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No Longer Uninsured: Residents of Illinois with a Preexisting Condition of AIDS, HIV, Mental Health, or Substance Use Are Now Covered Under the Affordable Care Act

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**No Longer Uninsured: Residents of Illinois with a
 Preexisting Condition of AIDS, HIV, Mental Health, or
 Substance Use Are Now Covered Under the
 Affordable Care Act**

Sonia A. Antolec and Alexis D. Figueroa, contributing†

The comprehensive health care reform law was enacted in two parts in March 2010.¹ The Patient Protection and Affordable Care Act was signed into law on March 23, 2010 and was amended by the Health Care and Education Reconciliation Act on March 30, 2010.² For purposes of this discussion, “ACA” is used to refer to “the Affordable Care Act” as the final version of the law. “ACA adults” refers to individuals between the ages of 19 and 64 who do not meet Medicaid eligibility criteria but who are now eligible under Medicaid Expansion for medical insurance coverage.

The Supreme Court of the United States in *National Federation of Independent Business v. Sebelius* made it optional for states to choose whether to expand their Medicaid coverage under the Affordable Care Act to service low-income people between the ages of 19 and 64 whose income is up to 138 percent of the Federal Poverty Level (FPL).³ In addition to extending Medicaid coverage, the ACA provides subsidies for lower- and middle-income people who are uninsured between 139 percent and 399 percent of the FPL to buy health insurance.⁴ Those individuals who receive subsidies and those who are not eligible for subsidies are able to purchase private coverage through state

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¹ *Affordable Care Act*, GET COVERED ILLINOIS, http://getcoveredillinois.gov/glossary_term/affordable-care-act/ (last visited Feb. 6, 2015).

² *Id.*

³ Nat’l Fed’n. of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2581–82 (2012).

⁴ JOEL E. MILLER & NARGES MAUDUDI, NASMHPD RESOURCE MANAGEMENT GUIDE: IMPACTS OF AFFORDABLE CARE ACT ON COVERAGE FOR UNINSURED PEOPLE WITH BEHAVIORAL CONDITIONS 1 (2013), available at <http://www.nasmhpd.org/docs/State%20RMG%20Reports/IL%20Report.pdf>.

health insurance exchanges.⁵ These exchanges are commonly referred to as “online marketplaces” that provide access to information for potential consumers on a range of health insurance programs and health plans. These state online marketplaces are targeted to those who are not enrolled in Medicaid, Medicare, or affordable employer-based plans.⁶ In Illinois, the online marketplace can be found at GetCoveredIllinois.gov.⁷

Illinois is one of the 26 states that chose to provide more affordable health-care coverage to all, regardless of preexisting conditions, under the optional Medicaid Expansion.⁸ Illinois also chose to expand certain Essential Health Benefits (EHB) with the goals of creating a culture of coverage and improving the health and wellbeing of the People of the State of Illinois.⁹ The ACA defined ten EHBs that must be included in all Qualified Health Plans sold inside and outside the Health Benefits Exchange starting in 2014.¹⁰ The ten categories of benefits 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.¹¹

People were able to apply for insurance on October 1, 2013 and the open enrollment period was extended to May 1, 2013.¹² Within the first twelve months, more than 622,000 Illinois residents enrolled and had access to affordable healthcare under the ACA and Illinois’ expanded Medicaid program.¹³ As of September 30, 2014, 476,501 newly eligible ACA adults have enrolled in the first calendar year in Illinois.¹⁴

⁵ *Id.*

⁶ *Id.*

⁷ See *Get Covered Illinois*, Get Covered Illinois, <http://www.getcoveredillinois.gov>, (last visited Feb. 6, 2015).

⁸ *22 States Are Refusing to Expand Medicaid. Here’s What That Means for Their Residents*, WHITE HOUSE (Jan. 27, 2015), <http://www.whitehouse.gov/share/medicaid-map>.

⁹ *Covered: Year One Annual Report*, JOOMAG, 2014, available at <http://www.joomag.com/magazine/gci-annual-report-2014/0975530001407517650?page=4>.

¹⁰ *Health Care Reform in Illinois – What It Means for You*, STATE OF ILL., <http://www2.illinois.gov/gov/healthcarereform/Pages/EHB.aspx> (last visited Feb. 6, 2015) [hereinafter *Health Care Reform in Illinois*].

¹¹ *Health Care Reform in Illinois*, *supra* note 10.

¹² *Covered: Year One Annual Report*, *supra* note 9.

¹³ *Id.*

¹⁴ *Id.*

ILLINOIS EXPANDED MEDICAID UNDER THE ACA TO INCLUDE COVERAGE FOR PEOPLE LIVING WITH HIV AND AIDS

Illinois is one of 11 states that chose to expand its coverage of HIV medical services as an EHB.¹⁵ The CDC recommends that HIV screening be a part of routine medical care for all patients between the ages of 13 and 64.¹⁶ While all state Medicaid programs must cover medically necessary HIV testing, and the ACA offers states financial incentives to cover certain preventive services at no cost to consumers, state coverage of routine HIV screening varies because it is an optional benefit under Medicaid.¹⁷ Currently, there are no national estimates of People Living with HIV and AIDS (PLWHA) likely to gain medical coverage under the ACA, but there are some distinct similarities in the statistics for Illinois residents.

In 2010, Illinois reported 513 HIV-related deaths.¹⁸ In 2010, Illinois reported 31,884 people living with HIV.¹⁹ In 2011, Illinois reported 2,142 diagnoses of HIV.²⁰ Prior to the expansion of Illinois Medicaid, those diagnosed PLWHA may not have been eligible for Medicaid coverage because HIV and AIDS were considered “preexisting conditions” under exclusionary provisions for health insurance.²¹ PLWHA may have only qualified for coverage once they were sick enough to be considered a “disabled person” under the program’s non-income based eligibility provisions.²²

¹⁵ LINDSEY DAWSON, THE AIDS INSTITUTE, COVERAGE OF HIV TESTING: A POLICY UPDATE (June 2, 2012), available at http://www.theaidsinstitute.org/sites/default/files/attachments/Routine%20HIV%20Testing-AFC%20presentation%20FINAL_0.pdf.

¹⁶ BERNARD M. BRANSON ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, REVISED RECOMMENDATIONS FOR HIV TESTING OF ADULTS, ADOLESCENTS, AND PREGNANT WOMEN IN HEALTH-CARE SETTINGS (Sept. 22, 2006), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>.

¹⁷ *State Medicaid Coverage of Routine HIV Screening*, HENRY J. KAISER FAMILY FOUND. (Feb. 25, 2014), <http://kff.org/hiv/aids/fact-sheet/state-medicare-coverage-of-routine-hiv-screening/>.

¹⁸ *Id.*; *Medicaid and HIV/AIDS*, HENRY J. KAISER FAMILY FOUND. (Mar. 5, 2013), <http://kff.org/hiv/aids/fact-sheet/medicaid-and-hiv/aids/>.

¹⁹ *NCHHSTP Atlas*, CTRS. FOR DISEASE CONTROL & PREVENTION (2012), <http://gis.cdc.gov/GRASP/NCHHSTPAtlas/main.html>.

²⁰ *The HIV/AIDS Epidemic in the United States*, HENRY J. KAISER FAMILY FOUND., June 2013, <http://kaiserfamilyfoundation.files.wordpress.com/2013/03/3029-14.pdf>.

²¹ HELPING PEOPLE WITH HIV NAVIGATE THE TRANSITION TO ACA COVERAGE: SUMMARY OF A ROUNDTABLE DISCUSSION, HENRY J. KAISER FAMILY FOUND. (2013), available at <http://kaiserfamilyfoundation.files.wordpress.com/2013/07/8462-helping-people-with-hiv-navigate-the-transition.pdf>.

²² *Id.*

In 2010, of the national population of PLWHA, 65 percent were racial minorities.²³ Currently in Illinois, 63 percent of PLWHA are racial minorities.²⁴ This percentage of racial minorities diagnosed with HIV or AIDS in Illinois is almost equivalent to the percentage of racial minorities who were uninsured in Illinois.²⁵ As of 2012, 49 percent of Illinois' uninsured population was minorities.²⁶ The causes of this HIV health disparity are complex. HIV-infection prevalence is higher and more broadly represented in the minority community compared to the white population.²⁷ Additionally, minority communities experience high rates of other sexually transmitted infections, and some of these infections can significantly increase the risk of contracting HIV.²⁸ Minorities also tend to be diagnosed at later stages in the disease and therefore begin therapy later, increasing the length of time of their infectivity.²⁹ Once engaged in treatment, minorities are more likely to discontinue therapy prematurely, risking resurgence of HIV infectivity and further health complications.³⁰ Of the newly enrolled ACA population in Illinois, 60 percent are racial minorities.³¹

The PLWHA population comprises much of the same population of people who were uninsured because they did not have access to affordable medical insurance coverage. One of the most important sources of care and coverage for people with HIV/AIDS in the U.S. is Medicaid, Illinois' and the nation's

²³ Ctrs. Center for Disease Control & Prevention, *Monitoring Selected National HIV Prevention and Care Objectives by Using HIV Surveillance Data – United States and 6 Dependent Areas – 2011*, HIV SURVEILLANCE REP., Oct. 2013, available at http://www.cdc.gov/hiv/pdf/2011_Monitoring_HIV_Indicators_HSSR_FINAL.pdf.

²⁴ *Distribution of the Nonelderly Uninsured by Race/Ethnicity*, HENRY J. KAISER FAMILY FOUND., available at <http://kff.org/uninsured/state-indicator/distribution-by-raceethnicity-2/> (last visited Feb. 6, 2015).

²⁵ *Uninsured Rates for the Nonelderly by Race/Ethnicity*, HENRY J. KAISER FAMILY FOUND., <http://kff.org/uninsured/state-indicator/rate-by-raceethnicity/> (last visited Feb. 6, 2015).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Nancy Aldrich & William F. Benson, *CDC Focuses on Need for Older Adults To Receive Clinical Preventive Services*, CENTERS. CENTER FOR DISEASE CONTROL AND PREVENTIVE SERVICES, CTRS. FOR DISEASE CONTROL & PREVENTION (2012), <http://www.cdc.gov/aging/pdf/cps-clinical-preventive-services.pdf>.

³¹ STATE OF ILL., AFFORDABLE CARE ACT ENROLLMENT BY AGE, RACE, AND GENDER AS OF OCTOBER 2014 (Nov. 2014), available at <http://www2.illinois.gov/hfs/SiteCollectionDocuments/ACAEnrollmentSummaryData.pdf>.

principal safety net health insurance program for low-income Americans.³² Medicaid is estimated to provide insurance coverage to almost half of all those with HIV who are in regular care.³³ In addition, a significant share of those newly diagnosed with HIV has been found to already be covered by Medicaid.³⁴ Thus, by expanding its Medicaid program, Illinois provides an important potential entry point for assessing implementation of routine HIV screening in health care settings for individuals who previously did not have access to routine health plans.

Illinois only offered “medically necessary” screening and treatment for PLWHA prior to expanding its Medicaid program.³⁵ Enrolled adults will now have access to routine and preventive clinical services, including screening, counseling, and preventive medications.³⁶ These visits are defined by the Centers for Medicare and Medicaid Services (CMS) as 20–30 minute sessions delivered by a primary care provider in a primary care setting.³⁷ The visit includes a personal risk assessment and a unique patient health plan to set up screening and preventive services over a period of five to ten years.³⁸ Part of the patient’s health plan should also include an assessment that covers the patient’s history and risk factors for contracting HIV or developing AIDS. Part of the risk factors and assessment are the patient’s substance use and mental health history.

³² *State Medicaid Coverage of Routine HIV Screening*, HENRY J. KAISER FAMILY FOUND. (Feb. 2014), <http://kaiserfamilyfoundation.files.wordpress.com/2014/02/8286-02-state-medicaid-coveragecoverage-of-routine-hiv-screening1.pdf>.

³³ *Medicaid and HIV: A National Analysis*, HENRY J. KAISER FAMILY FOUND., (Sept. 2, 2001), <http://kff.org/hiv/aids/report/medicaid-and-hiv-a-national-analysis/>.

³⁴ J. Kates et al., *Learning More About the HIV-infected Population Not In Care in the United States: Using Public Health Surveillance Data To Inform Current Policy Challenges*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.iasociety.org/Default.aspx?pageId=12&abstractId=4849> (last visited Feb. 6, 2015).

³⁵ See *supra* note 31 and accompanying text.

³⁶ CTRS. FOR MEDICARE & MEDICAID SERVICES, *STAYING HEALTHY: MEDICARE’S PREVENTATIVE SERVICES*, available at <http://www.medicare.gov/Pubs/pdf/11100.pdf> (last updated July 2014).

³⁷ See *supra* note 32 and accompanying text.

³⁸ JEN KATES, HENRY J. KAISER FAMILY FOUND., *MEDICAID AND HIV: A NATIONAL ANALYSIS* (Oct. 2011), available at <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8218.pdf>.

ILLINOIS EXPANDED COVERAGE UNDER THE ACA TO COVER
PEOPLE WITH MENTAL HEALTH AND SUBSTANCE
USE DISORDERS

The ACA also includes services for mental health and substance use disorder, including behavioral health treatment as an EHB that must be covered by ACA health plans.³⁹ The National Survey on Drug Use and Health (NSDUH) Report states that from 2011 and 2012, approximately 18.2 percent or 42.5 million adults aged 18 or older experienced a mental, behavioral, or emotional disorder (known together as “any mental illness”) as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders.⁴⁰ This same study also found that in Illinois, 15.86 percent of Illinois residents 18 or older suffered from a mental illness.⁴¹ The inclusion of this EHB means that those covered under the ACA will have access to prevention treatment, early intervention, and treatment for their mental and/or substance use disorders.⁴² Specifically, the ACA requirements state that health plans must cover preventive services like depression screening for adults and behavioral assessments for children at no cost.⁴³ The new ACA compliant health plans will also, at a minimum, meet health and substance use parity as set forth in the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).⁴⁴ The ACA’s parity with the MHPAEA means coverage of mental health and substance use services generally cannot be more restrictive than those for medical and surgical services.⁴⁵

The addition of mental and substance use disorders as an EHB means many previously uninsured Illinois residents who suffer from mental and/or substance use disorders will have an opportunity for treatment that otherwise would not have been available to them. It is estimated that nearly 672,156 previously uninsured Illinois residents aged 18 to 64 will become eligible for

³⁹ *Health Financing*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., <http://www.samhsa.gov/health-financing> (last updated Sept. 25, 2014).

⁴⁰ *State Estimates of Adult Mental Illness from the 2011 and 2012 National Surveys on Drug Use and Health*, NSDUH REP., (Substance Abuse & Mental Health Servs Admin., Rockville, Md.), Feb. 28, 2014, at 1, available at <http://www.samhsa.gov/data/sites/default/files/sr170-mental-illness-state-estimates-2014/sr170-mental-illness-state-estimates-2014.pdf>.

⁴¹ *Id.*

⁴² *Health Insurance and Mental Health Services*, METALHEALTH.GOV, <http://www.mentalhealth.gov/get-help/health-insurance/> (last visited Feb. 6, 2015).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

coverage under Medicaid Expansion.⁴⁶ Likewise, it is estimated that 724,820 previously uninsured Illinois residents aged 18 to 64 will become eligible for coverage under an ACA health plan.⁴⁷ The implementation of the ACA has therefore increased eligibility coverage of uninsured Illinois residents aged 18 to 64 by approximately 1.4 million, increasing the total of insurance-eligible people to nearly 2.2 million Illinois residents.⁴⁸ Of these 2.2 million Illinois residents, nearly 770,000 are estimated to be suffering from a behavioral health condition (people with a serious mental illness, in serious psychological distress, or with a substance use disorder).⁴⁹

The National Association of State Mental Health Program Directors estimates that in 2011, nearly 211,000 uninsured adults in Illinois suffered from a mental health condition (persons with either a serious mental illness or in serious psychological distress).⁵⁰ An additional 121,000 uninsured adults in Illinois with a mental health condition have become eligible for health insurance coverage under the new Medicaid Expansion program, and another nearly 156,000 have become eligible for coverage under the online marketplace ACA adults.⁵¹ In total, the implementation of the new Medicaid Expansion program and State Exchange Program has increased Illinois' coverage of residents with a mental health condition by 277,000.⁵²

The National Association of State Mental Health Program Directors also estimated that in 2011, nearly 74,000 uninsured adults in Illinois suffered from a substance use disorder.⁵³ Due to the expansion of Medicaid coverage brought on by the ACA, nearly 91,500 adults with substance use disorders who were previously uninsured in Illinois are now eligible for health insurance coverage under the new Medicaid Expansion program, and 118,000 under the online marketplace as ACA adults.⁵⁴ In total, the implementation of the ACA

⁴⁶ MILLER & MAUDUDI, *supra* note 4, at 20.

⁴⁷ *Id.*

⁴⁸ Newly eligible population for coverage under the Medicaid Expansion (672,156), plus the newly eligible population for coverage under the online marketplace (724,820), plus previously eligible population of Medicaid in 2011 (769,762), equals 2,173,738 total residents estimated to be eligible for coverage.

⁴⁹ *See supra* note 46 and accompanying text.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

has allowed Illinois to increase the availability of health insurance to those suffering from substance use disorders to 282,000 more Illinois residents.⁵⁵

ILLINOIS' EXPANSION OF MEDICAID UNDER THE ACA
IMPROVES HEALTH SERVICES FOR A PREVIOUSLY UNINSURED
POPULATION

Historically, stigmatized conditions such as HIV, Aids, mental health, and substance use were categorized as “pre-existing” conditions and anyone with any of these diagnoses was categorically denied medical insurance. The inclusion of coverage to these populations, among others, reflects a change of perception and awareness of the conditions that affect the residents of Illinois.⁵⁶ Illinois' initiative to expand Medicaid and implementation of the ACA is a demonstration of its goal of creating a culture of inclusive medical coverage and improving the health and wellbeing of all Illinois residents, regardless of any condition.⁵⁷

⁵⁵ *Id.*

⁵⁶ STATE OF ILL., ILLINOIS HEALTH INSURANCE MARKETPLACE OUTREACH AND CONSUMER EDUCATION PLAN 4 (Mar. 29, 2013), [https://www2.illinois.gov/hfs/SiteCollection Documents/IHIMOEP.pdf](https://www2.illinois.gov/hfs/SiteCollection/Documents/IHIMOEP.pdf).

⁵⁷ *Id.*