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(Original Signature of Member)

117TH CONGRESS  
1ST SESSION

# H. R.

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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.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. KHANNA introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# 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,*

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

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

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

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

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

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

10 “(a) APPLICATION.—

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

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

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

24 “(i) a comprehensive description of  
25 the State legislation, or other State legal

1 authority as applicable, and program to  
2 implement a plan meeting the require-  
3 ments for a waiver under this section;

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

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

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

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

19 “(A) Sections 1301 through 1324.

20 “(B) Section 1402.

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

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

24 “(E) Title XVIII of the Social Security  
25 Act.

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

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

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

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

8 “(J) Section 514 of the Employee Retire-  
9 ment Income Security Act of 1974.

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

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

24 “(4) WAIVER CONSIDERATION AND TRANS-  
25 PARENCY.—

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

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

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

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

22                         “(I) the provisions of law that  
23                         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.”.