September 22, 2016

The Honorable Trent Franks
Chairman
House Judiciary Committee
Subcommittee on the Constitution and Civil Justice

The Honorable Steve Cohen
Ranking Member
House Judiciary Committee
Subcommittee on the Constitution and Civil Justice

Dear Chairman Franks and Ranking Member Cohen:

On the eve of the 40th anniversary of the Hyde Amendment, the undersigned organizations representing the lesbian, gay, bisexual and transgender community stand squarely in opposition to this harmful and discriminatory policy. We urge the members of this Committee and the entire House and Senate to omit this onerous restriction on reproductive health care from all future appropriations measures, and to oppose all attempts to limit the health care options of those enrolled in federal programs. Access to affordable abortion care is an LGBT issue.

Rep. Henry Hyde was explicit 40 years ago when he first proposed banning the use of federal Medicaid funds to cover abortion care for women enrolled in the program. While he would have blocked access to abortion for all women were it in his power to do so, he settled for targeting those who depend on our nation's health insurance program for low-income people, effectively stripping them of a right guaranteed by the Constitution by rendering it financially out of reach. This policy has been renewed annually ever since, placing harmful restrictions on health care access for those who are struggling to make ends meet. Justice Thurgood Marshall, in dissenting in a U.S. Supreme Court case upholding the Hyde Amendment, stated: "In this case, the Federal Government has taken upon itself the burden of financing practically all medically necessary expenditures. One category of medically necessary expenditure has been singled out for exclusion, and the sole basis for the exclusion is a premise repudiated for purposes of constitutional law in *Roe v. Wade*. The consequence is a devastating impact on the lives and health of poor women. I do not believe that a Constitution committed to the equal protection of the laws can tolerate this result."[1]

The effects of the Hyde Amendment have not been limited to the Medicaid program. Other opponents of women's equal dignity have placed similar restrictions on Medicare and Children's Health Insurance Program enrollees; Federal Employees and their dependents; Peace Corps volunteers; Native Americans; women in federal prisons and detention centers (including

[1] *Harris v. McRae*, 448 U.S. 297, 348 (1980) (Marshall, J., dissenting).

those detained for immigration purposes); those who obtain care at community health centers; survivors of human trafficking; and residents of the District of Columbia.

Health insurance is vital to everyone's health and economic security, and health insurance coverage should be based on medical needs, not subject to restrictions and limitations based on the ideology of some elected officials. The Hyde Amendment subjects those enrolled in Medicaid to often insurmountable economic barriers if they need to end a pregnancy. The policy disproportionately affects those who are low-income, people of color, young, immigrants, or live in rural communities. In fact more than half of the women subject to the Hyde Amendment are women of color. When someone is living from paycheck to paycheck, denying coverage for an abortion can push them even deeper into poverty. Studies have shown that a woman who seeks an abortion but is denied is more likely to fall into poverty than one who is able to obtain the abortion she needs.[2]

Many within the LGBTQ community—including cisgender women and some transgender men, intersex and gender-nonconforming people—can become pregnant and need affordable access to the full range of reproductive health services to make the best decisions for themselves and their families.[3] Some LGBTQ communities experience disproportionate rates of sexual violence; for example, 46 percent of bisexual women have been raped compared with 17 percent of heterosexual and 13 percent of lesbian women.[4] The disproportionate experience of sexual violence in the overall LGBTQ community also parallels the experiences of LGB youth. The Centers for Disease Control and Prevention recently reported that LGB students were 18 percent more likely to report being physically forced to have sex than their heterosexual peers.[5]

Many communities are also likely to experience unintended pregnancy due to lack of resources, lack of comprehensive sexuality education, lack of culturally and linguistically competent providers, and other systemic factors. Young people ages fifteen to twenty-four are more likely to experience unintended pregnancy,[6] and lesbian, gay, and bisexual youth may experience

---

[2] Foster D.G., Roberts S.C.M. and Mauldon J., *Socioeconomic consequences of abortion compared to unwanted birth*, abstract presented at the annual meeting of the American Public Health Association, San Francisco, Oct. 27-31, 2012.

[3] The National LGBTQ Task Force, *Birth Control Access for LGBTQ People* (2016), *available at* http://www.thetaskforce.org/static_html/downloads/reports/fact_sheets/factsheet_birth_control_access.pdf.

[4] Beamesderfer A., Dawson L., et al., *Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S.*, The Henry J. Kaiser Family Foundation (June 2016), *available at* http://kff.org/report-section/health-and-access-to-care-and-coverage-for-lesbian-gay-bisexual-and-transgender-health-challenges/.

[5] Ctrs. for Disease Control & Prevention, *Adolescent and School Health: Health Risks Among Sexual Minority Youth* (2015), *available at* http://www.cdc.gov/healthyyouth/disparities/smy.htm.

[6] Syed K., *Ensuring Young People's Access to Preventive Health Services in the Affordable Care Act*, Advocates for Youth 2 (2014) *available at* http://www.advocatesforyouth.org/storage/advfy/documents/Preventive%20Services%20in%20the%20ACA-11-24-14.pdf. In 2014, Black and Latina youth experienced pregnancies at about twice the rate of their white counterparts. Native American youth experienced pregnancy at one and a half times the rate of their white peers. Ctrs. for Disease Control & Prevention, *Social Determinants and Eliminating Disparities in Teen Pregnancy* (April 26,

unintended pregnancies at even higher rates than their heterosexual peers.[7] It is essential that those who depend on Medicaid or other public programs for their health care do not have their health compromised by unwarranted restrictions on their reproductive health care options.

For a variety of reasons, the Medicaid program plays a vitally important role for LGBT people, as outlined in a recent report from the Center for American Progress:[8]

> Today, Medicaid is the nation's largest insurer, funding a significant portion of national spending on personal health care and providing low- or no-cost health coverage to nearly 70 million people—including many individuals who are lesbian, gay, bisexual, and transgender, or LGBT. Importantly, LGBT people are more likely than non-LGBT people to be living in poverty and to be uninsured.
>
> The high prevalence of poverty in LGBT communities, especially among transgender people and LGBT people of color, makes Medicaid a critical program for the health and well-being of LGBT communities. Nationwide, about one in five gay and bisexual men and one in four lesbian and bisexual women are living in poverty. The 2011 National Transgender Discrimination Survey found that more than 25 percent of transgender people report an annual household income of less than $20,000 and that transgender people are four times more likely than the general population to be living below the poverty line. In a 2014 nationwide survey of LGBT people with incomes less than 400 percent of the FPL, 61 percent of all respondents had incomes in the Medicaid expansion range—up to 138 percent of the FPL—including 73 percent of African-American respondents, 67 percent of Latino respondents, and 53 percent of white respondents.
>
> High rates of poverty in LGBT communities correlate with high rates of uninsurance. … [T]he ACA's coverage reforms, including Medicaid expansion, have had a substantial impact on uninsurance rates among LGBT people. Between 2013 and 2014, the number of uninsured LGBT adults with incomes less than 400 percent of the FPL dropped by almost a quarter, from 34 percent to 26 percent. In 2013, 22 percent of them had coverage through Medicaid, including 40 percent of those with incomes up to 138 percent of the FPL, and in 2014, 28 percent of them had Medicaid coverage.

2016), *available at* https://www.cdc.gov/teenpregnancy/about/social-determinants-disparities-teen-pregnancy.htm.

[7] Lisa L. Lindley & Katrina M. Walsemann, *Sexual Orientation and Risk of Pregnancy Among New York City High-School Students*, 105 AM. J. OF PUB. HEALTH 1379 (2015).

[8] Baker K., McGovern, A., Gruberg, S., & Cray, A., *The Medicaid Program and LGBT Communities: Overview and Policy Recommendations*, Aug. 9, 2016, available at https://www.americanprogress.org/issues/lgbt/report/2016/08/09/142424/the-medicaid-program-and-lgbt-communities-overview-and-policy-recommendations/.

> In 2014, Medicaid covered 29 percent of insured low- and middle-income LGBT Latinx individuals and 37 percent of insured low- and middle-income African Americans; 37 percent of insured LGBT adults with incomes of 139 percent of the FPL or less; and 36 percent of those with a high school education or less. States that expanded Medicaid between 2013 and 2014 saw a 10 percentage point drop in the overall rate of uninsurance among their low- and middle-income LGBT communities, compared to a 6-point drop in states that did not expand Medicaid—leading to an average uninsurance rate in this population of 18 percent in Medicaid expansion states versus 34 percent in non-expansion states in 2014.

It is thus clear that coverage restrictions in the Medicaid program have a significant impact on the LGBT community.

LGBT people know all too well the effects of health care discrimination, having only this year obtained express federal legal protections against many of the practices of health insurers and providers that have denied urgently required care. Just as those denied Medicaid coverage for a needed abortion will often be unable to obtain that needed care, so have insurance denials served as barriers to transgender individuals obtaining gender-confirming and other necessary medical care. When health care that is essential to exercising one's full bodily autonomy and living an authentic life is effectively denied through selective and discriminatory insurance coverage – whether that insurance is obtained in the private market or through a government program for which one qualifies – it is an assault on basic dignity. This is why we support the EACH Woman Act, introduced by Reps. Lee, Schakowsky, and DeGette and now cosponsored by over 120 Members of the House of Representatives. We look forward to the day when we can relegate the Hyde Amendment and policies like it to history, when its harmful and discriminatory effects will be but a deeply regrettable memory.

Sincerely,

American Civil Liberties Union

American Psychological Association

Equality Federation

Family Equality Council

GLBTQ Legal Advocates & Defenders (GLAD)

GLMA: Health Professionals Advancing LGBT Equality

Lambda Legal

National Black Justice Coalition

National Center for Lesbian Rights

National Center for Transgender Equality

National LGBTQ Task Force Action Fund

Positive Women's Network – USA

Sexuality Information and Education Council of the U.S. (SIECUS)

URGE: Unite for Reproductive & Gender Equity