Detrimental Effects of Allowing States to Waive the Essential Health Benefits

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Introduction

On June 22, Senate Republicans introduced the Better Care Reconciliation Act (BCRA) to repeal the Affordable Care Act (ACA) and eliminate the current financing structure of Medicaid. The bill is a "discussion draft" and not the final version the Senate is likely to vote on, but it highlights the Senate's desire to make drastic cuts and changes to Medicaid. BCRA also allows states to get rid of the Essential Health Benefits (EHBs) for individual and small group market plans.[1] EHBs consist of ten broad benefit categories that help ensure people have access to ***basic*** health care services. Without the EHB requirement, insurers will most likely stop covering critical services and leave individuals without access to the health care they need.

The Senate Bill and Essential Health Benefits

BCRA makes significant changes to the ACA's section 1332 state innovation waiver process. Currently, states are allowed to request waivers of certain ACA requirements, including EHBs, but the alternative approach must:

- provide coverage at least as comprehensive as coverage which includes all ten EHBs;
- provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as coverage under the waived provisions;
- cover a comparable number of residents; and
- not increase the Federal deficit.

[1] As of January 1, 2020, BCRA also eliminates EHBs in Alternative Benefit Plans, which are the benefits packages for the Medicaid expansion population.

BCRA ***eliminates*** these important coverage safeguards and instead makes it easier for states to waive the EHBs. Thus, BCRA:

- **Only requires that the waiver not increase the Federal deficit**. States must provide a description of how their alternative approach will increase access to comprehensive coverage, reduce average premiums, and increase enrollment. However, those vague requirements are meaningless since the Secretary of the U.S. Department of Health and Human Services (HHS) ***shall*** grant a waiver request ***unless*** it increases the Federal deficit. This represents a significant departure from the ACA, which granted the Secretary broad discretion and authority to reject waiver requests that do not provide coverage as comprehensive as coverage which includes all ten EHB categories.

- **Allows certification instead of a state law to provide for the state actions under the waiver**. BCRA adds a certification option allowing states to request a waiver as long as a signed document is submitted by the state's Governor and the State Insurance Commissioner certifying authority for the state actions under the waiver. Under the ACA, states must pass a law supporting the proposed waiver, but under BCRA state legislatures no longer have to give their approval.

- **Establishes an expedited application and approval process**. HHS shall establish an expedited process that may be used to respond to an urgent or emergency situation with respect to health insurance coverage within a state. This provision would significantly weaken the thorough review process for waiver applications established under the ACA.

- **Makes the waivers effective for longer periods and irrevocable by the Secretary of HHS**. The waivers will be in effect for 8 years (instead of 5 years), and can be renewed for unlimited additional 8-year periods. The waivers ***cannot*** be canceled by HHS before the expiration of the 8-year period. This means that a new administration would not be able to renegotiate waivers until they expire even if a state is misusing federal funds.

- **Is effective immediately**. These changes are applicable immediately upon enactment of BCRA.

Who Is At Risk?

If states are allowed to waive the EHB requirement, health coverage will be considerably less comprehensive. An analysis of individual market coverage before EHBs were required found that 75% of non-group market plans did not cover maternity care (delivery/inpatient care), and 45% did not cover inpatient/outpatient substance use disorder services. Under BCRA, if a state waived the requirement that insurers cover maternity care, the premium for a rider to cover these services would cost an additional $17,320 in 2026 instead of being covered in an EHB compliant plan with limits on out-of-pocket spending. Similarly, if a state waived the mental health and substance use benefits requirement, a drug dependence coverage rider would cost individuals an additional $20,450.

The Congressional Budget Office (CBO) estimated that ***50 percent*** of the population lives in states that would apply for a waiver to change EHBs. Per CBO, some states would no longer require coverage of services that typically were not covered prior to the ACA, such as maternity care, mental health and substance use disorder services, rehabilitative and habilitative services, and pediatric dental care. Other states would make even more drastic changes and only cover a small percentage of expected health care costs.

In states that waive EHBs, people who rely on services that are no longer considered EHBs will have to pay out-of-pocket or forgo the care they need. Even if a health plan continues to cover a service that is no longer considered an EHB in the state, the out-of-pocket maximum and annual and lifetime limit consumer protections will no longer apply since these protections only apply to EHBs. This will increase health care costs for many, including people with pre-existing conditions. Moreover, BCRA also makes it easier for states to waive annual cost-sharing limits and actuarial value requirements, which can have a significant impact on out-of-pocket costs as well.

Large Employer Coverage Also At Risk

Allowing states to waive the EHB requirement not only puts enrollees in the individual and small group markets at risk, but may also impact an estimated 27 million workers and their dependents that receive coverage through large employers, which generally consists of employers with 50 or more employees. Annual and lifetime limits on coverage apply to large employer plans, and these plans can choose any state's definition of EHBs for purposes of this prohibition. Thus, if ***any*** state waives EHBs, anyone getting employer sponsored insurance across the country may once again face annual or lifetime limits.

Conclusion

If states are allowed to waive EHBs, health care coverage will be insufficient, and once again, leave consumers facing higher costs and less access to the health care they need. Consumers cannot afford, health-wise or financially, to have fewer guarantees of basic health care services.