March 2019

Protecting Pre-existing Conditions & Making Health Care More Affordable Act of 2019: Section-by-Section

TITLE I: MAKE HEALTH CARE MORE AFFORDABLE

Section 101

Improve affordability and reduce premium costs for consumers. The legislation would make health care more affordable by expanding eligibility for premium tax credits beyond 400 percent of the federal poverty line (FPL), and would increase the size of the tax credit for all income brackets.

Section 102

Expand affordability for working families. Currently, an individual who has an offer of coverage through his or her employer can receive subsidized coverage in the Marketplaces if the cost of self-only coverage is unaffordable (i.e., the employee's financial contribution exceeds 9.5 percent of the employee's household income). However, some low-to-moderate-income families are locked out of receiving financial assistance by determining affordability based on the cost of self-only coverage, rather than family coverage (which is significantly more expensive). The legislation addresses this gap by ensuring that access to subsidized coverage turns on the affordability of family coverage, rather than self-only coverage, thereby expanding access to tax credits for coverage for working families.

TITLE II: UNDO SABOTAGE & PROTECT PEOPLE WITH PRE-EXISTING CONDITIONS

Section 201

Protect comprehensive coverage for small businesses and workers. The legislation would rescind the Trump Administration's final rule designed to destabilize and segment the individual and small group markets. The rule threatens comprehensive and affordable health coverage for small employers and individuals through association health plans (AHPs)—plans that could circumvent many of the consumer protections in the Affordable Care Act (ACA). AHPs are likely to have a destabilizing effect by incentivizing healthier individuals to leave the ACA-compliant market, thereby negatively affecting the risk pool and increasing premiums.

Section 202

Prevent junk plans and continue protections for consumers with pre-existing conditions. The legislation would reverse the Trump Administration's final rule expanding short-term, limited-duration health plans, which are not required to comply with any of the ACA's consumer protections (protections for pre-existing conditions, guaranteed issue, community rating, essential health benefits). These junk plans discriminate against people with pre-existing conditions and expanding them raises premiums and undermines the individual insurance market.

Section 203

Ensure plans provide comprehensive benefits. The legislation would prevent the Trump Administration from taking certain actions proposed in the 2019 Payment Notice that would undermine coverage of essential health benefits (EHBs). It would require plans to cover all EHBs, prohibit substitution of benefits across benefit categories, and ensure broad coverage of prescription drugs. The legislation would also require the Trump Administration to continue to make available standardized plans, so that consumers can make simpler comparisons of plans offered by different issuers.

Section 204

Undo Administration sabotage by requiring funding for navigators. The Trump Administration has cut navigators by over 80 percent. Navigators are community-based organizations who provide a critical source of unbiased information on coverage options. The legislation requires the Department of Health and Human Services (HHS) to implement a navigator program for the federally-facilitated Marketplace (FFM), and funds it at $100 million per year.

Section 205

Undo Administration sabotage by requiring funding for outreach and education. The Trump Administration has gutted marketing and outreach for the FFM, resulting in continually declining enrollment. Marketing and outreach are critically important to ensuring a balanced risk pool in the individual market. Covered California estimates that an aggressive marketing strategy could lower premiums by 2-8 percent. The legislation requires HHS to conduct marketing and outreach for the FFM and funds these activities at $100 million per year. The legislation also prohibits the Trump Administration from using outreach and enrollment funds to promote junk plans.

Section 206

Improve Marketplace stability to prevent sabotage from raising premiums. A well-designed reinsurance program could offset some, but not all, of the premium increases from the individual mandate repeal and the cumulative effects of the Trump Administration's sabotage of health insurance markets. The legislation establishes a state-based reinsurance program that would allow states to set up their own reinsurance programs, or to use the funds to provide premium subsidies or cost-sharing support. It also provides a federal default reinsurance program for states that do not opt to run their own reinsurance programs, in order to ensure that residents of all 50 states and the District of Columbia benefit from reduced premiums.

Section 207

Reverse Trump Administration guidance that would give states the green light to undermine consumer protections. Section 1332 (State Innovation Waivers) of the ACA authorizes states to waive certain requirements of the law and experiment with health insurance reforms that could improve the well-being and health of their residents. The law has a clear statutory directive that states must maintain the level of benefits, affordability, and coverage provided to state residents by the ACA. The Trump Administration's October 2018 waiver guidance weakens standards for approving these waivers by allowing states to simply demonstrate that a comparable number of residents will have *access* to comprehensive and affordable coverage, regardless of whether they actually enroll in that coverage, thereby allowing the Secretaries of HHS and Treasury to approve waivers that do not provide coverage that is as affordable or as comprehensive as under the ACA. The 2018 guidance also allows states to receive waiver approval for proposals that direct the ACA's tax credit subsidies towards junk plans. The legislation would revoke the October 2018 guidance.

TITLE III: STATE INNOVATION AND TRANSPARENCY

Section 301
Fund state health insurance education programs for consumers. The legislation provides $100 million in Consumer Assistance Program grants for states, which supports educational activities regarding health insurance, such as helping individuals file complaints and appeals, educating consumers on their rights, and assisting consumers with enrollment, as well as obtaining premium tax credits.

Section 302
Fund state innovations to expand coverage. Recognizing states are innovators in leading the charge to get America covered, the legislation provides $200 million a year from 2020 through 2022 in funding for states to conduct feasibility studies, pilot programs, technology upgrades, and other efforts to encourage enrollment in the individual and small group markets (including implementing a state version of an individual mandate).

Section 303
Preserve state option to implement health care Marketplaces. Under current law, federal funds are no longer available for states to set up state-based Marketplaces after January 1, 2015. The legislation would lift that prohibition so that states that have had a change in leadership and want to establish a state-based Marketplace can do so, and receive federal funding for planning and implementation.

Section 304
Promote transparency and accountability in the Administration's expenditures of exchange user fees. It is unclear how the Trump Administration is spending the funds raised from a user fee levied on issuers that is intended to be spent on exchange operations and outreach and enrollment, and whether all of those uses are appropriate. For example, during 2017, the Trump Administration appears to have spent agency money filming anti-ACA propaganda videos. The legislation requires HHS to submit an annual report to Congress that includes a detailed breakdown of the Department's spending on outreach and enrollment, navigators, maintenance of Healthcare.gov, and operation of the Healthcare.gov call centers.