[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:

SEC. 136. PERMITTING STATES TO WAIVE CERTAIN ACA REQUIREMENTS TO ENCOURAGE FAIR HEALTH INSURANCE PREMIUMS.

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

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

“(1) In General.—A State may submit an application to the Secretary for one or more of the following purposes:

“(A) In the case of plan years beginning on or after January 1, 2018, to apply, subject to paragraph (5), under subsection (a)(1)(A)(iii), instead of the ratio specified in such subsection, a higher ratio specified by the State (consistent with section 2707(c)).
“(B) In the case of plan years beginning on or after January 1, 2020, for health insurance coverage offered in the individual or small group market in such State, to apply, subject to paragraph (5), instead of the essential health benefits specified under subsection (b) of section 1302 of the Patient Protection and Affordable Care Act, essential health benefits as specified by the State.

“(C) In the case of a State that has in place a program that carries out the purpose described in paragraph (1) or (2) of section 2202(a) of the Social Security Act or participates in the program established under section 2205 of such Act, for health insurance offered in the individual market in such State, with respect to an individual who is an applicable policyholder of such coverage with respect to an enforcement period (as defined in section 2710A(b)) applicable to enrollments for a plan year beginning with plan year 2019 (or, in the case of enrollments during a special enrollment period, beginning with plan year 2018), to—

“(i) subject to paragraph (5), not apply any increase to the monthly premium
rate that would otherwise apply under section 2710A to such individual for such coverage; and

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

“(I) apply subsection (a)(1) as if health status were included as a factor described in subparagraph (A) of such subsection; and

“(II) not apply section 2705(b).

“(2) DEFAULT APPROVAL.—An application submitted under paragraph (1) is approved unless the Secretary notifies the State submitting the application, not later than 60 days after the date of the submission of such application, that the application has been denied for not being in compliance with any requirement of paragraph (3) and of the reason for such denial.

“(3) REQUIREMENTS.—The requirements of this paragraph, with respect to an application submitted under paragraph (1), are the following:

“(A) The application is submitted at such time, and in such manner, as the Secretary may require.
“(B) The application specifies how the approval of such application will provide for one or more of the following:

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

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

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

“(iv) Stabilizing premiums for individuals with pre-existing conditions.

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

“(C) The application specifies the period for which the waiver is to be effective, consistent with paragraph (4).

“(D) In the case of an application for purposes of paragraph (1)(A), the application specifies the higher ratio to be applied pursuant to such paragraph.

“(E) In the case of an application for purposes of paragraph (1)(B), the application specifies the essential health benefits to be applied pursuant to such paragraph.
“(F) In the case of an application for purposes of paragraph (1)(C), the application demonstrates that the State has in place a program that carries out the purpose described in paragraph (1) or (2) of section 2202(a) of the Social Security Act or participates in the program established under section 2205 of such Act.

“(4) TERM OF WAIVER.—

“(A) IN GENERAL.—No waiver for a State under this subsection may extend over a period of longer than 10 years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State in writing with respect to any additional information which is needed in order to make a final determination with respect to the request.

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

“(i) has in place a program that carries out the purpose described in para-
graph (1) or (2) of section 2202(a) of the Social Security Act; or

“(ii) participates in the program established under section 2205 of such Act.

“(5) NON-APPLICATION RULES.—

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

“(i) Section 1301 of the Patient Protection and Affordable Care Act, to the extent that such section applies to qualified health plans offered through the CO-OP program under section 1322 of such Act or multi-State plans under section 1334 of such Act.

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

“(B) HOLD HARMLESS.—Any standard or requirement adopted by a State pursuant to the terms of a waiver approved under this subsection shall be deemed to comply with section 1252 of the Patient Protection and Affordable Care Act and subsection (a) of section 1324 of such Act, insofar as such standard or require-
ment relates to a Federal or State law described in subsection (b)(2) of such section (relating to rating).”.

(b) **APPLICATION TO ESSENTIAL HEALTH BENEFITS.**—Section 1302(a)(1) of the Patient Protection and Affordable Care Act (42 U.S.C. 18022(a)(1)) is amended by inserting “(or, in the case of health insurance coverage offered in the individual or small group market in a State for which there is an applicable waiver in effect under section 2701(b) of the Public Health Service Act for a plan year, the essential health benefits applicable under such waiver)” after “subsection (b)”.

**SEC. 137. CONSTRUCTIONS.**

(a) **NO GENDER RATING.**—Nothing in this Act shall be construed as permitting health insurance issuers to discriminate in rates for health insurance coverage by gender.

(b) **NO LIMITING ACCESS TO COVERAGE FOR INDIVIDUALS WITH PREEXISTING CONDITIONS.**—Nothing in this Act shall be construed as permitting health insurance issuers to limit access to health coverage for individuals 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)”.

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