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Obama's False Nod Toward Flexibility

by [Benjamin Domenech](#)

on February 28, 2011

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“Flexibility.” It’s a word that everyone in politics loves. They love it so much, they overuse it, deploying it in situations where it conflicts directly with the facts.

That’s the case today, [where President Obama is claiming to embrace flexibility](#) in a speech to the nation’s governors. *The New York Times* reports:

Seeking to appease disgruntled governors, President Obama plans to announce on Monday that he supports amending the 2010 health care law to allow states to opt out of its most burdensome requirements three years earlier than currently permitted.

[You may recall my past discussions of this idea.](#) It’s introduced in the U.S. Senate as a bipartisan piece of legislation offered by Democrat Ron Wyden of Oregon and Republican Scott Brown of Massachusetts, two prominent moderates. Wyden in particular talks a great game when it comes to health policy—which is a shame, since his legislation is little more than a meaningless nod in the direction of flexibility.

The two-page long [Wyden-Brown legislation does essentially one thing](#): it moves the timeline for the “Waivers for State Innovation” portion of Obama’s health care law up from 2017 to 2014. These waivers are outlined in detail in section 1332 of the law, which contains a laundry list of things the waivers *won’t* cover.

The Secretary of Health and Human Services is directed to grant waivers for states only if their alternative plans that, among other requirements, “will provide coverage that is at least as comprehensive as the coverage defined in section 1302 (B) and offered through Exchanges established under this title as certified by Office of the Actuary of the Centers for Medicare & Medicaid Services.”

They must “provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of this title would provide.” And they must “provide coverage to at least a comparable number of its residents as the provisions of this title would provide.”

In other words, this is not, as the *Times* reports, allowing states to “opt out of its most burdensome requirements” in any way, shape, or form. The burdensome anti-market coverage requirements are still there (it must be as or more comprehensive); the coverage and cost-sharing provisions on out of pocket spending are still there (preventing high deductible HSA-based plans); and most damning of all, they require states to demonstrate that “at least a comparable number” of state residents will be provided coverage under the plan.

On that last point, I followed up with Wyden's office to find out what “at least a comparable number” means. As I reported last March in response to a Wyden interview with the Huffington Post, [the Senator's own staff acknowledged](#) that the requirement would mean states must demonstrate that any alternate plan they had would cover that *as many or a greater number of people* than covered under a plan wherein people are *required to purchase coverage under penalty of law*.

To summarize: states could only get an exemption approved by the Secretary of HHS if you prove you can cover as many or more people with your non-individual mandate plan, while also meeting all of the burdensome requirements within Obamacare for the amounts of coverage—and all of this would only be approved at the discretion of Kathleen Sebelius.

[This is, of course, laughable.](#) It brings to mind Henry Ford's comment that “Any customer can have a car painted any colour that he wants so long as it is black.”

The likely result is what we're seeing already in Vermont where, as Cato's Mike Cannon points out [Gov. Peter Shumlin is considering a single-payer approach](#). Indeed, beyond single-payer, I see few other policy options that this restrictive waiver system would allow.

If you want even more detail on the limits and policy problems of Wyden-Brown, [Stuart Butler breaks down the facts](#) in a superb post at the New England Journal of Medicine's Health Policy and Reform site. If this is the president's way of embracing flexibility, the governors in the room should recognize it for the false nod it is, and reject it outright.

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by [Benjamin Domenech](#)

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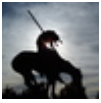
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