



October 29, 2019

Key Vote NO on the CRA to Roll Back State Innovation Waivers, S.J.Res. 52

On behalf of FreedomWorks' activist community, I urge you to contact your senators and ask them to vote NO on the disapproval resolution under the Congressional Review Act (CRA), S.J.Res. 52, to roll back state innovation waivers for healthcare. Introduced by Sen. Mark Warner (D-Va.), this resolution targets guidance issued by the Department of the Treasury and the Department of Health and Human Services that made it easier for states to get "state innovation waivers" under Section 1332 of the Affordable Care Act (ACA).

State innovation waivers allow states to depart from certain provisions of the ACA provided that they still meet specific criteria. Specifically, a state must be able to explain how it will provide coverage that is at least as comprehensive and affordable as plans offered on the ACA's individual market. A waiver also may not increase the budget deficit.

Notably, states cannot use Section 1332 to waive guaranteed issue, the provision of Obamacare that purports to protect access to care for individuals with pre-existing conditions. Any Democrat who argues that the Trump administration's revised guidance on these waivers is an attack on pre-existing condition protections, even as they are poorly done under Obamacare, is being flatly dishonest.

A state innovation waiver may be granted for five years, although a state may be able to request an extension. The provisions of the ACA for which waivers may be granted include the ten essential health benefits, metal tiers of coverage (platinum, gold, silver, and bronze), and premium tax credits. It was difficult for states to get waivers under the Obama administration, making Section 1332 largely meaningless, even as premiums were dramatically rising. Prior to 2017, only one state, Hawaii, had been granted a waiver.

The process for obtaining a waiver under the Trump administration has been noticeably different. Since 2017, Alaska, Colorado, Delaware, Maine, Maryland, Minnesota, Montana, New Jersey,

North Dakota, Oregon, Rhode Island, and Wisconsin have been granted waivers. But the administration wanted to do more to stabilize health insurance markets through state innovations.

The Trump administration has taken regulatory steps to provide more affordable private health insurance options through association health plans and short-term, limited-duration plans. In October 2018, the Department of the Treasury, the Department of Health and Human Services, and the Centers for Medicare and Medicaid Services issued guidance that further eases the process of applying for and receiving a waiver.

The October 2018 guidance focuses on the coverage that is made available on the exchanges by health insurance companies rather than what consumers had purchased. States must still meet statutory requirements to be eligible for a waiver, but the guidance explains that the comprehensiveness and affordability requirement may be considered met “if access to coverage that is as affordable and comprehensive as coverage forecasted to have been available in the absence of the waiver is projected to be available to a comparable number of people under the waiver.”

If an individual decides to purchase a more affordable, less comprehensive plan, the comprehensiveness and affordability requirement under Section 1332 will be met because there will be more comprehensive offerings on the exchanges that they could have opted to purchase.

The guidance issued by the Department of the Treasury and the Department of Health and Human Services is not a cure-all for the issues that America’s health insurance system faces. Much more has to be done to address these issues, particularly through the legislative process. Unfortunately, congressional Democrats aren’t interested in solutions; many want more government involvement and the elimination of private health insurance.

FreedomWorks will count the vote S.J.Res. 52 on our 2019 Congressional Scorecard. The scorecard is used to determine eligibility for the FreedomFighter Award, which recognizes Members of the House and Senate who consistently vote to support economic freedom and individual liberty.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Brandon', written in a cursive style.

Adam Brandon
President, FreedomWorks