

118TH CONGRESS
2D SESSION

S. 4817

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 SENATE OF THE UNITED STATES

JULY 25, 2024

Mr. MARKEY (for himself, Ms. WARREN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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 2024”.

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.—Part 4 of subtitle D of title I of
 6 the Patient Protection and Affordable Care Act (42
 7 U.S.C. 18021 et seq.) is amended by adding at the end
 8 the following:

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, 2025, 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, 2025, 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 2024, 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 2 or more States in a region from submitting a sin-
20 gle application under this section for a waiver that
21 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 such coverage and the facilitation of enrollment
15 in such coverage, and to raise awareness re-
16 garding restrictions on the sale of duplicative or
17 supplemental private insurance (and, if the
18 State chooses to continue to offer qualified
19 health plans through an Exchange, public edu-
20 cation activities will raise awareness of the
21 availability of and the facilitation of enrollment
22 in such plans in a manner similar to an entity
23 that serves as a navigator under a grant under
24 section 1311(i));

1 “(F) will be publicly administered by an
2 agency or multiple agencies of the State, or an
3 independent public entity within the govern-
4 ment of the State;

5 “(G) will not preclude the purchase of in-
6 surance that offers coverage for benefits that
7 are not offered under the State plan;

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

18 “(I) will provide coverage for reproductive
19 health care services, including abortion, contra-
20 ception, and gender-affirming care.

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

24 “(2) REQUIREMENT TO ENACT A LAW.—

1 “(A) IN GENERAL.—A law described in
 2 this paragraph is a State law (including an ex-
 3 ecutive order by a State governor) that provides
 4 for State actions under a waiver under this sec-
 5 tion, including the implementation of the State
 6 plan under subsection (a)(1)(B).

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

11 “(c) SCOPE OF WAIVER.—

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

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

19 “(d) DETERMINATIONS BY SECRETARY.—

20 “(1) TIME FOR DETERMINATION.—The Sec-
 21 retary shall, with respect to an application from a
 22 State under this section and after taking into ac-
 23 count recommendations of the Panel under sub-
 24 section (g) for such application, make a determina-

1 tion under subsection (a)(1) not later than 90 days
2 after the receipt of such recommendations.

3 “(2) EFFECT OF DETERMINATION.—

4 “(A) GRANTING OF WAIVERS.—If the Sec-
5 retary determines to grant a waiver under sub-
6 section (a)(1), the Secretary shall notify the
7 State involved of such determination and the
8 terms and effectiveness of such waiver.

9 “(B) DENIAL OF WAIVER.—If the Sec-
10 retary determines a waiver should not be grant-
11 ed under subsection (a)(1), the Secretary shall
12 notify the State involved and the appropriate
13 committees of Congress of such determination
14 and the reasons therefor.

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

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

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

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

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

10 “(D) Whether the State has achieved
11 health coverage for at least 95 percent of the
12 residents of the State.

13 “(E) Measurable changes in quality and
14 access.

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

18 “(2) 5-YEAR REVIEW.—In the case a State,
19 based on the report submitted under paragraph (1)
20 for a 5-year period—

21 “(A) has been determined by the Secretary
22 to have not achieved health coverage for at least
23 95 percent of the residents of the State—

24 “(i) the State shall have access to
25 technical assistance described in subsection

1 (a)(4)(B)(vii) to improve the health insur-
 2 ance program of the State implemented
 3 through the waiver under this section;

4 “(ii) the State shall have a grace pe-
 5 riod of 12 months after such determination
 6 to achieve health coverage for at least 95
 7 percent of residents of the State; and

8 “(iii) if after such 12 months, the
 9 State has not achieved such health cov-
 10 erage, the waiver under this section may be
 11 terminated at the discretion of the Sec-
 12 retary; and

13 “(B) has been determined by the Secretary
 14 to have achieved health coverage for at least 95
 15 percent of residents of the State, the State, as
 16 a condition of continuing such waiver, shall sub-
 17 mit to the Secretary a plan for achieving health
 18 coverage for the remainder of the residents of
 19 the State.

20 “(f) ASSURING COORDINATION.—

21 “(1) IN GENERAL.—Not later than 180 days
 22 after the date of the enactment of the State-Based
 23 Universal Health Care Act of 2024, the Secretary of
 24 Health and Human Services, the Secretary of the
 25 Treasury, the Secretary of Defense, the Secretary of

1 Labor, and the Director of the Office of Personnel
2 Management, shall, through the execution of an
3 interagency memorandum of understanding among
4 such Secretaries and Director—

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

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

12 “(ii) any other Federal law relating to
13 the provision of health care items or serv-
14 ices; and

15 “(B) ensure that—

16 “(i) regulations (including regulations
17 required under subsection (a)(4)(B)), rul-
18 ings, and interpretations issued by such
19 Secretaries and Director relating to the
20 same matter over which two or more such
21 Secretaries or Director have responsibility
22 under this section are administered so as
23 to have the same effect at all times; and

24 “(ii) coordination of policies relating
25 to the granting, implementation, and con-

1 continuation of waivers through such Secre-
 2 taries and Director in order to have a co-
 3 ordinated strategy that avoids duplication
 4 of effort by the States or Secretaries and
 5 Director and ensures clarity about waiver
 6 application status and approval.

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

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

20 “(g) INDEPENDENT ASSESSMENT PANEL FOR COM-
 21 PREHENSIVE HEALTH CARE.—

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

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

5 “(3) DUTIES.—The Panel shall—

6 “(A) review any waiver application by a
7 State forwarded under paragraph (2) and any
8 report submitted under paragraph (1) of sub-
9 section (e) for purposes of the review under
10 paragraph (2) of such subsection;

11 “(B) not later than 90 days after submis-
12 sion of such application (or report) by the
13 State, provide to the State and to the Secretary
14 the recommendations of the Panel regarding
15 the approval or disapproval of such waiver ap-
16 plication (or regarding the status of the waiver
17 for continuation pursuant to subsection (e)(2))
18 and, if applicable, possible improvements to
19 such application (or for purposes of subsection
20 (e)(2)); and

21 “(C) submit to Congress an annual report
22 on waiver applications (and waiver reports
23 under subsection (e)) reviewed by the Panel
24 during the applicable year, including the num-
25 ber of applications (and reports) received and

1 the number of applications recommended for
2 approval (and of reports with respect to which
3 recommendations for continuation were pro-
4 vided).

5 “(4) MEMBERSHIP.—

6 “(A) NUMBER AND APPOINTMENT.—The
7 Panel shall consist of 11 members appointed by
8 the Secretary of Health and Human Services,
9 of whom—

10 “(i) 1 shall be appointed on the rec-
11 ommendation of the Speaker of the House
12 of Representatives;

13 “(ii) 1 shall be appointed on the rec-
14 ommendation of the minority leader of the
15 House of Representatives;

16 “(iii) 1 shall be appointed on the rec-
17 ommendation of the majority leader of the
18 Senate;

19 “(iv) 1 shall be appointed on the rec-
20 ommendation of the minority leader of the
21 Senate;

22 “(v) 1 shall be appointed on the rec-
23 ommendation of the Republican Governors
24 Association;

1 “(vi) 1 shall be appointed on the rec-
 2 ommendation of the Democratic Governors
 3 Association;

4 “(vii) 1 shall be a representative from
 5 the patient advocacy community;

6 “(viii) 2 shall be representatives of a
 7 labor organization representing health care
 8 professionals who provide direct patient
 9 care, including at least one labor organiza-
 10 tion that primarily represents registered
 11 nurses;

12 “(ix) 1 shall be a representative of
 13 primary care physicians; and

14 “(x) 1 shall be a representative of
 15 health care professionals practicing in
 16 rural or underserved areas.

17 “(B) TERM OF SERVICE.—

18 “(i) IN GENERAL.—Each member of
 19 the Panel shall serve a 3-year term. A
 20 member may serve after the expiration of
 21 that member’s term until a successor has
 22 been appointed pursuant to subparagraph
 23 (A).

24 “(ii) VACANCY.—Any member ap-
 25 pointed to fill a vacancy occurring before

1 the expiration of the term for which the
 2 member's predecessor was appointed shall
 3 be appointed only for the remainder of that
 4 term. A vacancy in the Commission shall
 5 be filled in the manner in which the origi-
 6 nal appointment was made.

7 “(C) PAY.—Members of the Panel shall
 8 serve without pay.

9 “(D) CHAIRPERSON; VICE CHAIR-
 10 PERSON.—

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

15 “(ii) VICE CHAIRPERSON.—The Ad-
 16 ministrator of the Federal Emergency
 17 Management Agency, or a designee of the
 18 Administrator, shall serve on the Panel as
 19 the Vice Chairperson of the Panel.

20 “(5) STAFF, EXPERTS, AND CONSULTANTS.—
 21 The Panel may—

22 “(A) appoint such staff as the Panel con-
 23 siders to be appropriate, without regard to the
 24 provisions of title 5, United States Code, gov-
 25 erning appointments in the competitive service;

1 “(B) fix the pay of such staff, without re-
 2 gard to the provisions of chapter 51 and sub-
 3 chapter III of chapter 53 of such title relating
 4 to classification and General Schedule pay
 5 rates; and

6 “(C) procure the services of experts and
 7 consultants in accordance with the provisions of
 8 section 3109(b) of such title.

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

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

17 “(8) AUTHORIZATION OF APPROPRIATIONS.—
 18 There is authorized to be appropriated such sums as
 19 may be necessary to the Panel for carrying out the
 20 duties of the panel for each of fiscal years 2025
 21 through 2030.

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

24 “(1) IN GENERAL.—The Secretary shall issue
 25 guidance with respect to applying the provisions of

1 this section in a manner consistent with the fol-
2 lowing:

3 “(A) To further the goal that Federal
4 health services to maintain and improve the
5 health of Indians are consonant with and re-
6 quired by the Federal Government’s historical
7 and unique legal relationship with, and result-
8 ing responsibility to, Indians.

9 “(B) No enrollment fee, premium, or simi-
10 lar charge, and no deduction, copayment, cost
11 sharing, or similar charge, is to be imposed
12 against an Indian who is furnished an item or
13 service through a waiver under this section. All
14 costs incurred in waiving such charges shall be
15 borne by the Federal Government in fulfillment
16 of the trust responsibility.

17 “(C) A State may not require the enroll-
18 ment of an individual who is an Indian in
19 health insurance offered through a waiver under
20 this section.

21 “(D) Health insurance issuers offering cov-
22 erage pursuant to a waiver under this section
23 must make good faith efforts to contract with
24 Indian health care providers operating within
25 the area served by the issuers.

1 “(E) Health insurance issuers offering cov-
2 erage pursuant to a waiver under this section
3 shall pay Indian health care providers, whether
4 such providers are participating or nonpartici-
5 pating providers with respect to the coverage,
6 for covered services provided to those Indian
7 enrollees who are eligible to receive services
8 from such providers at a rate equal to the rate
9 negotiated between such entity and the provider
10 involved or, if such a rate has not been nego-
11 tiated, at a rate that is not less than the level
12 and amount of payment which the entity would
13 make for the services if the services were fur-
14 nished by a participating provider which is not
15 an Indian health care provider.

16 “(F) Health insurance issuers offering cov-
17 erage pursuant to a waiver under this section
18 will include a standard contract addendum
19 when contracting with Indian health care pro-
20 viders. The contract addendum will be devel-
21 oped in consultation with Tribes and in con-
22 ference with urban Indian health programs op-
23 erating within the service area of the State.

24 “(G) The treatment of Indians under this
25 section does not constitute invidious racial dis-

1 crimination in violation of the due process
2 clause of the Fifth or Fourteenth Amendments,
3 but is reasonable and rationally designed to fur-
4 ther the health of Indians.

5 “(H) In the case of any State in which 1
6 or more Indian health care programs furnishes
7 health care services, the State will provide for
8 a process under which the State seeks advice on
9 a regular, ongoing basis from designees of such
10 Indian health care programs and urban Indian
11 organizations on matters relating to the appli-
12 cation of a waiver under this section that are
13 likely to have a direct effect on such Indian
14 health programs and that—

15 “(i) shall include solicitation of advice
16 prior to submission of any plan amend-
17 ments, waiver requests, and proposals for
18 demonstration projects likely to have a di-
19 rect effect on Indians or Indian health care
20 programs; and

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

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

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

7 “(B) The term ‘Indian health care pro-
8 vider’ has the meaning given such term in sec-
9 tion 438.14(a) of title 42, Code of Federal Reg-
10 ulations.

11 “(i) DEFINITIONS.—In this section:

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

14 “(A) means—

15 “(i) health insurance coverage, as
16 such term is defined in section 2791(b) of
17 the Public Health Service Act (42 U.S.C.
18 300gg–(b)); and

19 “(ii) coverage under a group health
20 plan, as such term is defined in section
21 2791(a) of the Public Health Service Act
22 (42 U.S.C. 300gg–(a)); and

23 “(B) includes any medical coverage or
24 health benefits provided under one or more of
25 the specified Federal health program described

1 in subparagraphs (A) through (E) of paragraph
2 (4), as applicable to a waiver under subsection
3 (a)(1).

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

6 “(A) who is—

7 “(i) a citizen or national of the United
8 States; or

9 “(ii) an alien lawfully residing in the
10 State (including an alien who is granted
11 deferred action or who is otherwise author-
12 ized to remain in the United States); and

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

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

17 “(A) the Secretary of Health and Human
18 Services with respect to waivers relating to the
19 provisions described in subparagraphs (A), (B),
20 and (D) through (G) of paragraph (2) of sub-
21 section (a);

22 “(B) the Secretary of the Treasury with
23 respect to waivers relating to the provisions de-
24 scribed in subparagraph (C) of such paragraph;

1 “(C) the Director of the Office of Per-
2 sonnel Management with respect to waivers re-
3 lating to the provisions described in subpara-
4 graph (H) of such paragraph;

5 “(D) the Secretary of Defense with respect
6 to waivers relating to the provisions described
7 in subparagraph (I) of such paragraph; and

8 “(E) the Secretary of Labor with respect
9 to waivers relating to the provisions described
10 in subparagraph (J) of such paragraph.

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

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

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

19 “(C) The Children’s Health Insurance Pro-
20 gram under title XXI of the Social Security
21 Act.

22 “(D) The Federal Employees Health Bene-
23 fits Plan under chapter 89 of title 5, United
24 States Code.

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

4 “(F) An Exchange established under this
5 subtitle.

6 “(G) Subsidies under section 1402.

7 “(H) Tax credits under sections 36B and
8 45R of the Internal Revenue Code of 1986.”.

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

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

