

## Protecting Americans with Preexisting Conditions Act of 2021

*By Senators Warner, Cardin, Shaheen and Baldwin*

### **Background**

The Patient Protection and Affordable Care Act (ACA) included a provision, known as Section 1332, which allowed states to apply for waivers that give flexibility under the ACA to implement improvements which could expand coverage, reduce costs and provide more comprehensive benefits.

The statute included intentional guardrails to protect Americans from increased costs and ensure quality coverage for individuals with preexisting conditions. Specifically, Congress required that any state waiver approved under section 1332 must ensure:

1. Health coverage is at least as comprehensive it would otherwise be under the ACA
2. Cost-sharing and premiums are as affordable as they would otherwise be under the ACA
3. The number of individuals with coverage remains comparable to the number of individuals otherwise covered under the ACA
4. The waiver does not increase the Federal deficit

In 2018, 2019 and 2020, the Trump Administration made a series of harmful changes that allow 1332 waivers that would increase health care costs and make it more difficult for consumers to enroll in quality and comprehensive health care coverage.

Specifically, in October 2018, the Trump Administration released [modified guidance](#), stating that 1332 waivers could ignore the important guardrails listed above, and push so-called “short-term” junk insurance plans that allow for discrimination against individuals with preexisting conditions. These deceptively-marketed plans would be allowed to charge customers more based on their age and background, place annual and lifetime limits on care and are not required to cover essential benefits such as prescription drugs, mental health care and maternity care. The Administration’s changes would also allow the use of federal tax dollars to subsidize these subpar plans.

In January of 2021, the Trump Administration further cemented these harmful changes and made them more difficult to reverse by including them in the [Centers for Medicare and Medicaid Service’s \(CMS\) Notice of Benefit and Payment Parameters for 2022 Final Rule \(NBPP\)](#).

### **What this bill would do?**

This legislation would invalidate both the Trump Administration’s 2018 harmful guidance and related portions of the CMS NBPP to ensure continuing protections for individuals with preexisting conditions and millions more that would see their costs go up. While we are confident the Biden Administration will take steps to reverse this harmful rulemaking we also feel it is important for Congress to act on this issue as soon as possible.

This legislation would leave in place previous guidance put forth in 2015 under the Obama Administration. That guidance, consistent with the statute, outlines specific steps that a state would need to meet to qualify for a waiver. These included requiring a state to obtain data and other information sufficient to determine that the proposed waiver will:

1. Provide coverage that is at least as comprehensive as it would have been absent the waiver.
2. Provide coverage and cost sharing protections that keep care at least as affordable as would be provided absent the waiver.
3. Provide coverage to at least a comparable number of residents as would be provided coverage absent the waiver.

In addition, states would need to obtain an actuarial analysis to support state estimates that the waiver will comply with the comprehensive coverage requirement, the affordability requirement and the scope of coverage requirement. Under this previous 2015 guidance several states – including Alaska, Wisconsin, Hawai'i, Maryland and Maine – successfully obtained waivers under section 1332.

**Supporting Organizations:** American Heart Association, Cystic Fibrosis Foundation, Alliance for Retired Americans, Virginia Poverty Law Center, Commonwealth Institute, March of Dimes, Hemophilia Federation of America, American Cancer Society Cancer Action Network, Susan G. Komen, National Hemophilia Foundation, Leukemia & Lymphoma Society, National Patient Advocate Foundation, Protect Our Care, Cancer Support Community, Planned Parenthood Federation of America, Families USA, American Federation of State, County and Municipal Employees (AFSCME), American Lung Association, the Asthma and Allergy Foundation of America, the Association of University Centers on Disabilities (AUCD)