H. R. 1

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

Mr. Khan introduced the following bill; which was referred to the Committee on ______________________

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; PURPOSE.

(a) Short Title.—This Act may be cited as the “State-Based Universal Health Care Act of 2021”.

January 14, 2021 (2:49 p.m.)
(b) PURPOSE.—The purpose of this Act is to establish a flexible framework under which States can provide comprehensive universal health coverage to their residents.

SEC. 2. WAIVER FOR STATE UNIVERSAL HEALTH CARE.

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

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

“(a) APPLICATION.—

“(1) IN GENERAL.—Subject to paragraph (6), a State may apply to the Secretary (as defined in subsection (i)(3)) for the waiver of so much of the requirements described in paragraph (2) with respect to health benefits coverage within the State for plan years beginning on or after January 1, 2022, as is necessary to implement a comprehensive State universal health care plan in the State under this section. Such application shall—

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

“(B) contain such information as the Secretary may require, including—

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

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

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

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

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

“(A) Sections 1301 through 1324.

“(B) Section 1402.

“(C) Sections 36B and 4980H of the In-

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

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

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

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

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


“(3) PASSTHROUGH OF FUNDING.—With respect to a State waiver under paragraph (1), under which the State assumes responsibility for health coverage under one or more of the specified Federal health programs, including under each of the Federal health care or subsidy programs specified in subparagraphs (A), (B), (C), (E), (F), (G), (H), and (I) of paragraph (2), the Secretary shall not spend Federal health or related administrative funds that would otherwise have been spent for such a program, as applicable, for the time periods covered under the waiver and shall provide for an alternative means by which the aggregate amount of such funds (determined by the Secretary in coordination with the State), including caseload growth, adjusted for inflation in health care costs within the State, shall
be paid to the State for purposes of implementing the State plan under the waiver. Any savings in health care spending, including administrative savings, shall be available to the State for reinvestment in health care services under the State plan. Such amount shall be determined annually by the Secretary, taking into account the amount that would otherwise have been spent under each such Federal health program, including for administrative activities and caseload growth, with respect to residents of such State, for those time periods covered under the waiver, adjusted for inflation in health care costs, if such waiver did not apply. Such amount shall include funds equal to the aggregate amount of premium tax credits, cost-sharing reductions, or small-business credits, to the extent applicable to an approved waiver, under sections 36B and 45R of the Internal Revenue Code of 1986 or under section 1402 that would have been available to individuals and businesses in the State for those time periods covered under the waiver, including caseload growth, adjusted for inflation in health care costs, if such waiver did not apply.

“(4) W\\aiver Consideration and Transparency.—
“(A) IN GENERAL.—An application for a waiver under this section shall be considered by the Secretary, after taking into account recommendations of the Panel under subsection (g), in accordance with the regulations described in subparagraph (B).

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

“(i) a process for public notice and comment in accordance with the public notice and comment requirements applicable under regulations used for Medicaid waivers pursuant to section 1115 of the Social Security Act;

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

“(I) the provisions of law that the State involved seeks to waive; and
“(II) the specific plans of the State to ensure that the waiver will be in compliance with subsection (b);

“(iii) a process for providing public notice and comment after the application is received by the Secretary that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act), or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance;

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

“(v) a process for the periodic evaluation by the Secretary with respect to waivers granted under this section; and

“(vi) a process for providing technical assistance on—
“(I) how to develop an application to any State seeking to submit an application for a waiver relating to developing a program of providing health care for all residents for such State; and

“(II) how to improve such a program for purposes of a State seeking assistance pursuant to subsection (e)(2).

“(C) REPORT.—The Secretary shall annually report to Congress concerning actions taken by the Secretary with respect to applications for waivers under this section and programs conducted pursuant to such waivers that are approved.

“(5) REGIONAL WAIVER REQUEST AND PLAN.—Nothing in this section shall be construed to prevent two or more States in a region from submitting a single application under this section for a waiver that establishes a plan that is applicable to all of the States included in such application. In the case of such an application and plan, the requirements of this section shall continue to be applicable with respect to each State included in such application.
“(6) Coordination with 1332 Waivers.—A State may not apply for a waiver under this section with respect to a plan year if such State has in effect, with respect to such plan year, a waiver under section 1332.

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

“(b) Granting of Waivers.—

“(1) In General.—The Secretary shall grant a request for a waiver under subsection (a)(1) if the Secretary determines that the State plan—

“(A) will provide, in accordance with subparagraph (B), health benefits coverage to applicable State residents that is at least as comprehensive as the health benefits coverage that such residents would have received under one or more of the specified Federal health programs (as defined in subsection (i)(4)), as applicable, for which such residents would have been eligible, absent such waiver;

“(B) will provide, in the case of such a waiver under subsection (a)(1) for the State
waive any of the requirements described in subsection (a)(2)(F), as applicable, health benefits coverage to applicable State residents who would have otherwise received health benefits coverage in the form of medical assistance under the State Federal health program described in subsection (i)(4)(B) (regardless of whether the State provides for such assistance through a State Medicaid plan under title XIX of the Social Security Act or a waiver of such State Medicaid plan) that includes at least the mandatory benefits under title XIX of the Social Security Act that are required of a State without a waiver of a State Medicaid plan under such title, including benefits for early and periodic screening, diagnostic, and treatment, benefits for non-emergency transportation, and retroactive coverage;

“(C) will provide coverage and cost-sharing protections against excessive out-of-pocket spending to State residents that are at least as affordable as the coverage and cost-sharing protections under the specified Federal health program (as defined in subsection (i)(4)) for which
such residents would have been eligible, absent such waiver;

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

“(E) will provide for public education activities to raise awareness of the availability of qualified health plans and the facilitation of enrollment in such coverage in a manner similar to an entity that serves as a navigator under a grant under section 1311(i);

“(F) will be publicly administered by an agency or multiple agencies of the State, or an independent public entity within the government of the State;

“(G) will not preclude the purchase of insurance that offers coverage for benefits that are not offered under the State plan; and
“(H) will provide systems for complaints, appeals, independent review, and other procedures for accessing and maintaining benefits that are at least as accessible to applicable State residents as those of one or more of the specified Federal health programs (as defined in subsection (i)(4)) for which such residents would have otherwise been eligible without application of such waiver under subsection (a)(1).

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

“(2) REQUIREMENT TO ENACT A LAW.—

“(A) IN GENERAL.—A law described in this paragraph is a State law (including an executive order by a State governor) that provides for State actions under a waiver under this section, including the implementation of the State plan under subsection (a)(1)(B).

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

“(c) SCOPE OF WAIVER.—
“(1) IN GENERAL.—The Secretary shall determine the scope of a waiver of a requirement described in subsection (a)(2) granted to a State under subsection (a)(1).

“(2) LIMITATION.—Under this section, the Secretary may not waive any Federal law or requirement that is not listed in subsection (a)(2).

“(d) DETERMINATIONS BY SECRETARY.—

“(1) TIME FOR DETERMINATION.—The Secretary shall, with respect to an application from a State under this section and after taking into account recommendations of the Panel under subsection (g) for such application, make a determination under subsection (a)(1) not later than 90 days after the receipt of such recommendations.

“(2) EFFECT OF DETERMINATION.—

“(A) GRANTING OF WAIVERS.—If the Secretary determines to grant a waiver under subsection (a)(1), the Secretary shall notify the State involved of such determination and the terms and effectiveness of such waiver.

“(B) DENIAL OF WAIVER.—If the Secretary determines a waiver should not be granted under subsection (a)(1), the Secretary shall notify the State involved and the appropriate
committees of Congress of such determination
and the reasons therefor.

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

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

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

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

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

“(D) Whether the State has achieved
health coverage for at least 95 percent of the
residents of the State.
“(E) Measurable changes in quality and access.

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

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

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

“(i) the State shall have access to technical assistance described in subsection (a)(4)(B)(vii) to improve the health insurance program of the State implemented through the waiver under this section;

“(ii) the State shall have a grace period of 12 months after such determination to achieve health coverage for at least 95 percent of residents of the State; and

“(iii) if after such 12 months, the State has not achieved such health coverage, the waiver under this section may be terminated at the discretion of the Secretary; and
“(B) has been determined by the Secretary to have achieved health coverage for at least 95 percent of residents of the State, the State, as a condition of continuing such waiver, shall submit to the Secretary a plan for achieving health coverage for the remainder of the residents of the State.

“(f) ASSURING COORDINATION.—

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

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

“(i) titles XI, XVIII, XIX, and XXI of the Social Security Act; and
“(ii) any other Federal law relating to
the provision of health care items or serv-
ices; and
“(B) ensure that—
“(i) regulations (including regulations
required under subsection (a)(4)(B)), rul-
ings, and interpretations issued by such
Secretaries and Director relating to the
same matter over which two or more such
Secretaries or Director have responsibility
under this section are administered so as
to have the same effect at all times; and
“(ii) coordination of policies relating
to the granting, implementation, and con-
tinuation of waivers through such Secre-
taries and Director in order to have a co-
ordinated strategy that avoids duplication
of effort by the States or Secretaries and
Director and ensures clarity about waiver
application status and approval.
“(2) SINGLE APPLICATION.—The process under
paragraph (1)(A) shall permit a State to submit a
single application for a waiver under all of the provi-
sions of this section and the provisions of law listed
under clauses (i) and (ii) of such paragraph.
“(3) Submission of conforming amendments.—The Secretary of Health and Human Services, in coordination with the other Secretaries listed in paragraph (1) (including the Director of the Office of Personnel Management), shall submit to Congress such recommendations for such technical and conforming amendments to law as may be appropriate to assist in the implementation of this section.

“(g) Independent Assessment Panel for Comprehensive Health Care.—

“(1) Establishment.—There is established a committee to be known as the ‘Independent Assessment Panel for Comprehensive Health Care’ (in this section referred to as the ‘Panel’).

“(2) Consideration of submissions.—The Secretary shall forward a copy of each waiver application submitted under this section to the Panel for consideration under this subsection.

“(3) Duties.—The Panel shall—

“(A) review any waiver application by a State forwarded under paragraph (2) and any report submitted under paragraph (1) of subsection (e) for purposes of the review under paragraph (2) of such subsection;
“(B) not later than 90 days after submission of such application (or report) by the State, provide to the State and to the Secretary the recommendations of the Panel regarding the approval or disapproval of such waiver application (or regarding the status of the waiver for continuation pursuant to subsection (e)(2)) and, if applicable, possible improvements to such application (or for purposes of subsection (e)(2)); and

“(C) submit to Congress an annual report on waiver applications (and waiver reports under subsection (e)) reviewed by the Panel during the applicable year, including the number of applications (and reports) received and the number of applications recommended for approval (and of reports with respect to which recommendations for continuation were provided).

“(4) MEMBERSHIP.—

“(A) NUMBER AND APPOINTMENT.—The Panel shall consist of 11 members appointed by the Secretary of Health and Human Services, of whom—
“(i) one shall be appointed on the recommendation of the Speaker of the House of Representatives;

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

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

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

“(v) one shall be appointed on the recommendation of the Republican Governors Association;

“(vi) one shall be appointed on the recommendation of the Democratic Governors Association;

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

“(viii) two shall be representatives of a labor organization representing health care professionals who provide direct patient care, including at least one labor or-
ganization that primarily represents registered nurses;

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

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

“(B) TERM OF SERVICE.—

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

“(ii) VACANCY.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(C) PAY.—Members of the Panel shall serve without pay.
“(D) Chairperson; Vice Chairperson.—

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

“(ii) Vice Chairperson.—The Administrator of the Federal Emergency Management Agency, or a designee of the Administrator, shall serve on the Panel as the Vice Chairperson of the Panel.

“(5) Staff, Experts, and Consultants.—

The Panel may—

“(A) appoint such staff as the Panel considers to be appropriate, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service;

“(B) fix the pay of such staff, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

“(C) procure the services of experts and consultants in accordance with the provisions of section 3109(b) of such title.
“(6) DETAIL OF FEDERAL PERSONNEL.—Upon request of the Panel, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of the agency to the Panel to assist it in carrying out the duties under paragraph (3).

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

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

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

“(1) IN GENERAL.—The Secretary shall issue guidance with respect to applying the provisions of this section in a manner consistent with the following:

“(A) To further the goal that Federal health services to maintain and improve the health of Indians are consonant with and required by the Federal Government’s historical and unique legal relationship with, and resulting responsibility to, Indians.
“(B) No enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge, is to be imposed against an Indian who is furnished an item or service through a waiver under this section. All costs incurred in waiving such charges shall be borne by the Federal Government in fulfillment of the trust responsibility.

“(C) A State may not require the enrollment of an individual who is an Indian in health insurance offered through a waiver under this section.

“(D) Health insurance issuers offering coverage pursuant to a waiver under this section must make good faith efforts to contract with Indian health care providers operating within the area served by the issuers.

“(E) Health insurance issuers offering coverage pursuant to a waiver under this section shall pay Indian health care providers, whether such providers are participating or nonparticipating providers with respect to the coverage, for covered services provided to those Indian enrollees who are eligible to receive services from such providers at a rate equal to the rate
negotiated between such entity and the provider involved or, if such a rate has not been negotiated, at a rate that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a participating provider which is not an Indian health care provider.

“(F) Health insurance issuers offering coverage pursuant to a waiver under this section will include a standard contract addendum when contracting with Indian health care providers. The contract addendum will be developed in consultation with Tribes and in conference with urban Indian health programs operating within the service area of the State.

“(G) The treatment of Indians under this section does not constitute invidious racial discrimination in violation of the due process clause of the Fifth or Fourteenth Amendments, but is reasonable and rationally designed to further the health of Indians.

“(H) In the case of any State in which 1 or more Indian health care programs furnishes health care services, the State will provide for a process under which the State seeks advice on
a regular, ongoing basis from designees of such Indian health care programs and urban Indian organizations on matters relating to the application of a waiver under this section that are likely to have a direct effect on such Indian health programs and that—

“(i) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians or Indian health care programs; and

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

“(2) DEFINITIONS.—For purposes of this subsection:

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

“(B) The term ‘Indian health care provider’ has the meaning given such term in sec-
tion 438.14(a) of title 42, Code of Federal Regulations.

“(i) DEFINITIONS.—In this section:

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

“(A) means—

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

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

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

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

“(A) who is—

“(i) a citizen or national of the United States; or
“(ii) an alien lawfully residing in the State (including an alien who is granted deferred action or who is otherwise authorized to remain in the United States); and

“(B) whose primary residence (as defined by the State) is located in the State.

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

“(A) the Secretary of Health and Human Services with respect to waivers relating to the provisions described in subparagraphs (A), (B), and (D) through (G) of paragraph (2) of subsection (a);

“(B) the Secretary of the Treasury with respect to waivers relating to the provisions described in subparagraph (C) of such paragraph;

“(C) the Director of the Office of Personnel Management with respect to waivers relating to the provisions described in subparagraph (H) of such paragraph;

“(D) the Secretary of Defense with respect to waivers relating to the provisions described in subparagraph (I) of such paragraph; and
“(E) the Secretary of Labor with respect to waivers relating to the provisions described in subparagraph (J) of such paragraph.

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

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

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


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

“(F) An Exchange established under this subtitle.

“(G) Subsidies under section 1402.

“(H) Tax credits under sections 36B and 45R of the Internal Revenue Code of 1986.”.
(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Patient Protection and Affordable Care Act (42 U.S.C. 18001 note) is amended by inserting after the item relating to section 1334 the following new item:

"1335. Waiver for State universal health care.".