

[Discussion Draft]

AMENDMENT TO _____

OFFERED BY MR. MACARTHUR OF NEW JERSEY

[Amendment drafted to H.R. 1628, as amended by self-executing amendments adopted by Rules Committee]

Strike section 136 and insert the following:

1 **SEC. 136. PERMITTING STATES TO WAIVE CERTAIN ACA RE-**
2 **QUIREMENTS TO ENCOURAGE FAIR HEALTH**
3 **INSURANCE PREMIUMS.**

4 (a) IN GENERAL.—Section 2701 of the Public Health
5 Service Act (42 U.S.C. 300gg) is amended by adding at
6 the end the following new subsection:

7 “(b) PERMISSIBLE STATE WAIVER TO ENCOURAGE
8 FAIR HEALTH INSURANCE PREMIUMS.—

9 “(1) IN GENERAL.—A State may submit an ap-
10 plication to the Secretary for one or more of the fol-
11 lowing purposes:

12 “(A) In the case of plan years beginning
13 on or after January 1, 2018, to apply, subject
14 to paragraph (5), under subsection
15 (a)(1)(A)(iii), instead of the ratio specified in
16 such subsection, a higher ratio specified by the
17 State (consistent with section 2707(c)).

1 “(B) In the case of plan years beginning
2 on or after January 1, 2020, for health insur-
3 ance coverage offered in the individual or small
4 group market in such State, to apply, subject to
5 paragraph (5), instead of the essential health
6 benefits specified under subsection (b) of sec-
7 tion 1302 of the Patient Protection and Afford-
8 able Care Act, essential health benefits as speci-
9 fied by the State.

10 “(C) In the case of a State that has in
11 place a program that carries out the purpose
12 described in paragraph (1) or (2) of section
13 2202(a) of the Social Security Act or partici-
14 pates in the program established under section
15 2205 of such Act, for health insurance offered
16 in the individual market in such State, with re-
17 spect to an individual who is an applicable pol-
18 icyholder of such coverage with respect to an
19 enforcement period (as defined in section
20 2710A(b)) applicable to enrollments for a plan
21 year beginning with plan year 2019 (or, in the
22 case of enrollments during a special enrollment
23 period, beginning with plan year 2018), to—

24 “(i) subject to paragraph (5), not
25 apply any increase to the monthly premium

1 rate that would otherwise apply under sec-
2 tion 2710A to such individual for such cov-
3 erage; and

4 “(ii) instead, subject to paragraph
5 (5)—

6 “(I) apply subsection (a)(1) as if
7 health status were included as a fac-
8 tor described in subparagraph (A) of
9 such subsection; and

10 “(II) not apply section 2705(b).

11 “(2) DEFAULT APPROVAL.—An application sub-
12 mitted under paragraph (1) is approved unless the
13 Secretary notifies the State submitting the applica-
14 tion, not later than 60 days after the date of the
15 submission of such application, that the application
16 has been denied for not being in compliance with
17 any requirement of paragraph (3) and of the reason
18 for such denial.

19 “(3) REQUIREMENTS.—The requirements of
20 this paragraph, with respect to an application sub-
21 mitted under paragraph (1), are the following:

22 “(A) The application is submitted at such
23 time, and in such manner, as the Secretary may
24 require.

1 “(B) The application specifies how the ap-
2 proval of such application will provide for one
3 or more of the following:

4 “(i) Reducing average premiums for
5 health insurance coverage in the State.

6 “(ii) Increasing enrollment in health
7 insurance coverage in the State.

8 “(iii) Stabilizing the market for health
9 insurance coverage in the State.

10 “(iv) Stabilizing premiums for individ-
11 uals with pre-existing conditions.

12 “(v) Increasing the choice of health
13 plans in the State.

14 “(C) The application specifies the period
15 for which the waiver is to be effective, con-
16 sistent with paragraph (4).

17 “(D) In the case of an application for pur-
18 poses of paragraph (1)(A), the application
19 specifies the higher ratio to be applied pursuant
20 to such paragraph.

21 “(E) In the case of an application for pur-
22 poses of paragraph (1)(B), the application
23 specifies the essential health benefits to be ap-
24 plied pursuant to such paragraph.

1 “(F) In the case of an application for pur-
2 poses of paragraph (1)(C), the application dem-
3 onstrates that the State has in place a program
4 that carries out the purpose described in para-
5 graph (1) or (2) of section 2202(a) of the So-
6 cial Security Act or participates in the program
7 established under section 2205 of such Act.

8 “(4) TERM OF WAIVER.—

9 “(A) IN GENERAL.—No waiver for a State
10 under this subsection may extend over a period
11 of longer than 10 years unless the State re-
12 quests continuation of such waiver, and such re-
13 quest shall be deemed granted unless the Sec-
14 retary, within 90 days after the date of its sub-
15 mission to the Secretary, either denies such re-
16 quest in writing or informs the State in writing
17 with respect to any additional information
18 which is needed in order to make a final deter-
19 mination with respect to the request.

20 “(B) SPECIAL RULE.—A waiver applied for
21 by a State under paragraph (1)(C) may only be
22 effective for a period during which the State—

23 “(i) has in place a program that car-
24 ries out the purpose described in para-

1 graph (1) or (2) of section 2202(a) of the
2 Social Security Act; or

3 “(ii) participates in the program es-
4 tablished under section 2205 of such Act.

5 “(5) NON-APPLICATION RULES.—

6 “(A) SPECIFIED NON-APPLICATION PROVI-
7 SIONS.—In no case may a waiver for purposes
8 of paragraph (1) apply with respect to any of
9 the following provisions:

10 “(i) Section 1301 of the Patient Pro-
11 tection and Affordable Care Act, to the ex-
12 tent that such section applies to qualified
13 health plans offered through the CO-OP
14 program under section 1322 of such Act or
15 multi-State plans under section 1334 of
16 such Act.

17 “(ii) Sections 1312(d)(3)(D), 1331,
18 1332, 1333, and 1334 of such Act.

19 “(B) HOLD HARMLESS.—Any standard or
20 requirement adopted by a State pursuant to the
21 terms of a waiver approved under this sub-
22 section shall be deemed to comply with section
23 1252 of the Patient Protection and Affordable
24 Care Act and subsection (a) of section 1324 of
25 such Act, insofar as such standard or require-

1 ment relates to a Federal or State law de-
2 scribed in subsection (b)(2) of such section (re-
3 lating to rating).”.

4 (b) APPLICATION TO ESSENTIAL HEALTH BENE-
5 FITS.—Section 1302(a)(1) of the Patient Protection and
6 Affordable Care Act (42 U.S.C. 18022(a)(1)) is amended
7 by inserting “(or, in the case of health insurance coverage
8 offered in the individual or small group market in a State
9 for which there is an applicable waiver in effect under sec-
10 tion 2701(b) of the Public Health Service Act for a plan
11 year, the essential health benefits applicable under such
12 waiver)” after “subsection (b)”.

13 **SEC. 137. CONSTRUCTIONS.**

14 (a) NO GENDER RATING.—Nothing in this Act shall
15 be construed as permitting health insurance issuers to dis-
16 criminate in rates for health insurance coverage by gender.

17 (b) NO LIMITING ACCESS TO COVERAGE FOR INDIV-
18 IDUALS WITH PREEXISTING CONDITIONS.—Nothing in
19 this Act shall be construed as permitting health insurance
20 issuers to limit access to health coverage for individuals
21 with preexisting conditions.

 In the section 2710A(a)(1) proposed to be added to
the Public Health Service Act by section 133, strike
“Notwithstanding section 2701, subject” and insert
“Subject”.

In the amendment proposed to be inserted into section 2701(a)(1)(A)(iii) of the Public Health Service Act by section 135, insert after “or such other ratio for adults (consistent with section 2707(c)) as the State involved may provide” the following: “(or, in the case of a State with a waiver under subsection (b) in effect for such a plan year, the ratio applied for such plan year in accordance with such waiver)”.

