

116TH CONGRESS  
1ST SESSION

# H. R. 2183

To amend the Patient Protection and Affordable Care Act to streamline the State innovation waiver process, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2019

Mr. MARSHALL 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

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## A BILL

To amend the Patient Protection and Affordable Care Act to streamline the State innovation waiver process, 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 “State Flexibility and  
5 Patient Choice Act of 2019”.

1 **SEC. 2. STREAMLINING THE STATE INNOVATION WAIVER**  
2 **PROCESS.**

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

5 (1) in subsection (a)—

6 (A) in paragraph (1)—

7 (i) in subparagraph (B)(ii), by insert-  
8 ing “over both the term of the proposed  
9 waiver and the 10-year budget plan” after  
10 “Government”; and

11 (ii) in subparagraph (C), by striking  
12 “the law described in subsection (b)(2)”  
13 and inserting “a law or has in effect a cer-  
14 tification described in subsection (b)(3)”;  
15 and

16 (B) in paragraph (3)—

17 (i) in the first sentence—

18 (I) by inserting “or would qualify  
19 for a lesser amount of” after “would  
20 not qualify for”;

21 (II) by inserting “, or the State  
22 would not qualify for or would qualify  
23 for a lesser payment under section  
24 1331,” after “subtitle E”;

25 (III) by inserting “, or on behalf  
26 of participants in a basic health pro-

1                   gram established under section 1331  
2                   had such participants been enrolled in  
3                   an Exchange,” after “this title”; and

4                   (IV) by inserting “or for imple-  
5                   menting a basic health program estab-  
6                   lished under section 1331” before the  
7                   period; and

8                   (ii) in the second sentence, by insert-  
9                   ing before the period the following: “, and  
10                  with respect to participation in the basic  
11                  health program and funds provided to such  
12                  other States under section 1331”;

13                  (2) in subsection (b)—

14                   (A) in paragraph (1)—

15                   (i) in subparagraph (B), by striking  
16                   “at least as affordable” and inserting “of  
17                   comparable affordability”; and

18                   (ii) in subparagraph (D), by inserting  
19                   “over the term of the waiver and over the  
20                   10-year budget plan with respect to such  
21                   waiver” before the period at the end;

22                   (B) by redesignating paragraph (2) as  
23                  paragraph (3);

24                   (C) by inserting after paragraph (1) the  
25                  following new paragraph:

1 “(2) BUDGETARY EFFECT.—

2 “(A) IN GENERAL.—In determining wheth-  
3 er a State plan submitted under subsection (a)  
4 meets the deficit neutrality requirements of  
5 paragraph (1)(D), the Secretary shall take into  
6 consideration the direct budgetary effect of the  
7 provisions of such plan on sources of Federal  
8 funding other than the funding described in  
9 subsection (a)(3).”; and

10 (D) in paragraph (3) (as so redesign-  
11 nated)—

12 (i) in the paragraph heading, by in-  
13 serting “OR HAVE IN EFFECT A CER-  
14 TIFICATION” after “LAW”;

15 (ii) in subparagraph (A)—

16 (I) by striking “A law” and in-  
17 serting the following:

18 “(i) LAWS.—A law”; and

19 (II) by adding at the end the fol-  
20 lowing:

21 “(ii) CERTIFICATIONS.—A certifi-  
22 cation described in this paragraph is a doc-  
23 ument, signed by the Governor of the  
24 State, that certifies that such Governor  
25 has the authority under existing State law

1 to take action under this section, including  
2 implementation of the State plan under  
3 subsection (a)(1)(B).”; and

4 (iii) in subparagraph (B)—

5 (I) in the subparagraph heading,  
6 by striking “OF OPT OUT”; and

7 (II) by striking “may repeal a  
8 law” and all that follows through the  
9 period at the end and inserting the  
10 following: “may terminate the author-  
11 ity provided under the waiver with re-  
12 spect to the State by—”

13 “(i) repealing the law described in  
14 subparagraph (A)(i); or

15 “(ii) terminating the certification de-  
16 scribed in subparagraph (A)(ii), through a  
17 certification for such termination signed by  
18 the Governor of the State.”;

19 (3) in subsection (d)—

20 (A) in paragraph (1), by striking “180”  
21 and inserting “90”; and

22 (B) by adding at the end the following new  
23 paragraph:

24 “(3) EXPEDITED DETERMINATION.—

1           “(A) IN GENERAL.—With respect to any  
2 application under subsection (a)(1) submitted  
3 on or after the date of the enactment of this  
4 paragraph, the Secretary shall make a deter-  
5 mination on such application, using the criteria  
6 for approval otherwise applicable under this sec-  
7 tion, not later than 60 days after the receipt of  
8 such application and shall allow the public no-  
9 tice and comment at the State and Federal lev-  
10 els described under subsection (a)(4) to occur  
11 concurrently if such State application—

12                   “(i) is submitted in response to an ur-  
13 gent situation, with respect to areas in the  
14 State that the Secretary determines are at  
15 risk for substantial increases in premium  
16 rates or having no health plans offered in  
17 the applicable health insurance market for  
18 the current or following plan year; or

19                   “(ii) is for a waiver that is the same  
20 or substantially similar to a waiver that  
21 the Secretary already has approved for an-  
22 other State.

23           “(B) APPROVAL LIMITATIONS FOR URGENT  
24 SITUATIONS.—

1           “(i) PROVISIONAL APPROVAL.—A  
2           waiver approved under the expedited deter-  
3           mination process under subparagraph  
4           (A)(i) may extend over a period of not  
5           longer than 3 years.

6           “(ii) FULL APPROVAL.—Subject to  
7           the requirements for approval otherwise  
8           applicable under this section, not later  
9           than 1 year before the expiration of a pro-  
10          visional waiver period described in clause  
11          (i) with respect to an application described  
12          in subparagraph (A)(i), the Secretary shall  
13          make a determination on whether to ex-  
14          tend the term of such waiver for longer  
15          than the period described in clause (i), for  
16          a total waiver term not to exceed 6 years.  
17          The Secretary may request additional in-  
18          formation as the Secretary determines ap-  
19          propriate to make such determination.

20          “(C) GAO STUDY.—Not later than 5 years  
21          after the date of enactment of the State Flexi-  
22          bility and Patient Choice Act of 2019, the  
23          Comptroller General of the United States shall  
24          conduct a review of all waivers approved pursu-  
25          ant to an application under subparagraph

1 (A)(ii) to evaluate whether such waivers met  
2 the requirements of subsection (b)(1) and  
3 whether the applications should have qualified  
4 for such an expedited determination.”;

5 (4) in subsection (e), by inserting “(or, in the  
6 case of an application under subsection (a)(1) sub-  
7 mitted on or after the date of the enactment of the  
8 State Flexibility and Patient Choice Act of 2019, 6  
9 years)” after “5 years”; and

10 (5) by adding at the end the following new sub-  
11 section:

12 “(f) ADDITIONAL PROVISIONS.—In carrying out this  
13 section, the Secretary shall—

14 “(1) issue guidance, not later than 30 days  
15 after the date of the enactment of this subsection,  
16 that includes initial examples of model State plans  
17 that may meet the requirements for approval under  
18 this section; and

19 “(2) periodically review the guidance issued  
20 under paragraph (1) and, when appropriate, issue  
21 additional examples of model State plans that may  
22 meet the requirements for approval under this sec-  
23 tion, which may include—

24 “(A) model plans establishing reinsurance  
25 or invisible high-risk pool arrangements for pur-



1 poses of covering the cost of high-risk individ-  
2 uals;

3 “(B) model plans expanding insurer par-  
4 ticipation, access to affordable health plans,  
5 network adequacy, and health plan options over  
6 the entire applicable health insurance market in  
7 the State;

8 “(C) model plans that encourage or require  
9 health plans in a State to deploy value-based in-  
10 surance designs which structure enrollee cost-  
11 sharing and other health plan design elements  
12 to encourage enrollees to consume high-value  
13 clinical services;

14 “(D) model plans allowing for significant  
15 variation in health plan benefit design; or

16 “(E) any other model plan determined ap-  
17 propriate by the Secretary.”.

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