise decisions about their own health, family, and future. For more information, please contact: Nina Esperanza Serrienne at [nina@latinainstitute.org](mailto:nina@latinainstitute.org).



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In Our Own Voice: National Black Women's Reproductive Justice Agenda is a national/state partnership with eight Black women's Reproductive Justice organizations: Black Women for Wellness (CA), Black Women's Health Imperative (National), New Voices for Reproductive Justice (PA, OH), SisterLove, Inc. (GA), SisterReach (TN), SPARK Reproductive Justice NOW (GA), The Afiya Center (TX), and Women With A Vision (LA). Our goal is to lift up the voices of Black women leaders on national, regional, and state policies that impact the lives of Black women and girls. For more information, please contact: Jessica Pinckney at [jessica@blackrj.org](mailto:jessica@blackrj.org).

National Asian Pacific American Women's Forum (NAPAWF) is the only multi-issue, progressive, community organizing and policy advocacy organization for Asian American and Pacific Islander (AAPI) women and girls in the U.S. NAPAWF's mission is to build collective power so that all AAPI women and girls can have full agency over our lives, our families, and our communities. For more information, please contact: Jaclyn Dean at [jdean@napawf.org](mailto:jdean@napawf.org).



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The National LGBTQ Task Force works to secure full freedom, justice, and equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. For over 40 years, we have been at the forefront of the social justice movement by training thousands of organizers and advocating for change at the federal, state, and local levels. For more information, please contact: Candace Bond-Therault at [cbond@thetaskforce.org](mailto:cbond@thetaskforce.org).