

PROTECTING AMERICANS WITH PREEXISTING  
CONDITIONS ACT OF 2019

APRIL 30, 2019.—Committed to the Committee on the Whole House on the State of  
the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 986]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 986) to provide that certain guidance related to waivers for State innovation under the Patient Protection and Affordable Care Act shall have no force or effect, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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## PURPOSE AND SUMMARY

H.R. 986, the “Protecting Americans with Preexisting Conditions Act of 2019”, was introduced on February 6, 2019, by Reps. Kuster (D–NH), Beyer (D–VA), and Courtney (D–CT), and referred to the Committee on Energy and Commerce.

The goal of H.R. 986 is to prohibit the Department of Health and Human Services (HHS) and Department of the Treasury (the Treasury) from taking any action to implement, enforce, or otherwise give effect to the Section 1332 guidance that was issued on October 24, 2018. The bill would also prohibit the Secretaries of HHS and the Treasury from promulgating any substantially similar guidance or rule.

## BACKGROUND AND NEED FOR LEGISLATION

On October 24, 2018, the Centers for Medicare & Medicaid Services (CMS), HHS, and the Treasury issued a guidance on Section 1332 of the Patient Protection and Affordable Care Act (ACA) entitled, “State Relief and Empowerment Waivers” (2018 Guidance).<sup>1</sup> Section 1332 (State Innovation Waivers) of the ACA, Public Law 111–148, 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 ACA clearly directs states to maintain minimum benefits, affordability, and coverage standards and levels for state residents.

Section 1332 requires states to meet four statutory “guardrails” simultaneously and demonstrate that the proposed waiver will provide comprehensive, affordable coverage to a comparable number of residents as under the ACA, without increasing the federal deficit. In the 2018 Guidance, HHS and the Treasury revised the agencies’ interpretation of the requirements of the statute.

The 2018 Guidance changes the requirements that states must meet in relation to the affordability and comprehensiveness guardrails, and it expands the definition of health insurance coverage. The 2018 Guidance allows states to 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 the Treasury to approve waivers that do not provide coverage that is as affordable or as comprehensive to the same number of people 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 short-term, limited duration insurance (STLDI) plans and other types of health insurance plans that do not provide consumer protections contained in Title I of the ACA.

H.R. 986 would revoke the revised guidance issued on October 2018. H.R. 986 would further prohibit the Secretaries of HHS and the Treasury from promulgating any substantially similar guidance or rule.

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<sup>1</sup>Department of Health and Human Services and Department of the Treasury, *Waivers for State Innovation*, 83 Fed. Reg. 53575 (Oct. 24, 2018).

## COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop or consider H.R. 986:

On February 13, 2019, the Subcommittee on Health held a hearing on H.R. 986, entitled “Strengthening Our Health Care System: Legislation to Reverse ACA Sabotage and Ensure Pre-Existing Conditions Protections.” The Subcommittee received testimony from:

- Katie Keith, Associate Research Professor and Adjunct Professor of Law, Georgetown University;
- Jessica Altman, Commissioner, Pennsylvania Insurance Department; and
- Grace-Marie Turner, President, Galen Institute.

## COMMITTEE CONSIDERATION

H.R. 986, the “Protecting Americans with Preexisting Conditions Act of 2019”, was introduced on February 6, 2019, by Rep. Kuster (D–NH), and referred to the Committee on Energy and Commerce. The bill was subsequently referred to the Subcommittee on Health on February 7, 2019. Following legislative hearings on H.R. 986, the Subcommittee met in open markup session, pursuant to notice, on March 26, 2019, for consideration of the bill. Subsequently, the Subcommittee on Health agreed to a motion by Ms. Eshoo, Chairwoman of the Subcommittee, to favorably forward H.R. 986 to the full Committee without amendment.

The Committee on Energy and Commerce met in open markup session, pursuant to notice, on April 3, 2019, to consider H.R. 986. There were no amendments offered during consideration of the bill, and at the conclusion of the markup the Committee agreed to a motion by Mr. Pallone, Chairman of the Committee, to order H.R. 986 favorably reported to the House, as introduced, by a voice vote.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 986 during full Committee markup. A motion by Mr. Pallone to order H.R. 986 favorably reported to the House, as introduced, was agreed to by a voice vote.

## OVERSIGHT FINDINGS

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the

following cost estimate for H.R. 986 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 25, 2019.*

Hon. FRANK PALLONE, Jr.,  
*Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 986, the Protecting Americans with Preexisting Conditions Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kevin McNellis.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

<b>H.R. 986, Protecting Americans with Preexisting Conditions Act of 2019</b>			
As ordered reported by the House Committee on Energy and Commerce on April 3, 2019			
Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	*	*
Revenues	0	*	*
Deficit Effect	0	*	*
Spending Subject to Appropriation (Outlays)	0	0	0
Pay-as-you-go procedures apply?	Yes	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

H.R. 986 would prohibit the Departments of Health and Human Services and the Treasury from taking any action to implement or enforce the regulatory guidance entitled “State Relief and Empowerment Waivers” or from issuing similar guidance in the future. Under current law and this legislation, waivers are required to be budget neutral. Changes to waiver approvals could affect direct spending and revenues; however, CBO and JCT do not have a basis for estimating that the budgetary effects of the bill would be significantly different than under current law because no states have submitted a waiver application under the guidance that would be eliminated by this legislation. As a result, CBO and JCT estimate that H.R. 986 would not have a significant effect on direct spending or revenues over the 2019–2029 period.

The CBO staff contact for this estimate is Kevin McNellis. The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to revoke the Section 1332 Guidance issued on October 2018 and to prohibit the Secretaries of HHS and the Treasury from promulgating any substantially similar guidance or rule.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 986 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

## COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 986 contains no earmarks, limited tax benefits, or limited tariff benefits.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

Section 1 designates that the short title may be cited as the “Protecting Americans with Preexisting Conditions Act of 2019”.

*Section 2. Providing that certain guidance related to waivers for state innovation under the Patient Protection and Affordable Care Act shall have no force or effect*

Section 2 prohibits the Secretaries of HHS and the Treasury from taking any action to implement, enforce, or otherwise give effect to the Section 1332 Guidance issued on October 24, 2018. Section 2 also prohibits the Secretaries from promulgating any substantially similar rule or guidance.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law made by the bill H.R. 986.

## DISSENTING VIEWS

This legislation would invalidate the Trump Administration's guidance for 1332 Waivers for State Innovation.

Section 1332 of the Patient Protection and Affordable Care Act (PPACA) established Waivers for State Innovation beginning January 1, 2017.<sup>1</sup> These waivers give the Secretary of the Department of Health and Human Services and the Secretary of the Treasury the discretion to grant States new flexibility within their health care markets as long as the model provides coverage that is as comprehensive, affordable, covers a comparable number of residents, and is budget neutral to the Federal government. If approved, the State may receive funding equal to the amount of forgone Federal financial assistance that would have been provided to its residents pursuant to specified PPACA programs, known as pass-through funding. An approved waiver can remain in place for five years and can be renewed.

The updated guidance focused on loosening restrictions limiting State flexibility and consumer choice and providing flexibility for States to meet the legislative authority standard. More specifically, the modernized guidance centers on the availability of comprehensive and affordable coverage, expands the definition of coverage to include short-term plans, and clarifies that existing State legislation providing statutory authority to enforce PPACA may satisfy the requirement that each State enact a law to apply for and receive a 1332 waiver.

To date, eight States have active waivers, all of which were approved under the Obama Administration guidance.<sup>2</sup> Among these States, for 2018 alone: Alaska experienced a 26 percent premium reduction, Minnesota saw its rate increase reduced to 11.3 percent, significantly less than its 2017 57 percent increase; and, Oregon's rate changes ranged from -1.6 to 14.8 percent, dropping to a range of -9.6 to 10.1 percent for 2019.<sup>3</sup>

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<sup>1</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, (2010) (as amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010)).

<sup>2</sup> Center for Consumer Information and Insurance Oversight, *Section 1332: State Innovation Waivers*, available at [https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section\\_1332\\_state\\_innovation\\_waivers.html#Section%201332%20State%20Application%20Waiver%20Applications](https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers.html#Section%201332%20State%20Application%20Waiver%20Applications).

<sup>3</sup> Jack O'Brien, Health Leaders, *ACA Reinsurance Waivers Provide Relief from Premium Hikes*, (Nov. 27, 2018), available at <https://www.healthleadersmedia.com/finance/aca-reinsurance-waivers-provide-relief-premium-hikes>.

While this bill has a catchy title, it does little to protect individuals living with preexisting health care conditions. House Republicans continue to support pre-existing condition protections and have offered solutions to give patients this assurance outside of the unpopular, unaffordable, and unconstitutional framework.

GREG WALDEN,  
*Republican Leader, Com-  
mittee on Energy and  
Commerce.*

MICHAEL C. BURGESS,  
*Republican Leader, Sub-  
committee on Health,  
Committee on Energy and  
Commerce.*

