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Louisiana’s options are limited and flawed if the Affordable Care Act goes away. Senate Bill 173 falls short

Multiple bills have been introduced in the state Legislature to enshrine some of the most popular patient protections in the Affordable Care Act (ACA) into state law. The bills come in response to a [lawsuit](#) by Louisiana Attorney General Jeff Landry and others that seeks to have the landmark federal law declared unconstitutional. If the suit succeeds, it would have far reaching and [devastating consequences](#) for low-income and vulnerable Louisianans:

- [465,871](#) low-income adults who have health coverage through Medicaid expansion,
- [80,791](#) low to moderate-income families who receive federal subsidies to buy health insurance in the individual marketplace, and
- [849,000](#) people with pre-existing conditions who could lose protections against discrimination in coverage by health insurance providers.

States have [limited](#) ability to safeguard the consumer protections that would disappear if the ACA is repealed. That’s because many of the most popular protections - such as the ability to buy coverage regardless of pre-existing conditions - only work if there are federal subsidies in place to make that coverage affordable. Still, Louisiana is among several states where lawmakers are seeking to protect consumers in case the law is thrown out.

The bill that has gained the most momentum in Louisiana is [Senate Bill 173](#), by Sen. Fred Mills. While the bill enshrines some important consumer protections into state law, it falls well short of providing comprehensive patient protections. Furthermore, [its key provisions would only go into effect](#) if the federal law is overturned *and* the tax credits or similar federal funding are preserved.

When compared to other states that have taken action to protect individuals should the lawsuit succeed in taking away federal health insurance protections, the state protections provided in SB 173 are limited.

Louisiana’s proposed coverage does not provide a comprehensive solution

| State | Annual or Lifetime Limits Prohibited | Community Rating* | Essential Health Benefits | Guaranteed Issue | Non-discrimination | Preexisting Conditions |
|-------------------|--------------------------------------|-------------------|---------------------------|------------------|--------------------|------------------------|
| Louisiana (SB173) | ✓ | Limited | ✓ | — | Limited | ✓ |
| Connecticut | ✓ | — | ✓ | — | — | — |
| Maine | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Maryland | — | — | — | — | — | — |
| New Mexico | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| North Dakota | — | — | — | — | — | — |
| Washington | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

Source: LBP Analysis and [The Commonwealth Fund](#)

What the bill does:

It prohibits health insurers from placing annual or lifetime limits on the dollar amount of benefits. It allows dependent children to remain on their parents insurance up to age 26. And it establishes in state law a set of “essential benefits” that have to be included in health insurance policies sold to individuals. The benefits are broadly similar to the ten basic benefits required under the federal law.

To offset the high cost of covering people with chronic or pre-existing conditions, the bill directs the commissioner of insurance to set up a high-risk pool, but that portion of the bill would only take effect if the federal government continues to subsidize insurance coverage through the existing tax credit or by some other means.

Where the bill falls short:

Guaranteed issue: The bill does not include “**guaranteed issue,**” a provision of the ACA that requires health insurers to enroll people regardless of health status. While the bill says health insurance plans must cover pre-existing conditions, the lack of guaranteed issue means that people can be denied coverage outright based on their health status. This would be a huge step backward, especially for the [up to 40% of applicants](#) who were denied coverage pre-ACA based on their health status.

Age rating: The age rating is the maximum ratio between the premiums charged to the youngest population group and the oldest, typically 19 to 29 years old and 50 to 64 years old. Under existing federal law, older adults cannot be charged more than three times the premiums charged to younger adults. Senate Bill 173 increases this ratio to 5:1. According to a [study](#) on the effects of the change, the average yearly premiums for a 60 year old would increase \$3,200 for a total of \$17,900 each year. This creates a significant burden for older adults living on fixed incomes or struggling to make ends meet, but who are not yet eligible for Medicare.

Essential benefits: The Affordable Care Act requires each state to establish an essential health benefits package (EHBP) - a list of minimum required coverage categories for health insurance plans. States have flexibility in establishing their essential benefits, but the law lays out a base set of 10 categories,¹ which are included in SB173.

Last year, the U.S. Department of Health & Human Services (HHS) released new and [more lenient guidelines](#) to states on essential benefits, and ruled that states cannot make their basic benefits package more generous than what they currently offer.

Given these rules, it’s essential that patient advocates and consumers have a voice in the process. But under SB 173, the Louisiana Commissioner of Insurance would have full authority to define the state’s minimum benefit package,² regardless of the outcome of the ACA lawsuit.

A new “high-risk pool:” Prior to the ACA being enacted, Louisiana, like many other states, operated a high-risk insurance pool for people who were unable to access coverage in the private market due to pre-existing conditions. Those who had no other choice but to use the pool often [experienced](#) 6-month waiting lists, premiums twice as high as those outside the pool, and high deductibles.

¹ These categories are: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

² The state’s current EHBP was established by default in 2016 when the small group health insurance plan enrolling the greatest number of individuals became the benchmark plan for the state, one of three methods of establishing an EHBP.

The Affordable Care Act, with its consumer protections and federal subsidies, created a national solution for high-risk patients that was affordable for states and provided comprehensive coverage for patients.

In the event the ACA is overturned, *but* the federal subsidies (or equivalent appropriations) remain, SB 173 proposes a new high-risk pool, called the “Louisiana Guaranteed Benefits Pool Act.” The bill does not say how the pool would be funded and operated; nor does it ensure that patients in the high-risk pool would have the same benefits as those in the private market.

To determine eligibility, the bill proposes collecting information through “health status statements,” but it is unclear who would need to fill out this information. Would Louisiana return to lengthy pre-ACA health surveys used to screen all new applicants for placement in the high-risk pool? If not, at what point would a person be required to complete the form? How long would the health status statement be, and how would they be administered? Many of these decisions would be left to the Commissioner of Insurance, who would make recommendations to the Joint Legislative Committee on the Budget by March 1, 2020.

[Reinsurance and high-risk pools](#) vary greatly in patient experience and coverage. The vague language in SB 173 leaves unclear how it would affect Louisianans should the ACA be struck down. Furthermore, studies have consistently shown the limitations of high-risk pools in providing coverage pre-ACA, including in [Minnesota](#) and Maine.

If the entire ACA is overturned, including the subsidies that keep coverage affordable, not only would this portion of the law not take effect, the argument over high-risk pools would be moot. Louisianans with pre-existing conditions would be priced out of the health insurance market and left without coverage.

Spotlight: the “Maine Model” is limited in its impact and cost reductions

The “Maine Model” is a reinsurance program that operated in Maine for 18 months. It has been referenced by proponents of SB 173 as a replacement model for Louisiana if the ACA is struck down. While the Model enjoyed some success and reduced premiums by about 10 percent, its impact was far less than the 20 percent plus some have espoused. Here is a deeper dive into how it worked and its outcomes:

In 2011 Maine adopted a prospective reinsurance program for its struggling individual market, which, prior to the ACA, had guaranteed issue and community rating, but no subsidy or purchase mandate. The program was funded by a \$4 per person per month levy on all forms of health insurance, including large groups and self-insured employers. That brought \$21 million into the individual market to subsidize the costs for subscribers whom insurers identified as high risk. “High risk” was determined based on having one of eight prior diagnoses (congestive heart failure, HIV, COPD, kidney failure, various cancers), or based on information the insurer collected from applicants through a detailed medical questionnaire.

Proponents of this approach claim that it cut premiums in half. Closer analysis, however, undermines this claim. Two other changes happened at the same time. First, covered benefits became much less generous. For instance, the new, reinsured policies required 30 percent coinsurance and increased out-of-pocket maximums two-fold or more; also, maternity coverage was dropped entirely. Those changes contributed substantially to the price reduction.

Second, Maine expanded its age-rating bands from 1.5-to-1 to 3-to-1, but only for the new policies and not for legacy subscribers who chose to keep their old policies. Predictably, older, sicker subscribers kept what they had because they continued to benefit from tighter community rating, while younger ones who benefited from broader age bands migrated to the new reinsurance policies. This age separation was especially pronounced in Maine due to its having the oldest population in the U.S.

Maine’s reinsurance board estimated the impact of the program was similar to that of ACA reinsurance programs. For this model to work in Louisiana, several provisions of SB 173 would need to change and substantial financing for the reinsurance program would need to be secured.

Source: [Health Net](#)

The Bottom Line: SB 173 is no replacement for the ACA

Louisiana is among several states that's debating ways to protect consumers in case the ACA is struck down. While Senate Bill 173 includes many well-intentioned provisions, it does not come close to offering the same protections as the current federal law. Senate Bill 173 provides only limited coverage and does not provide a comprehensive solution should the ACA be overturned leaving too many Louisianans vulnerable.

by Stacey Roussel
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