

117TH CONGRESS
1ST SESSION

H. R. 3775

To amend title I of the Patient Protection and Affordable Care Act to authorize the establishment of, and provide support for, State-based universal health care systems that provide comprehensive health benefits to State residents, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2021

Mr. KHANNA (for himself, Ms. PINGREE, Mr. RASKIN, Mr. LEVIN of Michigan, Mr. BLUMENAUER, Ms. LEE of California, Ms. JAYAPAL, Mr. SMITH of Washington, Mr. POCAN, Ms. OMAR, Ms. NORTON, Mr. DEFazio, Mr. NEGUSE, Ms. TLAIB, Ms. PRESSLEY, Mr. GRIJALVA, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. HUFFMAN, Ms. BONAMICI, Ms. SCHAKOWSKY, Mrs. WATSON COLEMAN, Mr. BOWMAN, Mr. GARCÍA of Illinois, Mr. JONES, and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Armed Services, Oversight and Reform, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title I of the Patient Protection and Affordable Care Act to authorize the establishment of, and provide support for, State-based universal health care systems that provide comprehensive health benefits to State residents, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; PURPOSE.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “State-Based Universal Health Care Act of 2021”.

4 (b) PURPOSE.—The purpose of this Act is to estab-
5 lish a flexible framework under which States can provide
6 comprehensive universal health coverage to their residents.

7 **SEC. 2. WAIVER FOR STATE UNIVERSAL HEALTH CARE.**

8 (a) IN GENERAL.—Subtitle D of title I of the Patient
9 Protection and Affordable Care Act (42 U.S.C. 18021 et
10 seq.) is amended by inserting after section 1334 the fol-
11 lowing new section:

12 **“SEC. 1335. WAIVER FOR STATE UNIVERSAL HEALTH CARE.**

13 “(a) APPLICATION.—

14 “(1) IN GENERAL.—Subject to paragraph (6), a
15 State may apply to the Secretary (as defined in sub-
16 section (i)(3)) for the waiver of so much of the re-
17 quirements described in paragraph (2) with respect
18 to health benefits coverage within the State for plan
19 years beginning on or after January 1, 2022, as is
20 necessary to implement a comprehensive State uni-
21 versal health care plan in the State under this sec-
22 tion. Such application shall—

23 “(A) be filed at such time and in such
24 manner as the Secretary may require;

25 “(B) contain such information as the Sec-
26 retary may require, including—

1 “(i) a comprehensive description of
2 the State legislation, or other State legal
3 authority as applicable, and program to
4 implement a plan meeting the require-
5 ments for a waiver under this section;

6 “(ii) a plan for how the State will
7 achieve in 5 years health coverage for at
8 least 95 percent of residents of the State;
9 and

10 “(iii) a 10-fiscal-year budget plan for
11 such plan that is budget neutral for the
12 Federal Government; and

13 “(C) provide an assurance that the State
14 has legal authority to implement such plan or
15 has enacted the law described in subsection
16 (b)(2).

17 “(2) REQUIREMENTS.—The requirements de-
18 scribed in this paragraph with respect to health ben-
19 efits coverage within the State for plan years begin-
20 ning on or after January 1, 2022, are as follows:

21 “(A) Sections 1301 through 1324.

22 “(B) Section 1402.

23 “(C) Sections 36B and 4980H of the In-
24 ternal Revenue Code of 1986.

25 “(D) Title XI of the Social Security Act.

1 “(E) Title XVIII of the Social Security
2 Act.

3 “(F) Title XIX of the Social Security Act.

4 “(G) Title XXI of the Social Security Act.

5 “(H) Chapter 89 of title 5, United States
6 Code.

7 “(I) Chapter 55 of title 10, United States
8 Code, including coverage under the TRICARE
9 program.

10 “(J) Section 514 of the Employee Retirement
11 Income Security Act of 1974.

12 “(3) PASSTHROUGH OF FUNDING.—With re-
13 spect to a State waiver under paragraph (1), under
14 which the State assumes responsibility for health
15 coverage under one or more of the specified Federal
16 health programs, including under each of the Fed-
17 eral health care or subsidy programs specified in
18 subparagraphs (A), (B), (C), (E), (F), (G), (H), and
19 (I) of paragraph (2), the Secretary shall not spend
20 Federal health or related administrative funds that
21 would otherwise have been spent for such a pro-
22 gram, as applicable, for the time periods covered
23 under the waiver and shall provide for an alternative
24 means by which the aggregate amount of such funds
25 (determined by the Secretary in coordination with

1 the State), including caseload growth, adjusted for
2 inflation in health care costs within the State, shall
3 be paid to the State for purposes of implementing
4 the State plan under the waiver. Any savings in
5 health care spending, including administrative sav-
6 ings, shall be available to the State for reinvestment
7 in health care services under the State plan. Such
8 amount shall be determined annually by the Sec-
9 retary, taking into account the amount that would
10 otherwise have been spent under each such Federal
11 health program, including for administrative activi-
12 ties and caseload growth, with respect to residents
13 of such State, for those time periods covered under
14 the waiver, adjusted for inflation in health care
15 costs, if such waiver did not apply. Such amount
16 shall include funds equal to the aggregate amount of
17 premium tax credits, cost-sharing reductions, or
18 small-business credits, to the extent applicable to an
19 approved waiver, under sections 36B and 45R of the
20 Internal Revenue Code of 1986 or under section
21 1402 that would have been available to individuals
22 and businesses in the State for those time periods
23 covered under the waiver, including caseload growth,
24 adjusted for inflation in health care costs, if such
25 waiver did not apply.

1 “(4) WAIVER CONSIDERATION AND TRANS-
2 PARENCY.—

3 “(A) IN GENERAL.—An application for a
4 waiver under this section shall be considered by
5 the Secretary, after taking into account rec-
6 ommendations of the Panel under subsection
7 (g), in accordance with the regulations de-
8 scribed in subparagraph (B).

9 “(B) REGULATIONS.—Not later than 180
10 days after the date of the enactment of the
11 State-Based Universal Health Care Act of
12 2021, the Secretary shall promulgate regula-
13 tions relating to waivers under this section that
14 provide—

15 “(i) a process for public notice and
16 comment in accordance with the public no-
17 tice and comment requirements applicable
18 under regulations used for Medicaid waiv-
19 ers pursuant to section 1115 of the Social
20 Security Act;

21 “(ii) a process for the submission of
22 an application that ensures the disclosure
23 of—

24 “(I) the provisions of law that
25 the State involved seeks to waive; and

1 “(II) the specific plans of the
2 State to ensure that the waiver will be
3 in compliance with subsection (b);

4 “(iii) a process for providing public
5 notice and comment after the application is
6 received by the Secretary that is sufficient
7 to ensure a meaningful level of public
8 input and that does not impose require-
9 ments that are in addition to, or duplica-
10 tive of, requirements imposed under chap-
11 ter 5 of title 5, United States Code (com-
12 monly referred to as the Administrative
13 Procedure Act), or requirements that are
14 unreasonable or unnecessarily burdensome
15 with respect to State compliance;

16 “(iv) a process for the submission to
17 the Secretary of periodic reports by the
18 State concerning the implementation of the
19 program under the waiver;

20 “(v) a process for the periodic evalua-
21 tion by the Secretary with respect to waiv-
22 ers granted under this section; and

23 “(vi) a process for providing technical
24 assistance on—

1 “(I) how to develop an applica-
2 tion to any State seeking to submit an
3 application for a waiver relating to de-
4 veloping a program of providing
5 health care for all residents for such
6 State; and

7 “(II) how to improve such a pro-
8 gram for purposes of a State seeking
9 assistance pursuant to subsection
10 (e)(2).

11 “(C) REPORT.—The Secretary shall annu-
12 ally report to Congress concerning actions
13 taken by the Secretary with respect to applica-
14 tions for waivers under this section and pro-
15 grams conducted pursuant to such waivers that
16 are approved.

17 “(5) REGIONAL WAIVER REQUEST AND PLAN.—
18 Nothing in this section shall be construed to prevent
19 two or more States in a region from submitting a
20 single application under this section for a waiver
21 that establishes a plan that is applicable to all of the
22 States included in such application. In the case of
23 such an application and plan, the requirements of
24 this section shall continue to be applicable with re-
25 spect to each State included in such application.

1 “(6) COORDINATION WITH 1332 WAIVERS.—A
2 State may not apply for a waiver under this section
3 with respect to a plan year if such State has in ef-
4 fect, with respect to such plan year, a waiver under
5 section 1332.

6 “(7) AUTHORIZATION OF APPROPRIATIONS.—
7 There is authorized to be appropriated such sums as
8 may be necessary for providing funds to States with
9 a waiver under this section for purposes of carrying
10 out activities described in subsection (b)(1)(E).

11 “(b) GRANTING OF WAIVERS.—

12 “(1) IN GENERAL.—The Secretary shall grant a
13 request for a waiver under subsection (a)(1) if the
14 Secretary determines that the State plan—

15 “(A) will provide, in accordance with sub-
16 paragraph (B), health benefits coverage to ap-
17 plicable State residents that is at least as com-
18 prehensive as the health benefits coverage that
19 such residents would have received under one or
20 more of the specified Federal health programs
21 (as defined in subsection (i)(4)), as applicable,
22 for which such residents would have been eligi-
23 ble, absent such waiver;

24 “(B) will provide, in the case of such a
25 waiver under subsection (a)(1) for the State to

1 waive any of the requirements described in sub-
2 section (a)(2)(F), as applicable, health benefits
3 coverage to applicable State residents who
4 would have otherwise received health benefits
5 coverage in the form of medical assistance
6 under the State Federal health program de-
7 scribed in subsection (i)(4)(B) (regardless of
8 whether the State provides for such assistance
9 through a State Medicaid plan under title XIX
10 of the Social Security Act or a waiver of such
11 State Medicaid plan) that includes at least the
12 mandatory benefits under title XIX of the So-
13 cial Security Act that are required of a State
14 without a waiver of a State Medicaid plan
15 under such title, including benefits for early
16 and periodic screening, diagnostic, and treat-
17 ment, benefits for non-emergency transpor-
18 tation, and retroactive coverage;

19 “(C) will provide coverage and cost-sharing
20 protections against excessive out-of-pocket
21 spending to State residents that are at least as
22 affordable as the coverage and cost-sharing pro-
23 tections under the specified Federal health pro-
24 gram (as defined in subsection (i)(4)) for which

1 such residents would have been eligible, absent
2 such waiver;

3 “(D) will provide coverage to all residents
4 of the State, including those otherwise covered
5 under one or more of the Federal health care
6 or subsidy programs specified in subparagraphs
7 (B), (C), (E), (F), (G), and (H) of subsection
8 (a)(2), except individuals who are eligible for
9 benefits through the Indian Health Service or
10 for benefits and services under title 38, United
11 States Code;

12 “(E) will provide for public education ac-
13 tivities to raise awareness of the availability of
14 qualified health plans and the facilitation of en-
15 rollment in such coverage in a manner similar
16 to an entity that serves as a navigator under a
17 grant under section 1311(i);

18 “(F) will be publicly administered by an
19 agency or multiple agencies of the State, or an
20 independent public entity within the govern-
21 ment of the State;

22 “(G) will not preclude the purchase of in-
23 surance that offers coverage for benefits that
24 are not offered under the State plan; and

1 “(H) will provide systems for complaints,
2 appeals, independent review, and other proce-
3 dures for accessing and maintaining benefits
4 that are at least as accessible to applicable
5 State residents as those of one or more of the
6 specified Federal health programs (as defined
7 in subsection (i)(4)) for which such residents
8 would have otherwise been eligible without ap-
9 plication of such waiver under subsection
10 (a)(1).

11 Subparagraph (D) shall not be construed as limiting
12 a State from contracting with one or more private
13 entities to administer the State plan.

14 “(2) REQUIREMENT TO ENACT A LAW.—

15 “(A) IN GENERAL.—A law described in
16 this paragraph is a State law (including an ex-
17 ecutive order by a State governor) that provides
18 for State actions under a waiver under this sec-
19 tion, including the implementation of the State
20 plan under subsection (a)(1)(B).

21 “(B) TERMINATION OF OPT OUT.—A State
22 may repeal a law described in subparagraph (A)
23 and terminate the authority provided under the
24 waiver with respect to the State.

25 “(c) SCOPE OF WAIVER.—

1 “(1) IN GENERAL.—The Secretary shall deter-
2 mine the scope of a waiver of a requirement de-
3 scribed in subsection (a)(2) granted to a State under
4 subsection (a)(1).

5 “(2) LIMITATION.—Under this section, the Sec-
6 retary may not waive any Federal law or require-
7 ment that is not listed in subsection (a)(2).

8 “(d) DETERMINATIONS BY SECRETARY.—

9 “(1) TIME FOR DETERMINATION.—The Sec-
10 retary shall, with respect to an application from a
11 State under this section and after taking into ac-
12 count recommendations of the Panel under sub-
13 section (g) for such application, make a determina-
14 tion under subsection (a)(1) not later than 90 days
15 after the receipt of such recommendations.

16 “(2) EFFECT OF DETERMINATION.—

17 “(A) GRANTING OF WAIVERS.—If the Sec-
18 retary determines to grant a waiver under sub-
19 section (a)(1), the Secretary shall notify the
20 State involved of such determination and the
21 terms and effectiveness of such waiver.

22 “(B) DENIAL OF WAIVER.—If the Sec-
23 retary determines a waiver should not be grant-
24 ed under subsection (a)(1), the Secretary shall
25 notify the State involved and the appropriate

1 committees of Congress of such determination
2 and the reasons therefor.

3 “(e) REQUIRED REPORTS; 5-YEAR REVIEW.—

4 “(1) IN GENERAL.—As a condition of receipt of
5 a waiver under this section, after each 5-year period
6 of such waiver, a State shall submit to the Secretary
7 a report that is carried out by an independent, non-
8 partisan entity, with respect to such 5-year period
9 and after a process for public notice and comment
10 at the State level, including public hearings, suffi-
11 cient to ensure a meaningful level of public input, on
12 the following:

13 “(A) How waiver funds have been spent by
14 the State.

15 “(B) The number of residents of the State
16 without health insurance and a description of
17 how the State plans to provide health insurance
18 coverage within the subsequent 5 years to resi-
19 dents of the State without health insurance.

20 “(C) How affordability in the State for
21 health care has changed over the period.

22 “(D) Whether the State has achieved
23 health coverage for at least 95 percent of the
24 residents of the State.

1 “(E) Measurable changes in quality and
2 access.

3 “(F) Any additional information specified
4 by the Secretary for purposes of determining
5 the successes and challenges of the waiver.

6 “(2) 5-YEAR REVIEW.—In the case a State,
7 based on the report submitted under paragraph (1)
8 for a 5-year period—

9 “(A) has been determined by the Secretary
10 to have not achieved health coverage for at least
11 95 percent of the residents of the State—

12 “(i) the State shall have access to
13 technical assistance described in subsection
14 (a)(4)(B)(vii) to improve the health insur-
15 ance program of the State implemented
16 through the waiver under this section;

17 “(ii) the State shall have a grace pe-
18 riod of 12 months after such determination
19 to achieve health coverage for at least 95
20 percent of residents of the State; and

21 “(iii) if after such 12 months, the
22 State has not achieved such health cov-
23 erage, the waiver under this section may be
24 terminated at the discretion of the Sec-
25 retary; and

1 “(B) has been determined by the Secretary
2 to have achieved health coverage for at least 95
3 percent of residents of the State, the State, as
4 a condition of continuing such waiver, shall sub-
5 mit to the Secretary a plan for achieving health
6 coverage for the remainder of the residents of
7 the State.

8 “(f) ASSURING COORDINATION.—

9 “(1) IN GENERAL.—Not later than 180 days
10 after the date of the enactment of the State-Based
11 Universal Health Care Act of 2021, the Secretary of
12 Health and Human Services, the Secretary of the
13 Treasury, the Secretary of Defense, the Secretary of
14 Labor, and the Director of the Office of Personnel
15 Management, shall, through the execution of an
16 interagency memorandum of understanding among
17 such Secretaries and Director—

18 “(A) develop a process for coordinating
19 and consolidating the State waiver processes
20 applicable under the provisions of this section,
21 and the existing waiver processes applicable
22 under—

23 “(i) titles XI, XVIII, XIX, and XXI
24 of the Social Security Act; and

1 “(ii) any other Federal law relating to
2 the provision of health care items or serv-
3 ices; and

4 “(B) ensure that—

5 “(i) regulations (including regulations
6 required under subsection (a)(4)(B)), rul-
7 ings, and interpretations issued by such
8 Secretaries and Director relating to the
9 same matter over which two or more such
10 Secretaries or Director have responsibility
11 under this section are administered so as
12 to have the same effect at all times; and

13 “(ii) coordination of policies relating
14 to the granting, implementation, and con-
15 tinuation of waivers through such Secre-
16 taries and Director in order to have a co-
17 ordinated strategy that avoids duplication
18 of effort by the States or Secretaries and
19 Director and ensures clarity about waiver
20 application status and approval.

21 “(2) SINGLE APPLICATION.—The process under
22 paragraph (1)(A) shall permit a State to submit a
23 single application for a waiver under all of the provi-
24 sions of this section and the provisions of law listed
25 under clauses (i) and (ii) of such paragraph.

1 “(3) SUBMISSION OF CONFORMING AMEND-
2 MENTS.—The Secretary of Health and Human Serv-
3 ices, in coordination with the other Secretaries listed
4 in paragraph (1) (including the Director of the Of-
5 fice of Personnel Management), shall submit to Con-
6 gress such recommendations for such technical and
7 conforming amendments to law as may be appro-
8 priate to assist in the implementation of this section.

9 “(g) INDEPENDENT ASSESSMENT PANEL FOR COM-
10 PREHENSIVE HEALTH CARE.—

11 “(1) ESTABLISHMENT.—There is established a
12 committee to be known as the ‘Independent Assess-
13 ment Panel for Comprehensive Health Care’ (in this
14 section referred to as the ‘Panel’).

15 “(2) CONSIDERATION OF SUBMISSIONS.—The
16 Secretary shall forward a copy of each waiver appli-
17 cation submitted under this section to the Panel for
18 consideration under this subsection.

19 “(3) DUTIES.—The Panel shall—

20 “(A) review any waiver application by a
21 State forwarded under paragraph (2) and any
22 report submitted under paragraph (1) of sub-
23 section (e) for purposes of the review under
24 paragraph (2) of such subsection;

1 “(B) not later than 90 days after submis-
2 sion of such application (or report) by the
3 State, provide to the State and to the Secretary
4 the recommendations of the Panel regarding
5 the approval or disapproval of such waiver ap-
6 plication (or regarding the status of the waiver
7 for continuation pursuant to subsection (e)(2))
8 and, if applicable, possible improvements to
9 such application (or for purposes of subsection
10 (e)(2)); and

11 “(C) submit to Congress an annual report
12 on waiver applications (and waiver reports
13 under subsection (e)) reviewed by the Panel
14 during the applicable year, including the num-
15 ber of applications (and reports) received and
16 the number of applications recommended for
17 approval (and of reports with respect to which
18 recommendations for continuation were pro-
19 vided).

20 “(4) MEMBERSHIP.—

21 “(A) NUMBER AND APPOINTMENT.—The
22 Panel shall consist of 11 members appointed by
23 the Secretary of Health and Human Services,
24 of whom—

1 “(i) one shall be appointed on the rec-
2 ommendation of the Speaker of the House
3 of Representatives;

4 “(ii) one shall be appointed on the
5 recommendation of the minority leader of
6 the House of Representatives;

7 “(iii) one shall be appointed on the
8 recommendation of the majority leader of
9 the Senate;

10 “(iv) one shall be appointed on the
11 recommendation of the minority leader of
12 the Senate;

13 “(v) one shall be appointed on the rec-
14 ommendation of the Republican Governors
15 Association;

16 “(vi) one shall be appointed on the
17 recommendation of the Democratic Gov-
18 ernors Association;

19 “(vii) one shall be a representative
20 from the patient advocacy community;

21 “(viii) two shall be representatives of
22 a labor organization representing health
23 care professionals who provide direct pa-
24 tient care, including at least one labor or-

1 organization that primarily represents reg-
2 istered nurses;

3 “(ix) one shall be a representative of
4 primary care physicians; and

5 “(x) one shall be a representative of
6 health care professionals practicing in
7 rural or underserved areas.

8 “(B) TERM OF SERVICE.—

9 “(i) IN GENERAL.—Each member of
10 the Panel shall serve a three-year term. A
11 member may serve after the expiration of
12 that member’s term until a successor has
13 been appointed pursuant to subparagraph
14 (A).

15 “(ii) VACANCY.—Any member ap-
16 pointed to fill a vacancy occurring before
17 the expiration of the term for which the
18 member’s predecessor was appointed shall
19 be appointed only for the remainder of that
20 term. A vacancy in the Commission shall
21 be filled in the manner in which the origi-
22 nal appointment was made.

23 “(C) PAY.—Members of the Panel shall
24 serve without pay.

1 “(D) CHAIRPERSON; VICE CHAIR-
2 PERSON.—

3 “(i) CHAIRPERSON.—The Secretary of
4 Health and Human Services, or a designee
5 of the Secretary, shall serve on the Panel
6 as the Chairperson of the Panel.

7 “(ii) VICE CHAIRPERSON.—The Ad-
8 ministrator of the Federal Emergency
9 Management Agency, or a designee of the
10 Administrator, shall serve on the Panel as
11 the Vice Chairperson of the Panel.

12 “(5) STAFF, EXPERTS, AND CONSULTANTS.—
13 The Panel may—

14 “(A) appoint such staff as the Panel con-
15 siderers to be appropriate, without regard to the
16 provisions of title 5, United States Code, gov-
17 erning appointments in the competitive service;

18 “(B) fix the pay of such staff, without re-
19 gard to the provisions of chapter 51 and sub-
20 chapter III of chapter 53 of such title relating
21 to classification and General Schedule pay
22 rates; and

23 “(C) procure the services of experts and
24 consultants in accordance with the provisions of
25 section 3109(b) of such title.

1 “(6) DETAIL OF FEDERAL PERSONNEL.—Upon
2 request of the Panel, the head of any Federal agency
3 may detail, on a reimbursable basis, any of the per-
4 sonnel of the agency to the Panel to assist it in car-
5 rying out the duties under paragraph (3).

6 “(7) FEDERAL ADVISORY COMMITTEE ACT.—
7 The Federal Advisory Committee Act (5 U.S.C.
8 App.) shall apply to the Panel.

9 “(8) AUTHORIZATION OF APPROPRIATIONS.—
10 There is authorized to be appropriated such sums as
11 may be necessary to the Panel for carrying out the
12 duties of the panel for each of fiscal years 2022
13 through 2027.

14 “(h) GUIDANCE RELATING TO AMERICAN INDIANS
15 AND ALASKA NATIVES.—

16 “(1) IN GENERAL.—The Secretary shall issue
17 guidance with respect to applying the provisions of
18 this section in a manner consistent with the fol-
19 lowing:

20 “(A) To further the goal that Federal
21 health services to maintain and improve the
22 health of Indians are consonant with and re-
23 quired by the Federal Government’s historical
24 and unique legal relationship with, and result-
25 ing responsibility to, Indians.

1 “(B) No enrollment fee, premium, or simi-
2 lar charge, and no deduction, copayment, cost
3 sharing, or similar charge, is to be imposed
4 against an Indian who is furnished an item or
5 service through a waiver under this section. All
6 costs incurred in waiving such charges shall be
7 borne by the Federal Government in fulfillment
8 of the trust responsibility.

9 “(C) A State may not require the enroll-
10 ment of an individual who is an Indian in
11 health insurance offered through a waiver under
12 this section.

13 “(D) Health insurance issuers offering cov-
14 erage pursuant to a waiver under this section
15 must make good faith efforts to contract with
16 Indian health care providers operating within
17 the area served by the issuers.

18 “(E) Health insurance issuers offering cov-
19 erage pursuant to a waiver under this section
20 shall pay Indian health care providers, whether
21 such providers are participating or nonpartici-
22 pating providers with respect to the coverage,
23 for covered services provided to those Indian
24 enrollees who are eligible to receive services
25 from such providers at a rate equal to the rate

1 negotiated between such entity and the provider
2 involved or, if such a rate has not been nego-
3 tiated, at a rate that is not less than the level
4 and amount of payment which the entity would
5 make for the services if the services were fur-
6 nished by a participating provider which is not
7 an Indian health care provider.

8 “(F) Health insurance issuers offering cov-
9 erage pursuant to a waiver under this section
10 will include a standard contract addendum
11 when contracting with Indian health care pro-
12 viders. The contract addendum will be devel-
13 oped in consultation with Tribes and in con-
14 ference with urban Indian health programs op-
15 erating within the service area of the State.

16 “(G) The treatment of Indians under this
17 section does not constitute invidious racial dis-
18 crimination in violation of the due process
19 clause of the Fifth or Fourteenth Amendments,
20 but is reasonable and rationally designed to fur-
21 ther the health of Indians.

22 “(H) In the case of any State in which 1
23 or more Indian health care programs furnishes
24 health care services, the State will provide for
25 a process under which the State seeks advice on

1 a regular, ongoing basis from designees of such
2 Indian health care programs and urban Indian
3 organizations on matters relating to the appli-
4 cation of a waiver under this section that are
5 likely to have a direct effect on such Indian
6 health programs and that—

7 “(i) shall include solicitation of advice
8 prior to submission of any plan amend-
9 ments, waiver requests, and proposals for
10 demonstration projects likely to have a di-
11 rect effect on Indians or Indian health care
12 programs; and

13 “(ii) may include appointment of an
14 advisory committee and of a designee of
15 such Indian health care programs to the
16 medical care advisory committee advising
17 the State on its waiver under this section.

18 “(2) DEFINITIONS.—For purposes of this sub-
19 section:

20 “(A) The term ‘Indian’ has the meaning
21 given such term in section 447.50 of title 42,
22 Code of Federal Regulations (as in effect on
23 July 1, 2010).

24 “(B) The term ‘Indian health care pro-
25 vider’ has the meaning given such term in sec-

1 tion 438.14(a) of title 42, Code of Federal Reg-
2 ulations.

3 “(i) DEFINITIONS.—In this section:

4 “(1) HEALTH BENEFITS COVERAGE.—The term
5 ‘health benefits coverage’—

6 “(A) means—

7 “(i) health insurance coverage, as
8 such term is defined in section 2791(b) of
9 the Public Health Service Act (42 U.S.C.
10 300gg–(b)); and

11 “(ii) coverage under a group health
12 plan, as such term is defined in section
13 2791(a) of the Public Health Service Act
14 (42 U.S.C. 300gg–(a)); and

15 “(B) includes any medical coverage or
16 health benefits provided under one or more of
17 the specified Federal health program described
18 in subparagraphs (A) through (E) of paragraph
19 (4), as applicable to a waiver under subsection
20 (a)(1).

21 “(2) RESIDENT.—With respect to a State, the
22 term ‘resident’ means an individual—

23 “(A) who is—

24 “(i) a citizen or national of the United
25 States; or

1 “(ii) an alien lawfully residing in the
2 State (including an alien who is granted
3 deferred action or who is otherwise author-
4 ized to remain in the United States); and
5 “(B) whose primary residence (as defined
6 by the State) is located in the State.

7 “(3) SECRETARY.—The term ‘Secretary’
8 means—

9 “(A) the Secretary of Health and Human
10 Services with respect to waivers relating to the
11 provisions described in subparagraphs (A), (B),
12 and (D) through (G) of paragraph (2) of sub-
13 section (a);

14 “(B) the Secretary of the Treasury with
15 respect to waivers relating to the provisions de-
16 scribed in subparagraph (C) of such paragraph;

17 “(C) the Director of the Office of Per-
18 sonnel Management with respect to waivers re-
19 lating to the provisions described in subpara-
20 graph (H) of such paragraph;

21 “(D) the Secretary of Defense with respect
22 to waivers relating to the provisions described
23 in subparagraph (I) of such paragraph; and

1 “(E) the Secretary of Labor with respect
2 to waivers relating to the provisions described
3 in subparagraph (J) of such paragraph.

4 “(4) SPECIFIED FEDERAL HEALTH PROGRAM.—
5 The term ‘specified Federal health program’ means
6 one or more of the following programs, as applicable
7 to a waiver under subsection (a)(1):

8 “(A) The Medicare program under title
9 XVIII of the Social Security Act.

10 “(B) The Medicaid program under title
11 XIX of the Social Security Act.

12 “(C) The Children’s Health Insurance Pro-
13 gram under title XXI of the Social Security
14 Act.

15 “(D) The Federal Employees Health Bene-
16 fits Plan under chapter 89 of title 5, United
17 States Code.

18 “(E) Medical coverage under chapter 55 of
19 title 10, United States Code, including coverage
20 under the TRICARE program.

21 “(F) An Exchange established under this
22 subtitle.

23 “(G) Subsidies under section 1402.

24 “(H) Tax credits under sections 36B and
25 45R of the Internal Revenue Code of 1986.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1(b) of the Patient Protection and Affordable
3 Care Act (42 U.S.C. 18001 note) is amended by inserting
4 after the item relating to section 1334 the following new
5 item:

“1335. Waiver for State universal health care.”.

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