

115TH CONGRESS
1ST SESSION

H. R. 4695

To amend the Patient Protection and Affordable Care Act to provide for stabilization in the individual health insurance market, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2017

Mr. SCHRADER (for himself, Mr. REED, Mr. GOTTHEIMER, Mr. LANCE, Mr. BERA, Mr. TROTT, Mrs. MURPHY of Florida, Mr. THOMPSON of Pennsylvania, Mr. O'HALLERAN, Mr. COSTELLO of Pennsylvania, Mr. SUOZZI, Mr. DENT, Mr. PANETTA, Mr. CURBELO of Florida, Ms. SINEMA, Mr. FITZPATRICK, Mr. SOTO, Mr. KATKO, Mr. LIPINSKI, Mr. FASO, Ms. ESTY of Connecticut, Mr. COSTA, Mr. NOLAN, Mr. SCHNEIDER, Mr. PETERS, and Mr. WELCH) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Patient Protection and Affordable Care Act to provide for stabilization in the individual health insurance market, 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.**

4 This Act may be cited as the “Bipartisan Market Sta-
5 bilization and Innovation Act of 2017”.

1 **SEC. 2. FUNDING FOR PPACA EXCHANGE PLANS COST-**
2 **SHARING REDUCTIONS.**

3 Section 1402 of the Patient Protection and Afford-
4 able Care Act (42 U.S.C. 18071) is amended by adding
5 at the end the following new subsection:

6 “(g) FUNDING.—

7 “(1) IN GENERAL.—Out of any funds in the
8 Treasury not otherwise appropriated, there is appro-
9 priated such sums as may be necessary for payments
10 under this section, including through advance pay-
11 ment under section 1412(c)(3). Funds appropriated
12 under this paragraph shall remain available for obli-
13 gation until expended.

14 “(2) REPORTS.—The Secretary shall for 2017
15 and each subsequent year submit to the Committee
16 on Energy and Commerce, the Committee on Ways
17 and Means, and the Committee on Appropriations of
18 the House of Representatives and the Committee on
19 Finance, the Committee on Health, Education,
20 Labor, and Pensions, and the Committee on Appro-
21 priations of the Senate an annual report on—

22 “(A) the amount of payments made under
23 this section with respect to such year;

24 “(B) the effects of such payments on the
25 costs of health insurance in the individual mar-
26 ket; and

1 “(C) the projected costs of health insur-
2 ance in the individual market over the subse-
3 quent year.”.

4 **SEC. 3. PATIENT AND STATE STABILITY FUND.**

5 The Social Security Act (42 U.S.C. 301 et seq.) is
6 amended by adding at the end the following new title:

7 **“TITLE XXII—PATIENT AND**
8 **STATE STABILITY FUND**

9 **“SEC. 2201. ESTABLISHMENT OF PROGRAM.**

10 “‘There is hereby established the ‘Patient and State
11 Stability Fund’ to be administered by the Secretary of
12 Health and Human Services, acting through the Adminis-
13 trator of the Centers for Medicare & Medicaid Services
14 (in this section referred to as the ‘Administrator’), to pro-
15 vide funding, in accordance with this title, to the 50 States
16 and the District of Columbia (each referred to in this sec-
17 tion as a ‘State’) during the period, subject to section
18 2204(c), beginning on January 1, 2019, and ending on
19 December 31, 2028, for the purposes described in section
20 2202.

21 **“SEC. 2202. USE OF FUNDS.**

22 “‘A State may use the funds allocated to the State
23 under this title for any of the following purposes:

24 “(1) Helping, through the provision of financial
25 assistance, high-risk individuals who do not have ac-

1 cess to health insurance coverage offered through an
2 employer enroll in health insurance coverage.

3 “(2) Providing incentives to appropriate entities
4 to enter into arrangements with the State to help
5 stabilize premiums for health insurance coverage in
6 the individual market, as such markets are defined
7 by the State.

8 “(3) Reducing the cost for providing health in-
9 surance coverage in the individual market and small
10 group market to individuals who have, or are pro-
11 jected to have, a high rate of utilization of health
12 services (as measured by cost) and to individuals
13 who have high costs of health insurance coverage
14 due to the low density population of the State in
15 which they reside.

16 “(4) Promoting participation in the individual
17 market and small group market in the State and in-
18 creasing health insurance options available through
19 such market.

20 “(5) Providing assistance to reduce out-of-pock-
21 et costs, such as copayments, coinsurance, pre-
22 miums, and deductibles, of individuals enrolled in
23 health insurance coverage in the State.

1 **“SEC. 2203. STATE ELIGIBILITY AND APPROVAL; DEFAULT**
2 **SAFEGUARD.**

3 “(a) ENCOURAGING STATE OPTIONS FOR ALLOCA-
4 TIONS.—

5 “(1) IN GENERAL.—To be eligible for an alloca-
6 tion of funds under this title for a year during the
7 period described in section 2201 for use for one or
8 more purposes described in section 2202, a State
9 shall submit to the Administrator an application at
10 such time (not later than March 31 of the previous
11 year) and in such form and manner as specified by
12 the Administrator and containing—

13 “(A) a description of how the funds will be
14 used for such purposes;

15 “(B) a certification that the State will
16 make, from non-Federal funds, expenditures for
17 such purposes in an amount that is not less
18 than the State percentage required for the year
19 under section 2204(e)(1); and

20 “(C) such other information as the Admin-
21 istrator may require.

22 “(2) ADMINISTRATOR DETERMINATION
23 TIMELINE.—

24 “(A) IN GENERAL.—The Administrator
25 shall make a determination as to the approval

1 or disapproval of an application not later than
2 90 days after the receipt of such application.

3 “(B) EXPEDITED DETERMINATION.—The
4 Administrator shall make a determination as to
5 the approval or disapproval of an application
6 not later than 45 days after the receipt of such
7 application if such application—

8 “(i) is submitted in response to an ur-
9 gent situation, with respect to areas in the
10 State that the Administrator determines
11 are at risk for excessive premium increases
12 or having no health plans offered in the
13 applicable health insurance market for the
14 current or following plan year; or

15 “(ii) resembles an application that is
16 the same or substantially similar to an ap-
17 plication that the Administrator has al-
18 ready approved for another State.

19 “(3) PERIOD OF APPROVAL.—If an application
20 of a State is approved for a year, with respect to a
21 purpose described in section 2202, such application
22 shall also be treated as approved, with respect to
23 such purpose, for each of the subsequent 4 years,
24 but in no case shall an application be approved for
25 a year after 2028.

1 “(4) TREATMENT AS A STATE HEALTH CARE
2 PROGRAM.—Any program receiving funds from an
3 allocation for a State under this title, including pur-
4 suant to subsection (b), shall be considered to be a
5 ‘State health care program’ for purposes of sections
6 1128, 1128A, and 1128B.

7 “(b) DEFAULT FEDERAL SAFEGUARD.—

8 “(1) IN GENERAL.—In the case of a State that
9 does not have in effect an approved application
10 under this section for 2019 or a subsequent year be-
11 ginning during the period described in section 2201,
12 subject to section 2204(e), the Administrator, in
13 consultation with the State insurance commissioner,
14 shall use the allocation that would otherwise be pro-
15 vided to the State under this title for such year, in
16 accordance with paragraph (2), for such State.

17 “(2) REQUIRED USE FOR MARKET STABILIZA-
18 TION PAYMENTS TO ISSUERS.—Subject to section
19 2204(a), an allocation for a State made pursuant to
20 paragraph (1) for a year shall be used to carry out
21 the purpose described in section 2202(2) in such
22 State by providing payments to appropriate entities
23 described in such section with respect to claims that
24 exceed \$50,000 (or, with respect to allocations made
25 under this title for 2020 or a subsequent year dur-

1 ing the period specified in section 2201, such dollar
2 amount specified by the Administrator), but do not
3 exceed \$350,000 (or, with respect to allocations
4 made under this title for 2020 or a subsequent year
5 during such period, such dollar amount specified by
6 the Administrator), in an amount equal to 75 per-
7 cent (or, with respect to allocations made under this
8 title for 2020 or a subsequent year during such pe-
9 riod, such percentage specified by the Administrator)
10 of the amount of such claims.

11 **“SEC. 2204. ALLOCATIONS.**

12 “(a) APPROPRIATION.—For the purpose of providing
13 allocations for States (including pursuant to section
14 2203(b)) under this title there is appropriated, out of any
15 money in the Treasury not otherwise appropriated,
16 \$11,500,000,000 for each of 2019 through 2028.

17 “(b) ALLOCATIONS.—

18 “(1) PAYMENT.—From amounts appropriated
19 under subsection (a) for a year, the Administrator
20 shall, with respect to a State and not later than
21 January 1 of such year, allocate, subject to sub-
22 section (e), for such State (including pursuant to
23 section 2203(b)) the amount determined for such
24 State and year under paragraph (2).

1 “(2) ALLOCATION AMOUNT DETERMINA-
2 TIONS.—

3 “(A) FOR 2019 THROUGH 2021.—

4 “(i) IN GENERAL.—For purposes of
5 paragraph (1), the amount determined
6 under this paragraph for each of 2019
7 through 2021 for a State is an amount
8 equal to the sum of—

9 “(I) the relative incurred claims
10 amount described in clause (ii) for
11 such State and year; and

12 “(II) the relative uninsured and
13 issuer participation amount described
14 in clause (iv) for such State and year.

15 “(ii) RELATIVE INCURRED CLAIMS
16 AMOUNT.—For purposes of clause (i), the
17 relative incurred claims amount described
18 in this clause for a State for 2019, 2020,
19 and 2021 is the product of—

20 “(I) 90 percent of the amount
21 appropriated under subsection (a) for
22 the year; and

23 “(II) the relative State incurred
24 claims proportion described in clause
25 (iii) for such State and year.

1 “(iii) RELATIVE STATE INCURRED
2 CLAIMS PROPORTION.—The relative State
3 incurred claims proportion described in
4 this clause for a State and year is the
5 amount equal to the ratio of—

6 “(I) the adjusted incurred claims
7 by the State, as reported through the
8 medical loss ratio annual reporting
9 under section 2718 of the Public
10 Health Service Act for the third pre-
11 vious year; to

12 “(II) the sum of such adjusted
13 incurred claims for all States, as so
14 reported, for such third previous year.

15 “(iv) RELATIVE UNINSURED AND
16 ISSUER PARTICIPATION AMOUNT.—For
17 purposes of clause (i), the relative unin-
18 sured and issuer participation amount de-
19 scribed in this clause for a State for 2019,
20 2020, and 2021 is the product of—

21 “(I) 10 percent of the amount
22 appropriated under subsection (a) for
23 the year; and

24 “(II) the relative State uninsured
25 and issuer participation proportion de-

1 scribed in clause (v) for such State
2 and year.

3 “(v) RELATIVE STATE UNINSURED
4 AND ISSUER PARTICIPATION PROPOR-
5 TION.—The relative State uninsured and
6 issuer participation proportion described in
7 this clause for a State and year is—

8 “(I) in the case of a State not
9 described in clause (vi) for such year,
10 0; and

11 “(II) in the case of a State de-
12 scribed in clause (vi) for such year,
13 the amount equal to the ratio of—

14 “(aa) the number of individ-
15 uals residing in such State who
16 for the third preceding year were
17 not enrolled in a health plan or
18 otherwise did not have health in-
19 surance coverage (including
20 through a Federal or State
21 health program) and whose in-
22 come is below 100 percent of the
23 poverty line applicable to a family
24 of the size involved; to

1 “(bb) the sum of the num-
2 ber of such individuals for all
3 States described in clause (vi) for
4 the third preceding year.

5 “(vi) STATES DESCRIBED.—For pur-
6 poses of clause (v), a State is described in
7 this clause, with respect to 2019, 2020,
8 and 2021, if the State satisfies either of
9 the following criterion:

10 “(I) The ratio described in sub-
11 clause (II) of clause (v) that would be
12 determined for such State by sub-
13 stituting ‘2015’ for each reference in
14 such subclause to ‘the third preceding
15 year’ and by substituting ‘all such
16 States’ for the reference in item (bb)
17 of such subclause to ‘all States de-
18 scribed in clause (vi)’ is greater than
19 the ratio described in such subclause
20 that would be determined for such
21 State by substituting ‘2013’ for each
22 reference in such subclause to ‘the
23 third preceding year’ and by sub-
24 stituting ‘all such States’ for the ref-

1 erence in item (bb) of such subclause
2 to ‘all States described in clause (vi)’.

3 “(II) The State has fewer than
4 three health insurance issuers offering
5 qualified health plans through the Ex-
6 change for 2017.

7 “(B) FOR 2022 THROUGH 2028.—For pur-
8 poses of paragraph (1), the amount determined
9 under this paragraph for a year (beginning with
10 2022) during the period described in section
11 2201 for a State is an amount determined in
12 accordance with an allocation methodology spec-
13 ified by the Administrator which—

14 “(i) takes into consideration the ad-
15 justed incurred claims of such State, the
16 number of residents of such State who for
17 the previous year were not enrolled in a
18 health plan or otherwise did not have
19 health insurance coverage (including
20 through a Federal or State health pro-
21 gram) and whose income is below 100 per-
22 cent of the poverty line applicable to a
23 family of the size involved, and the number
24 of health insurance issuers participating in

1 the insurance market in such State for
2 such year;

3 “(ii) is established after consultation
4 with health care consumers, health insur-
5 ance issuers, State insurance commis-
6 sioners, and other stakeholders and after
7 taking into consideration additional cost
8 and risk factors that may inhibit health
9 care consumer and health insurance issuer
10 participation; and

11 “(iii) reflects the goals of improving
12 the health insurance risk pool, promoting a
13 more competitive health insurance market,
14 and increasing choice for health care con-
15 sumers.

16 “(c) ANNUAL DISTRIBUTION OF PREVIOUS YEAR’S
17 REMAINING FUNDS.— In carrying out subsection (b), the
18 Administrator shall, with respect to a year (beginning with
19 2022 and ending with 2028), not later than March 31 of
20 such year—

21 “(1) determine the amount of funds, if any,
22 from the amounts appropriated under subsection (a)
23 for the previous year but not allocated for such pre-
24 vious year; and

1 “(2) if the Administrator determines that any
2 funds were not so allocated for such previous year,
3 allocate such remaining funds, in accordance with
4 the allocation methodology specified pursuant to
5 subsection (b)(2)(B), with, respect to a year before
6 2028, any remaining funds being made available for
7 allocations to States for the subsequent year.

8 “(d) AVAILABILITY.—Amounts appropriated under
9 subsection (a) for a year and allocated to States in accord-
10 ance with this section shall remain available for expendi-
11 ture through December 31, 2028.

12 “(e) CONDITIONS FOR AND LIMITATIONS ON RE-
13 CEIPT OF FUNDS.—The Secretary may not make an allo-
14 cation under this title for a State, with respect to a pur-
15 pose described in section 2202 in the case of an allocation
16 that would be made to a State pursuant to section
17 2203(a), if the State does not agree that the State will
18 make available non-Federal contributions towards such
19 purpose in an amount equal to—

20 “(1) for 2020, 5 percent of the amount allo-
21 cated under this subsection to such State for such
22 year and purpose; and

23 “(2) for 2021 and each subsequent year
24 through 2028, 10 percent of the amount allocated

1 under this subsection to such State for such year
2 and purpose.”.

3 **SEC. 4. MODIFICATIONS TO WAIVER FOR STATE INNOVA-**
4 **TION.**

5 Section 1332 of the Patient Protection and Afford-
6 able Care Act (42 U.S.C. 18052) is amended—

7 (1) in subsection (a)(3), in the first sentence,
8 by striking “individuals and small employers” and
9 all that follows through “the State had not received
10 such waiver” and inserting “the Secretary deter-
11 mines that there would be a reduction in the Federal
12 deficit during the waiver period, the Secretary shall
13 provide for a means by which the amount of such re-
14 duction”; and

15 (2) in subsection (d)—

16 (A) in paragraph (1), by striking “180
17 days” and inserting “subject to paragraph (3),
18 90 days”; and

19 (B) by adding at the end the following new
20 paragraph:

21 “(3) **EXPEDITED DETERMINATION.**—With re-
22 spect to any application under subsection (a)(1) sub-
23 mitted on or after the date of enactment of this
24 paragraph (or any such application submitted prior
25 to such date of enactment and under review by the

1 Secretary as of such date of enactment), the Sec-
2 retary shall make a determination on such applica-
3 tion, using the criteria for approval otherwise appli-
4 cable under this section, not later than 45 days after
5 the receipt of such application, and shall allow the
6 public notice and comment at the State and Federal
7 levels described under subsection (a)(4) to occur
8 concurrently if such State application—

9 “(A) is submitted in response to an urgent
10 situation, with respect to areas in the State
11 that the Secretary determines are at risk for ex-
12 cessive premium increases or having no health
13 plans offered in the applicable health insurance
14 market for the current or following plan year;
15 or

16 “(B) is for a waiver that is the same or
17 substantially similar to a waiver that the Sec-
18 retary already has approved for another
19 State.”.

20 **SEC. 5. EMPLOYER MANDATE ADJUSTMENT.**

21 (a) INCREASING THE SIZE OF APPLICABLE LARGE
22 EMPLOYERS.—Paragraph (2) of section 4980H(c) of the
23 Internal Revenue Code of 1986 is amended by striking
24 “50” and inserting “500” each place such term appears.

1 (b) INCREASING THE HOURS REQUIRED TO QUALIFY
2 AS FULL-TIME EMPLOYEES.—

3 (1) IN GENERAL.—Subparagraph (A) of section
4 4980H(c)(4) of the Internal Revenue Code of 1986
5 is amended by striking “30” and inserting “40”.

6 (2) FULL-TIME EQUIVALENTS.—Subparagraph
7 (E) of section 4980H(c)(2) of the Internal Revenue
8 Code of 1986 is amended by striking “120” and in-
9 serting “160”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to months beginning after Decem-
12 ber 31, 2017.

13 **SEC. 6. REPEAL OF MEDICAL DEVICE EXCISE TAX.**

14 Section 4191 is amended by adding at the end the
15 following new subsection:

16 “(d) APPLICABILITY.—The tax imposed under sub-
17 section (a) shall not apply to sales after December 31,
18 2017.”.

19 **SEC. 7. OFFERING HEALTH PLANS IN MORE THAN ONE**
20 **STATE.**

21 Not later than 1 year after the date of enactment
22 of this Act, the Secretary of Health and Human Services,
23 in consultation with the National Association of Insurance
24 Commissioners, shall issue regulations for the implemen-
25 tation of health care choice compacts established under

1 section 1333 of the Patient Protection and Affordable
2 Care Act (42 U.S.C. 18053) to allow for the offering of
3 health plans in more than one State.

4 **SEC. 8. SENSE OF CONGRESS.**

5 It is the sense of Congress that the provisions of this
6 Act should not increase the deficit, and any projected costs
7 of such provisions should be offset with policies to negate
8 any projected deficit increase.

○