

## DRW Testimony AB 1, Pre-Existing Condition Guaranteed Coverage Act

Assembly Health Committee, January 15, 2019

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Thank you for the opportunity to provide informational comments regarding AB 1. Disability Rights Wisconsin is the designated Protection and Advocacy agency for people with disabilities in Wisconsin. The comments we present today are for the informational purpose of explaining what effect AB 1 might have on people with disabilities. Our conclusion is that the bill represents a partial and highly imperfect fix to the problem of insurers denying coverage to people with pre-existing conditions, a problem which existed prior to—and was solved by—the passage of the Affordable Care Act (ACA).

Although AB 1, the Pre-Existing Condition Guaranteed Coverage Act, might protect individuals with pre-existing conditions from blatant discrimination, it lacks the additional protections offered by the ACA, such as premium and cost-sharing subsidies, essential health benefits, and the removal of lifetime and annual caps on coverage. Because of these deficiencies in AB 1, people with disabilities (who, by definition also have pre-existing conditions) would be unable to afford decent quality health insurance. Any plans people with disabilities might be able to afford would likely not cover benefits they need and currently receive under the ACA.

Because AB 1 would only become effective if the ACA is invalidated, it is important to understand the provisions of the ACA that, taken together, allow people with pre-existing conditions to purchase decent quality health insurance.

### *What the ACA Does*

Currently, the ACA prohibits health insurers from discriminating on the basis of pre-existing conditions or health history. That means insurers cannot refuse to sell health insurance to an individual because the person has a pre-existing condition. Insurers are also prohibited from charging higher premiums on the basis of pre-existing conditions. Finally, insurers cannot issue a policy that limits its coverage of a pre-existing condition. It is this part—and the only part—of the ACA that AB 1 seeks to replace.

The ACA, by stark contrast, contains other important protections that affect people with disabilities and makes quality health insurance actually—rather than theoretically—available to them.

The ACA requires individual health insurance (health insurance that individuals or families buy directly from insurers) and small employer group health insurance (employers with less than 50 employees) to cover ten essential health benefits, which include coverage for mental

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health, prescription drugs, hospitalization, and habilitative services (those that help individuals acquire, maintain, or improve skills necessary for daily functioning – which are critically important for people born with disabilities). Before the ACA, many health insurance plans did not cover all these benefits and we are aware of no plans that covered habilitative services.

The ACA also prohibits imposition of lifetime and annual limits on essential health benefits. Prior to the ACA, insurance plans often set an annual or lifetime limit – a dollar limit on what they would spend for the covered benefits during a year or during the entire time a person was enrolled in the plan. Individuals with disabilities who needed expensive or complicated treatment could reach those limits quickly and then would have no effective coverage under their plan.

Finally, the ACA provides subsidies that make individual health insurance affordable, which is perhaps the most important ACA benefit for people with disabilities because persons with disabilities experience the highest rate of poverty of any subcategory of Americans charted by the Census Bureau.<sup>1</sup>

However, these important protections are at risk because of a recent decision by a Federal District Court in Texas. That decision found the entire ACA unconstitutional because Congress had eliminated the penalty for not complying with the individual mandate.<sup>2</sup> If this decision is upheld on appeal, these federal protections will no longer apply.

### ***The Limited Fix Provided by AB 1***

AB 1, the Pre-Existing Condition Guaranteed Coverage Act, would provide some of these protections to Wisconsin residents in the event that the ACA is found unconstitutional on appeal. The bill prohibits individual insurance, fully-funded employer group health plans, and self-insured governmental health plans from (1) refusing to cover individuals with pre-existing conditions; (2) charging a higher premium because of an individual's pre-existing conditions; and (3) reducing coverage for a pre-existing condition. However, the bill will effectively not protect most people with pre-existing conditions for several reasons.

### ***What AB 1 Fails to Do***

First, self-funded employer plans (as opposed to employers who contract with a health insurance plan from an insurer to cover their workers) cannot be regulated by Wisconsin because state regulation of those plans is preempted under the federal Employee Retirement Income Security Act (ERISA). Therefore, large employers who provide self-funded employer

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<sup>1</sup>[https://www.americanbar.org/publications/human\\_rights\\_magazine\\_home/2014\\_vol\\_40/vol\\_40\\_no\\_3\\_poverty/poverty\\_employment\\_disability/](https://www.americanbar.org/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/poverty_employment_disability/)

<sup>2</sup> The individual mandate requires most people to have health insurance. Prior to the 2019 tax year, individuals would have to pay a penalty on their tax return if they did not have health insurance and did not meet any of the exemptions to the individual mandate.

health insurance will be able to impose waiting periods on coverage for pre-existing conditions, just as they did prior to the ACA. State law (unlike the federal ACA) cannot dictate coverage mandates to these so-called ERISA plans.

Second, like the market before the ACA, individual health insurance will simply be unaffordable to most people without the federal subsidies that the ACA provides. The ACA provides individuals with income between 100% and 400% of the Federal Poverty Level with subsidies that reduce the out-of-pocket costs individuals pay for their premiums. The ACA also provides individuals with income between 100% and 250% of FPL with cost-sharing subsidies that reduces deductibles, co-pays/co-insurance, and the maximum annual out-of-pocket individuals pay.

In 2018, 83% of the approximately 225,000 Wisconsin residents who enrolled in individual insurance through the ACA's Marketplace received subsidies.<sup>3</sup> Without those subsidies, many individuals with disabilities would not be able to afford health insurance.

For example, most individuals who qualify for Social Security Disability Insurance (SSDI) must wait two years before they can enroll in Medicare. The average monthly SSDI check for 2017 was \$1,197<sup>4</sup>, which would make the average person ineligible for Badgercare Plus because their income is above 100% of FPL. Thus, during the two-year wait for Medicare, the only option for health insurance for many of these individuals is to purchase individual insurance through the ACA's Marketplace.

For a 30-year-old receiving this amount of SSDI, a Silver Marketplace plan without the ACA subsidies would cost \$500 a month in Milwaukee for 2019.<sup>5</sup> Moreover, for such an individual, without the ACA subsidies, his or her maximum out-of-pocket cost-sharing (deductible and copays/coinsurance) could be as high as \$7,900. Without the subsidies, the 30-year-old on SSDI could pay almost 100% of his or her annual income towards the premiums and cost-sharing.

And it gets worse for older individuals. A 50-year-old receiving the average amount of SSDI living in Milwaukee would pay almost \$800 a month in premiums for a Silver plan.<sup>6</sup>

With the ACA's subsidies, their Silver plan premium would only be \$25 a month and their maximum out-of-pocket limit for cost-sharing would only be \$2,600 for the year.<sup>7</sup>

Clearly, even with pre-existing conditions protections, many individuals with disabilities will not be able to afford to buy health insurance without the ACA's subsidies.

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<sup>3</sup> <https://www.healthinsurance.org/wisconsin-state-health-insurance-exchange/>

<sup>4</sup> [https://www.ssa.gov/policy/docs/chartbooks/fast\\_facts/2018/fast\\_facts18.pdf](https://www.ssa.gov/policy/docs/chartbooks/fast_facts/2018/fast_facts18.pdf) at pg. 16.

<sup>5</sup> <https://www.kff.org/interactive/subsidy-calculator/>

<sup>6</sup> <https://www.kff.org/interactive/subsidy-calculator/>

<sup>7</sup> <https://www.kff.org/interactive/subsidy-calculator/>

Third, AB 1 does not appear to require health insurers to cover the 10 essential health benefits required by the ACA. Thus, many insurance plans may not cover important benefits to people with disabilities such as mental health and prescription drug coverage. In addition, the ACA requires individual health insurance and small employer plans to cover habilitative services, which are important to many people who are born with disabilities. The Wisconsin bill does not appear to require coverage of those services.

Fourth, it does not appear that AB 1 eliminates potential caps on services. For example, prior to the ACA, insurance plans often set an annual or lifetime limit – a dollar limit on what they would spend for the covered benefits during a year or during the entire time a person was enrolled in the plan. Individuals with disabilities who needed expensive or complicated treatment could reach those limits quickly and then would have no effective coverage under their plan.

### *Summary*

For these reasons, the protection offered by AB 1 is illusory. AB 1 only takes effect if the Affordable Care Act is invalidated. If that happens, premium and cost-sharing subsidies will be gone, and people with disabilities will be unable to afford health insurance even if a carrier is required to offer it to them for the same premium it charges a person without a pre-existing condition. Further, any plan they might be able to afford would likely be of such inferior quality as to be essentially meaningless coverage.

Thank you for the opportunity to provide these informational comments.