The House 2024 Appropriations Bills: Two Steps Back For Transgender Health Equity

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In July 2023, the US House of Representatives made bold and decisive moves to erode gender-affirming health care coverage, marking the beginning of a new frontier in the battle for transgender rights. The House passed two bills and released a third bill that would impact gender-affirming care coverage for Medicare, Medicaid, TRICARE, the Indian Health Service (IHS), and the Department of Veterans Affairs (VA). Together, these sources cover more than 40 percent of people in the US. The three bills will ban virtually all federal sources from covering gender-affirming hormones and surgeries. This watershed moment demands our attention and critical examination by raising questions about access to equitable medical treatment and the impact on transgender population health.

The House passed the National Defense Authorization Act for Fiscal Year 2024 and the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act for 2024 and released of the appropriations bill for the Department of Labor, Health and Human Services (HHS), and Education in sweeping attempts to curtail access to gender-affirming care. All three bills ban the use of federal funds for gender-affirming care. The bills bar TRICARE (for active duty military and their families), the VA, and HHS from funding gender-affirming hormone therapy and surgeries. If these policies are signed into law, Medicare, the IHS, the VA, and TRICARE will not cover gender-affirming services, and Medicaid programs will have to choose whether to cover gender-affirming services using only state funds. This is particularly critical because transgender people are more likely to have public insurance than cisgender people. The passage of these policies will have unquestionably detrimental effects on the health of transgender populations in the US.

Transgender And Non-Binary Health And Gender-Affirming Care

Transgender and non-binary people in the US face substantial health disparities compared to cisgender people. Transgender and non-binary people have high prevalence of poor mental health outcomes such as depression, anxiety, substance use disorders, and suicidal ideation relative to the rest of the population. In addition, transgender and non-binary people have a high burden of HIV. Less research has examined chronic conditions, but some research has found that transgender and non-binary people also have a high prevalence of hypertension, chronic kidney disease, chronic obstructive pulmonary disease, and asthma. These health disparities result from stigma and persist across the life course, from childhood to older adulthood. Additionally, transgender and non-binary people face high rates of violence, homelessness and housing insecurity, food insecurity, and uninsurance.

High-quality, gender-affirming care reduces health disparities. Although not all transgender and non-binary people desire or seek out medical gender affirmation, gender affirmation has been associated

with lower suicidal ideation, binge drinking, drug use, depression, anxiety, and stress. Gender-affirming hormones and surgeries are considered medically necessary by every major medical organization. Despite substantial evidence of the benefit of gender-affirming care, public payers do not uniformly cover these services. The House spending bills gut the progress that has been made over the past decade to increase access to care for transgender and non-binary populations.

Medicaid Coverage

Medicaid is a critical payer for transgender and non-binary populations because these populations experience disproportionately high rates of poverty as a result of unemployment, underemployment, and disability. In particular, transgender and non-binary Black, Hispanic, Native Hawaiian/Pacific Islander, and American Indian/Alaska Native (AIAN) populations are more likely to be covered by Medicaid than private insurance. As such, Medicaid coverage of gender-affirming care is an important lever to address disparities for transgender people of color and low-income transgender people, particularly as private payers increasingly cover gender-affirming care.

Twenty-six states, Puerto Rico, and Washington, DC, explicitly cover some type of gender-affirming care in their Medicaid programs. Nine states explicitly exclude gender-affirming care coverage for all ages, and two exclude gender-affirming care only for minors. Thirteen states and four territories have no policy regarding coverage for gender-affirming care. In these states, gender-affirming care is covered on a case-by-case basis, which leads to significant administrative hurdles, uncertainty, and delays in care. States vary substantially in what types of gender-affirming care they cover. Gender-affirming hormone therapy is the most commonly covered benefit, while some states also cover gender-affirming surgeries and long-term hair removal. Furthermore, Medicaid managed care plans can cover care above and beyond base Medicaid. Notably, certainty of coverage is not always clear, given high rates of coverage denials for those with Medicaid managed care and reports of inconsistent coverage.

In the past year, Medicaid programs have both increased and decreased access to gender-affirming care. In August 2022, the Florida Agency for Health Care Administration announced that gender-affirming care will no longer be covered in Florida's Medicaid program. In the announcement for the rule reconsideration, the agency falsely stated that "sex reassignment surgery, cross-sex hormones, and puberty blockers are not consistent with generally accepted professional medical standards." In June 2023, a federal judge struck down the law, citing the Affordable Care Act's prohibition of sex discrimination. Meanwhile California's Medicaid program, Medi-Cal, has made strides in the far opposite end of the spectrum, going beyond Medicaid coverage of gender-affirming services to improve the lives of transgender beneficiaries. In September 2022, California's legislature passed a law requiring staff at Medi-Cal managed care plans and health insurers to complete trans-inclusive health care competency training in an attempt to ensure that transgender beneficiaries would have better interactions with their insurance companies. The bill also requires Medi-Cal managed care plans and other health insurers to identify which in-network providers provide gender-affirming care in their directory. By passing the Departments of Labor, HHS, and Education appropriations bill as is, legislators would gut the progress that has been made to advance transgender population health in states with generous gender-affirming care coverage.

Medicare Coverage

Medicare is a crucial payer of gender-affirming care because transgender and non-binary people are much more likely to have disabilities than cisgender people. Thus, transgender and non-binary

beneficiaries are much more likely to qualify for Medicare on the basis of disability than the basis of age. Transgender and non-binary people with disabilities have high rates of unmet health needs, even higher than cisgender people with disabilities. As such, Medicare policy is an important tool in improving the health of transgender and non-binary populations, especially among people with disabilities.

Medicare does not categorically cover gender-affirming care, although the Centers for Medicare and Medicaid Services (CMS) policies have become more lenient over time. In 1989, CMS issued a blanket ban on coverage of gender-affirming surgery, citing that the surgeries were "experimental" and had high rates of complications. In 2014, the HHS Departmental Appeals Board determined that the ban was no longer valid and in line with current medical evidence. However, CMS has not released a National Coverage Determination, citing a perceived lack of data on the Medicare population. As a result, each Medicare Administrative Contractor determines coverage on a case-by-case basis. By barring Medicare's coverage of gender-affirming care, the proposed bill will create substantial barriers to necessary care for older and disabled transgender populations.

Coverage In TRICARE And The VA

TRICARE and the VA offer important sources of coverage and care for transgender communities, as transgender and non-binary people are estimated to be twice as likely to serve in the military as the general population. TRICARE covers gender-affirming hormone therapy provided by a TRICARE-authorized provider. TRICARE explicitly does not cover gender-affirming surgeries. However, active duty service members may request a waiver for medically necessary gender-affirming surgery, as Supplemental Health Care Funds can be used to cover services that are not generally covered. The House defense spending bill would bar any Department of Defense spending from paying for gender-affirming hormones or surgery, thereby closing both these pathways to care.

The Veteran's Health Administration (VHA) has taken significant steps to promote inclusion of LGBTQ+ veterans in their facilities, including requiring every VHA facility to appoint at least one clinical staff member to serve as an LGBT veteran care coordinator beginning in 2016. The VHA currently provides gender-affirming hormone therapy, preoperative evaluation, and postoperative care following gender-affirming surgery, but VA policy has barred coverage of gender-affirming surgery since 1999. In June 2021, VA Secretary Denis McDonough announced that the VHA would begin covering surgery, although the relevant regulations have yet to be published. The House VA spending bill would prohibit any coverage of gender-affirming care beginning in the 2024 fiscal year.

Implications Of The House Bills

Health care for transgender and non-binary individuals will continue to be threatened as Congress works to finalize appropriations bills for the 2024 fiscal year. The bills have a larger scope than any piece of legislation targeting gender-affirming care in US history. For example, previous policies impacting gender-affirming care for Medicare beneficiaries had no bearing on Medicaid's coverage, and vice versa, while the House's draft bill guts all federal funding for such care. As legislation restricting gender-affirming care has fallen down party lines, the Democrat-majority Senate will likely prevent these policies from becoming law. These bills are a likely preview of what will come if more conservative legislators gain power in the Senate and White House, particularly with the 2024 elections looming. To date, legislation has focused on limiting access to care for transgender and non-binary minors, resulting in children with Medicaid and their families fleeing states where they cannot receive

lifesaving care. The House bills signal a shift to policy that restricts care for transgender and non-binary people of all ages.

Gender-affirming care can close health inequities for transgender populations. Rolling back gender-affirming care through the elimination of federal funding will exacerbate existing disparities faced by transgender and non-binary people. Transgender and non-binary people in this population are at risk of serious mental distress and the onset or worsening of mental illness. In addition, affected beneficiaries who have undergone gender-affirming surgeries are placed at serious risk of bone and heart health complications. Multiply marginalized transgender and non-binary people—those with intersecting identities including low-income, elderly, and disabled transgender and non-binary people—will be unable to access care, while wealthier transgender people may be able to pay out of pocket for these services. These policies will also increase racial disparities, as transgender and non-binary people of color are more likely than White transgender and non-binary people to access care through public payers. This is particularly critical for AIAN Two-Spirit, transgender, and non-binary people, as the proposed House HHS spending bill would also roll back the IHS's current coverage of gender-affirming hormone therapy.

The recent House bills are in response to growing visibility, acceptance, and political power of transgender and non-binary communities. These bills directly mirror the strategy and language of the Hyde Amendment, the legislative provision barring the use of federal funds to pay for abortion, which has been included in spending bills every year since 1976. The actions of the House are an indicator that the fight for transgender and non-binary health care has escalated to the federal level and is likely here to stay. Strengthening and expanding coverage of gender-affirming care by public payers are among the most important policy levers to change population-level outcomes for transgender and non-binary people and narrow disparities for vulnerable populations. For example, although Medicare covers gender-affirming care on a case-by-case basis, transgender and non-binary Medicare beneficiaries currently face barriers to receiving gender-affirming care because of a lack of access to providers and the risk of coverage denials. As long as CMS declines to release a National Coverage Determination explicitly covering gender-affirming surgeries, Medicare beneficiaries, especially those who choose traditional Medicare over Medicare Advantage, risk high out-of-pocket costs when receiving gender-affirming care.

Additionally, Medicaid programs have the power to improve population health for transgender and gender-diverse people in their states. Medicaid programs can expand Medicaid beyond categorical eligibility, cover comprehensive gender-affirming care, reduce access barriers such as behavioral health letters and prior authorization, and increase gender-affirming provider reimbursement rates. State legislatures also have a role to play, including passing "shield" laws, which have the primary goal of protecting transgender people, their families, and their medical providers against ongoing attacks and to protect access to transgender-related health care. In addition, state legislatures can pass laws that prohibit discrimination in private insurance on the basis of gender identity or transgender status as Medicaid will likely follow suit.

Policy makers at every level of government have the ability to take action against threats and rollbacks to transgender rights, including the right to equitable medical care. Current threats encompass every form of public health insurance and would impact transgender and non-binary individuals—including people of color, those living with disabilities, veterans, Indigenous individuals, and seniors—as well as their families and communities. During such a crucial and precarious time, legislators have the opportunity to align themselves with every major medical association and the ever-present voice of transgender and non-binary communities; they can choose to bolster access to gender-affirming care,

instead of giving into fear.