

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To stabilize individual market premiums and provide meaningful State flexibility.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**S. 1771**

Making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2018, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

1 At the end, insert the following:

2 **TITLE VI—BIPARTISAN HEALTH**  
3 **CARE STABILIZATION**

4 **SEC. 601. SHORT TITLE.**

5 This title may be cited as the “Bipartisan Health  
6 Care Stabilization Act of 2018”.

7 **SEC. 602. WAIVERS FOR STATE INNOVATION; COST-SHAR-**  
8 **ING PAYMENTS.**

9 (a) WAIVERS FOR STATE INNOVATION.—

10 (1) STREAMLINING THE STATE APPLICATION  
11 PROCESS.—Section 1332 of the Patient Protection

1 and Affordable Care Act (42 U.S.C. 18052) is  
2 amended—

3 (A) in subsection (a)(1)(C), by striking  
4 “the law” and inserting “a law or has in effect  
5 a certification”; and

6 (B) in subsection (b)(2)—

7 (i) in the paragraph heading, by in-  
8 serting “OR CERTIFY” after “LAW”;

9 (ii) in subparagraph (A)—

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

12 “(i) LAWS.—A law”; and

13 (II) by adding at the end the fol-  
14 lowing:

15 “(ii) CERTIFICATIONS.—A certifi-  
16 cation described in this paragraph is a doc-  
17 ument, signed by the Governor of the  
18 State, that certifies that such Governor  
19 has the authority under existing Federal  
20 and State law to take action under this  
21 section, including implementation of the  
22 State plan under subsection (a)(1)(B).”;  
23 and

24 (iii) in subparagraph (B)—

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

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

9 “(i) repealing a law described in sub-  
10 paragraph (A)(i); or

11 “(ii) terminating a certification de-  
12 scribed in subparagraph (A)(ii), through a  
13 certification for such termination signed by  
14 the Governor of the State.”.

15 (2) GIVING STATES MORE FUNDING FLEXI-  
16 BILITY, TO ESTABLISH REINSURANCE, HIGH RISK  
17 POOLS, INVISIBLE HIGH RISK POOLS, INSURANCE  
18 STABILITY FUNDS AND OTHER PROGRAMS.—

19 (A) STATE GRANTS UNDER WAIVERS.—  
20 Section 1332(a) of the Patient Protection and  
21 Affordable Care Act (42 U.S.C. 18052(a)) is  
22 amended—

23 (i) in paragraph (3)—

24 (I) in the first sentence—

1 (aa) by inserting “or would  
2 qualify for a reduced portion of”  
3 after “would not qualify for”;

4 (bb) by inserting “, or the  
5 State would not qualify for or  
6 would qualify for a reduced por-  
7 tion of basic health program  
8 funds under section 1331,” after  
9 “subtitle E”;

10 (cc) by inserting “, or basic  
11 health program funds the State  
12 would have received,” after “this  
13 title”; and

14 (dd) by inserting “or for im-  
15 plementing the basic health pro-  
16 gram established under section  
17 1331” before the period;

18 (II) in the second sentence, by  
19 inserting before the period “, and with  
20 respect to participation in the basic  
21 health program and funds provided to  
22 such other States under section  
23 1331”; and

24 (III) by adding after the second  
25 sentence the following: “A State may

1 request that all of, or any portion of,  
2 such aggregate amount of such cred-  
3 its, reductions, or funds be paid to the  
4 State as described in the first sen-  
5 tence.”;

6 (ii) by redesignating paragraphs (4),  
7 (5), and (6) as paragraphs (5), (6), and  
8 (7), respectively; and

9 (iii) by inserting after paragraph (3)  
10 the following:

11 “(4) FEDERAL FUNDING FOR INVISIBLE HIGH-  
12 RISK POOL AND REINSURANCE PROGRAMS.—

13 “(A) ALLOCATIONS.—Not later than 45  
14 days after the date of enactment of the Bipar-  
15 tisan Health Care Stabilization Act of 2018,  
16 the Secretary, in consultation with the National  
17 Association of Insurance Commissioners, shall  
18 specify an allocation methodology for deter-  
19 mining the amount of funds appropriated under  
20 section 602(a)(2)(B) of the Bipartisan Health  
21 Care Stabilization Act of 2018 for a fiscal year  
22 to be allocated for each State for purposes of  
23 subparagraph (B) and section 602(a)(2)(C) of  
24 the Bipartisan Health Care Stabilization Act of  
25 2018.

1           “(B) STATE GRANTS.—From amounts ap-  
2           propriated under section 602(a)(2)(B) of the  
3           Bipartisan Health Care Stabilization Act of  
4           2018 for a fiscal year, the Secretary shall  
5           award grants to States for each of fiscal years  
6           2018 through 2021, in amounts determined in  
7           accordance with the allocation methodology  
8           under subparagraph (A), for the following pur-  
9           poses:

10                   “(i) For fiscal year 2018, for adminis-  
11                   trative costs of the State associated with  
12                   preparing and submitting information de-  
13                   scribed in subsection (a)(1)(B) that in-  
14                   cludes an invisible high-risk pool or rein-  
15                   surance program that meets the require-  
16                   ments of subsection (g)(2), or costs associ-  
17                   ated with the establishment of such invis-  
18                   ible high-risk pool or reinsurance program.

19                   “(ii) For each of fiscal years 2019,  
20                   2020, and 2021, for the establishment or  
21                   maintenance of invisible high-risk pools  
22                   and reinsurance programs that meet the  
23                   requirements of subsection (g)(2) and for  
24                   which the State has received a waiver  
25                   under this section.

1           “(C) BUDGET NEUTRALITY.—Funds  
2 awarded to a State under a grant awarded  
3 under subparagraph (B) shall not be taken into  
4 account for purposes of determining under  
5 paragraph (1) whether the State waiver is  
6 budget neutral, or determining under subsection  
7 (b)(1) whether the State waiver increases the  
8 Federal deficit.”.

9           (B) APPROPRIATIONS.—

10           (i) IN GENERAL.—There are author-  
11 ized to be appropriated, and there are ap-  
12 propriated, to the Secretary of Health and  
13 Human Services, for the purposes de-  
14 scribed in section 1332(a)(4)(B) of the Pa-  
15 tient Protection and Affordable Care Act  
16 and subparagraph (C), out of any funds in  
17 the Treasury not otherwise appropriated—

18           (I) \$500,000,000 for fiscal year

19           2018; and

20           (II) \$10,000,000,000 for each of

21           fiscal years 2019, 2020, and 2021.

22           (ii) AVAILABLE UNTIL EXPENDED.—

23           Amounts appropriated under this para-  
24 graph shall remain available until ex-  
25 pended.

1 (C) DEFAULT FEDERAL SAFEGUARD.—

2 (i) IN GENERAL.—For purposes of  
3 plan year 2019, in the case of a State that  
4 does not, by a date specified by the Sec-  
5 retary of Health and Human Services (re-  
6 ferred to in this paragraph as the “Sec-  
7 retary”), in consultation with the National  
8 Association of Insurance Commissioners,  
9 have in effect a waiver under section 1332  
10 of the Patient Protection and Affordable  
11 Care Act (42 U.S.C. 18052) that includes  
12 an invisible high-risk pool or reinsurance  
13 program that meets the requirements of  
14 subsection (g)(2) of such section 1332, the  
15 Secretary shall, from amounts appro-  
16 priated under subparagraph (B), use the  
17 allocation determined for the State under  
18 subsection (a)(4)(B) of such section 1332  
19 for plan year 2019 for the purpose de-  
20 scribed in clause (ii) for such State.

21 (ii) REQUIRED USE FOR MARKET STA-  
22 BILIZATION PAYMENTS TO ISSUERS.—The  
23 Secretary shall use any allocation for a  
24 State made pursuant to clause (i) to pro-  
25 vide incentives to appropriate entities to

1 enter into arrangements with the State to  
2 help stabilize premiums for health insur-  
3 ance coverage in the individual market in  
4 such State by providing payments to such  
5 appropriate entities using payment param-  
6 eters and a methodology determined by the  
7 Secretary.

8 (3) ENSURING PATIENT ACCESS TO MORE  
9 FLEXIBLE HEALTH PLANS.—Section 1332 of the Pa-  
10 tient Protection and Affordable Care Act (42 U.S.C.  
11 18052) is amended—

12 (A) in subsection (b)—

13 (i) in paragraph (1)—

14 (I) in subparagraph (B), by  
15 striking “at least as affordable” and  
16 inserting “of comparable affordability,  
17 including for low-income individuals,  
18 individuals with serious health needs,  
19 and other vulnerable populations,”;  
20 and

21 (II) by amending subparagraph

22 (D) to read as follows:

23 “(D)(i) will not increase the Federal deficit  
24 over the term of the waiver; and

1           “(ii) will not increase the Federal deficit  
2 over the term of the 10-year budget plan sub-  
3 mitted under subsection (a)(1)(B)(ii).”;

4           (ii) by redesignating paragraph (2)  
5 (as amended by paragraph (1)) as para-  
6 graph (3); and

7           (iii) by inserting after paragraph (1)  
8 the following:

9           “(2) BUDGETARY EFFECT.—

10           “(A) IN GENERAL.—In determining wheth-  
11 er a State plan submitted under subsection (a)  
12 meets the deficit neutrality requirements of  
13 paragraph (1)(D), the Secretary may take into  
14 consideration the direct budgetary effect of the  
15 provisions of such plan on sources of Federal  
16 funding other than the funding described in  
17 subsection (a)(3).

18           “(B) LIMITATION.—A determination made  
19 by the Secretary under subparagraph (A)—

20           “(i) shall not be construed to affect  
21 any waiver process or standards or terms  
22 and conditions in effect on the date of en-  
23 actment of the Bipartisan Health Care  
24 Stabilization Act of 2018 under title XI,  
25 XVIII, XIX, or XXI of the Social Security

1 Act, or any other Federal law relating to  
2 the provision of health care items or serv-  
3 ices; and

4 “(ii) shall be made without regard to  
5 any changes in policy with respect to any  
6 waiver process or provision of health care  
7 items or services described in clause (i).”;  
8 and

9 (B) in subsection (a)(1)(C), by striking  
10 “subsection (b)(2)” and inserting “subsection  
11 (b)(3)”.

12 (4) PROVIDING EXPEDITED APPROVAL OF  
13 STATE WAIVERS.—Section 1332(d) of the Patient  
14 Protection and Affordable Care Act (42 U.S.C.  
15 18052(d)) is amended—

16 (A) in paragraph (1) by striking “180”  
17 and inserting “120”; and

18 (B) by adding at the end the following:

19 “(3) EXPEDITED DETERMINATION.—

20 “(A) IN GENERAL.—With respect to any  
21 application under subsection (a)(1) submitted  
22 on or after the date of enactment of the Bipar-  
23 tisan Health Care Stabilization Act of 2018 or  
24 any such application submitted prior to such  
25 date of enactment and under review by the Sec-

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

10                   “(i) is submitted in response to an ur-  
11                   gent situation, with respect to areas in the  
12                   State that the Secretary determines are at  
13                   risk for excessive premium increases or  
14                   having no health plans offered in the appli-  
15                   cable health insurance market for the cur-  
16                   rent or following plan year;

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

21                   “(iii) is for a waiver that includes an  
22                   invisible high-risk pool or reinsurance pro-  
23                   gram described in subparagraph (A), (B),  
24                   or (D) of subsection (g)(2).

25                   “(B) APPROVAL.—

1 “(i) URGENT SITUATIONS.—

2 “(I) PROVISIONAL APPROVAL.—A  
3 waiver approved under the expedited  
4 determination process under subpara-  
5 graph (A)(i) shall be in effect for a  
6 period of 3 years, unless the State re-  
7 quests a shorter duration.

8 “(II) FULL APPROVAL.—Subject  
9 to the requirements for approval oth-  
10 erwise applicable under this section,  
11 not later than 1 year before the expi-  
12 ration of a provisional waiver period  
13 described in subclause (I) with respect  
14 to an application described in sub-  
15 paragraph (A)(i), the Secretary shall  
16 make a determination on whether to  
17 extend the approval of such waiver for  
18 the full term of the waiver requested  
19 by the State, for a total approval pe-  
20 riod not to exceed 6 years. The Sec-  
21 retary may request additional infor-  
22 mation as the Secretary determines  
23 appropriate to make such determina-  
24 tion.

1                   “(ii) APPROVAL OF SAME OR SIMILAR  
2                   APPLICATIONS.—An approval of a waiver  
3                   under subparagraph (A)(ii) shall be subject  
4                   to the terms of subsection (e).

5                   “(C) GAO STUDY.—Not later than 5 years  
6                   after the date of enactment of the Bipartisan  
7                   Health Care Stabilization Act of 2018, the  
8                   Comptroller General of the United States shall  
9                   conduct a review of all waivers approved pursu-  
10                  ant to subparagraph (A)(ii) to evaluate whether  
11                  such waivers met the requirements of sub-  
12                  section (b)(1) and whether the applications  
13                  should have qualified for such expedited proc-  
14                  ess.”.

15                  (5) PROVIDING CERTAINTY FOR STATE-BASED  
16                  REFORMS.—Section 1332(e) of the Patient Protec-  
17                  tion and Affordable Care Act (42 U.S.C. 18052(e))  
18                  is amended by striking “No waiver” and all that fol-  
19                  lows through the period at the end and inserting the  
20                  following: “A waiver under this section—

21                         “(1) shall be in effect for a period of 6 years  
22                         unless the State requests a shorter duration;

23                         “(2) may be renewed, subject to the State meet-  
24                         ing the criteria for approval otherwise applicable

1 under this section, for unlimited additional 6-year  
2 periods upon application by the State; and

3 “(3) may not be suspended or terminated, in  
4 whole or in part, by the Secretary at any time before  
5 the date of expiration of the waiver period (including  
6 any renewal period under paragraph (2)), unless the  
7 Secretary determines that the State materially failed  
8 to comply with the terms and conditions of the waiv-  
9 er.”.

10 (6) GUIDANCE AND REGULATIONS.—Section  
11 1332 of the Patient Protection and Affordable Care  
12 Act (42 U.S.C. 18052) is amended—

13 (A) by adding at the end the following:

14 “(f) GUIDANCE AND REGULATIONS.—

15 “(1) IN GENERAL.—With respect to carrying  
16 out this section, the Secretary shall—

17 “(A) issue guidance, not later than 60  
18 days after the date of enactment of the Bipar-  
19 tisan Health Care Stabilization Act of 2018,  
20 that includes initial examples of model State  
21 plans that meet the requirements for approval  
22 under this section; and

23 “(B) periodically review the guidance  
24 issued under subparagraph (A) and when ap-  
25 propriate, issue additional examples of model

1 State plans that meet the requirements for ap-  
2 proval under this section, which may include—

3 “(i) State plans establishing reinsur-  
4 ance or invisible high-risk pool arrange-  
5 ments for purposes of covering the cost of  
6 high-risk individuals;

7 “(ii) State plans expanding insurer  
8 participation, access to affordable health  
9 plans, network adequacy, and health plan  
10 options over the entire applicable health in-  
11 surance market in the State;

12 “(iii) waivers encouraging or requiring  
13 health plans in such State to deploy value-  
14 based insurance designs which structure  
15 enrollee cost-sharing and other health plan  
16 design elements to encourage enrollees to  
17 consume high-value clinical services;

18 “(iv) State plans allowing for signifi-  
19 cant variation in health plan benefit de-  
20 sign; or

21 “(v) any other State plan as the Sec-  
22 retary determines appropriate.

23 “(2) RESCISSION OF PREVIOUS REGULATIONS  
24 AND GUIDANCE.—Beginning on the date of enact-  
25 ment of the Bipartisan Health Care Stabilization

1 Act of 2018, the regulations promulgated, and the  
2 guidance issued, under this section prior to the date  
3 of enactment of the Bipartisan Health Care Sta-  
4 bilization Act of 2018 shall have no force or effect.”;  
5 and

6 (B) in subsection (a)(5) (as redesignated  
7 by paragraph (2)(A)(ii))—

8 (i) in subparagraph (A), by inserting  
9 “, as applicable” before the period; and

10 (ii) in subparagraph (B), by striking  
11 “Not later than 180 days after the date of  
12 enactment of this Act, the Secretary shall”  
13 and inserting “The Secretary may”.

14 (7) INVISIBLE HIGH RISK POOLS AND REINSUR-  
15 ANCE PROGRAMS.—Section 1332 of the Patient Pro-  
16 tection and Affordable Care Act (42 U.S.C. 18052),  
17 as amended by paragraph (6), is further amended by  
18 adding at the end the following:

19 “(g) INVISIBLE HIGH RISK POOLS AND REINSUR-  
20 ANCE PROGRAMS.—

21 “(1) FUNDING.—With respect to a State that  
22 has received a waiver under this section to establish  
23 an invisible high-risk pool or reinsurance program  
24 described in paragraph (2), the State may fund such

1 program, in whole or in part, using one or both of  
2 the following:

3 “(A) Amounts received through a grant de-  
4 scribed in subsection (a)(4)(C).

5 “(B) All of, or a portion of, the payments  
6 made to the State as described in subsection  
7 (a)(3), consistent with the information the  
8 State provides under subsection (a)(1)(B).

9 “(2) PROGRAM DESIGN.—An invisible high-risk  
10 pool or reinsurance program described in this para-  
11 graph is a program that meets any of the following:

12 “(A) An invisible high-risk pool, as defined  
13 by the State, under which health insurance  
14 issuers, with respect to designated individuals  
15 who experience higher than average health costs  
16 as determined by the State, and are enrolled in  
17 health insurance coverage offered in the indi-  
18 vidual market, cede risk to the pool, without af-  
19 fecting the premium paid by the designated in-  
20 dividuals or their terms of coverage. With re-  
21 spect to such pool, the State, or an entity oper-  
22 ating the pool on behalf of the State, shall es-  
23 tablish—

24 “(i) the premium amount the ceding  
25 issuer shall pay to the reinsurance pool;

1           “(ii) the applicable attachment points  
2           or coinsurance percentages if the ceding  
3           issuer retains any portion of the risk under  
4           ceded policies; and

5           “(iii) the mechanism by which high-  
6           risk individuals are designated for cession  
7           to the pool, which may include a list of  
8           designated high-cost health conditions.

9           “(B) A reinsurance program, as defined by  
10          the State, that assumes a portion of the risk for  
11          individuals who experience higher than average  
12          health costs as determined by the State, in a  
13          manner substantially similar to the reinsurance  
14          program that operated in the State in accord-  
15          ance with section 1341.

16          “(C) A reinsurance program established by  
17          the State not otherwise described in this para-  
18          graph.

19          “(D) A program based on another State’s  
20          reinsurance program—

21                 “(i) described in subparagraph (A),  
22                 (B), or (C), for which an application has  
23                 been approved under this subsection; or

24                 “(ii) which was implemented prior to  
25                 September 1, 2017, and which the Sec-

1           retary determines meets the requirements  
2           of subparagraph (A).”.

3           (8) APPLICABILITY.—The amendments made  
4           by this Act to section 1332 of the Patient Protection  
5           and Affordable Care Act (42 U.S.C. 18052)—

6                   (A) with respect to applications for waivers  
7                   under such section 1332 submitted after the  
8                   date of enactment of this Act and applications  
9                   for such waivers submitted prior to such date of  
10                  enactment and under review by the Secretary  
11                  on the date of enactment, shall take effect on  
12                  the date of enactment of this Act; and

13                  (B) with respect to applications for waivers  
14                  approved under such section 1332 before the  
15                  date of enactment of this Act, shall not require  
16                  reconsideration of whether such applications  
17                  meet the requirements of such section 1332, ex-  
18                  cept that, at the request of a State, the Sec-  
19                  retary shall recalculate the amount of funding  
20                  provided under subsection (a)(3) of such sec-  
21                  tion.

22           (9) CLARIFYING BUDGET NEUTRALITY.—Sec-  
23           tion 1332(a)(1)(B) of the Patient Protection and Af-  
24           fordable Care Act (42 U.S.C. 18052(a)(1)(B)) is  
25           amended—

1 (A) in clause (i), by inserting “, including,  
2 as applicable, a description of the State’s plan  
3 to use any amounts awarded to the State under  
4 paragraph (4) to support an invisible high-risk  
5 pool or reinsurance program consistent with  
6 subsection (g) and such information about such  
7 program as the Secretary may require” before  
8 the semicolon; and

9 (B) in clause (ii), by inserting “over both  
10 the term of the proposed waiver and the term  
11 of the 10-year budget plan” after “Govern-  
12 ment”.

13 (b) COST-SHARING PAYMENTS.—

14 (1) IN GENERAL.—There is appropriated to the  
15 Secretary of Health and Human Services (referred  
16 to in this section as the “Secretary”), out of any  
17 funds in the Treasury not otherwise obligated, such  
18 sums as may be necessary for payments for cost-  
19 sharing reductions, as authorized by section 1402 of  
20 the Patient Protection and Affordable Care Act (42  
21 U.S.C. 18071) for the portion of plan year 2017  
22 that begins on October 1, 2017, and ends on Decem-  
23 ber 31, 2017, and for plan years 2019, 2020, and  
24 2021.

1           (2) SPECIAL RULES FOR COST-SHARING REDUC-  
2           TIONS.—

3                   (A) BASIC HEALTH PLAN.—For plan year  
4                   2018, there is appropriated to the Secretary,  
5                   out of any funds in the Treasury not otherwise  
6                   obligated, such sums as may be necessary for,  
7                   with respect to States that have in effect a  
8                   basic health plan on January 1, 2018, the por-  
9                   tion of transfers pursuant to section 1331(d) of  
10                   the Patient Protection and Affordable Care Act  
11                   (42 U.S.C. 18051(d)) attributable to the cost-  
12                   sharing reductions under section 1402 of the  
13                   Patient Protection and Affordable Care Act (42  
14                   U.S.C. 18071) that would have been provided  
15                   for plan year 2018 with respect to eligible indi-  
16                   viduals enrolled in standard health plans in  
17                   such States.

18                   (B) HOLD HARMLESS.—

19                           (i) IN GENERAL.—For plan year  
20                           2018, there is appropriated to the Sec-  
21                           retary, out of any funds in the Treasury  
22                           not otherwise obligated, such sums as may  
23                           be necessary for payments for cost-sharing  
24                           reductions authorized by section 1402 of  
25                           the Patient Protection and Affordable Care

1 Act (42 U.S.C. 18071) with respect to  
2 qualified health plans described in clause  
3 (ii).

4 (ii) QUALIFIED HEALTH PLANS DE-  
5 SCRIBED.—A qualified health plan de-  
6 scribed in this clause is a qualified health  
7 plan for which the Secretary determines,  
8 based on a certification and appropriate  
9 documentation from the issuer of such  
10 plan and a certification from the applicable  
11 State regulator, that the health insurance  
12 issuer of such plan has not increased pre-  
13 mium rates for plan year 2018 on account  
14 of the issuer assuming, or being instructed  
15 by applicable State regulators to assume,  
16 that the issuer would receive payments  
17 under such section 1402.

18 (C) CLARIFICATION OF OBLIGATIONS.—

19 (i) NO REQUIREMENTS TO MAKE PAY-  
20 MENTS.—Notwithstanding any other provi-  
21 sion of law, there shall be no obligation  
22 under this Act or any other Act, including  
23 the Patient Protection and Affordable Care  
24 Act (Public Law 111-148), to make pay-  
25 ments for cost-sharing reductions under

1 section 1402(c)(3) of the Patient Protec-  
2 tion and Affordable Care Act (42 U.S.C.  
3 18071(c)(3)) or advance payments for such  
4 cost-sharing reductions under section 1412  
5 of the Patient Protection and Affordable  
6 Care Act (42 U.S.C. 18082) for plan year  
7 2018, except for such payments for which  
8 amounts are appropriated under subpara-  
9 graphs (A) and (B). Nothing in this clause  
10 shall be construed as affecting the require-  
11 ments under section 1402 of the Patient  
12 Protection and Affordable Care Act for  
13 issuers to reduce cost-sharing.

14 (ii) NO OBLIGATION TO RECONCILE  
15 PAYMENTS.—Notwithstanding any other  
16 provision of law, there shall be no obliga-  
17 tion under this Act or any other Act, in-  
18 cluding the Patient Protection and Afford-  
19 able Care Act (Public Law 111-148), to  
20 make payments on or after October 1,  
21 2017, for the purpose of reconciling any  
22 cost-sharing reduction payments by the  
23 Secretary under section 1402(a)(2) of the  
24 Patient Protection and Affordable Care  
25 Act (42 U.S.C. 18071(a)(2)) made for

1 plan year 2016 or the plan year beginning  
2 January 1, 2017, through September 30,  
3 2017.

4 (D) TREATMENT OF PREVIOUS PAY-  
5 MENTS.—Notwithstanding any other provision  
6 of law, payments made for cost-sharing reduc-  
7 tions under section 1402 of the Patient Protec-  
8 tion and Affordable Care Act (42 U.S.C.  
9 18071) during the period beginning on January  
10 1, 2014, and ending on September 30, 2017,  
11 shall be treated in the same manner as a refund  
12 due from the credit allowed under section 36B  
13 of the Internal Revenue Code of 1986 for the  
14 purposes of section 1324 of title 31, United  
15 States Code.

16 (c) HEALTH BENEFITS COVERAGE.—Notwith-  
17 standing any other provision of law, including any other  
18 definition of “health benefits coverage” for purposes of  
19 subsection (b) and (c) of section 506 of this Act, any use  
20 made of funds appropriated under subsection (b) starting  
21 in plan year 2019, and subsection (a)(2)(B) starting in  
22 plan year 2018, and any program, activity, plan, or cov-  
23 erage funded or supported by such funds, shall constitute  
24 “health benefits coverage”.

25 (d) LIMITATIONS.—The following shall apply:

1           (1) Nothing in this section shall be construed to  
2           limit the applicability of subsection (a), (b), or (d)  
3           of section 507.

4           (2) For purposes of this section, a health insur-  
5           ance issuer expending State, local, or private funds,  
6           shall be treated in the same manner as a managed  
7           care provider described in section 507(c).

8 **SEC. 603. ALLOWING ALL INDIVIDUALS PURCHASING**  
9           **HEALTH INSURANCE IN THE INDIVIDUAL**  
10           **MARKET THE OPTION TO PURCHASE A**  
11           **LOWER PREMIUM COPPER PLAN.**

12           (a) IN GENERAL.—Section 1302(e) of the Patient  
13           Protection and Affordable Care Act (42 U.S.C. 18022(e))  
14           is amended—

15           (1) in paragraph (1)—

16           (A) by redesignating clauses (i) and (ii) of  
17           subparagraph (B) as subparagraphs (A) and  
18           (B), respectively, and adjusting the margins ac-  
19           cordingly;

20           (B) by striking “plan year if—” and all  
21           that follows through “the plan provides—” and  
22           inserting “plan year if the plan provides—”;  
23           and

1 (C) in subparagraph (A), as redesignated  
2 by paragraph (1), by striking “clause (ii)” and  
3 inserting “subparagraph (B)”;  
4 (2) by striking paragraph (2); and  
5 (3) by redesignating paragraph (3) as para-  
6 graph (2).

7 (b) RISK POOLS.—Section 1312(c)(1) of the Patient  
8 Protection and Affordable Care Act (42 U.S.C. 18032(e))  
9 is amended by inserting “and including enrollees in cata-  
10 strophic plans described in section 1302(e)” after “Ex-  
11 change”.

12 (c) CONFORMING AMENDMENT.—Section  
13 1312(d)(3)(C) of the Patient Protection and Affordable  
14 Care Act (42 U.S.C. 18032(d)(3)(C)) is amended by strik-  
15 ing “, except that in the case of a catastrophic plan de-  
16 scribed in section 1302(e), a qualified individual may en-  
17 roll in the plan only if the individual is eligible to enroll  
18 in the plan under section 1302(e)(2)”.

19 (d) EFFECTIVE DATE.—The amendments made by  
20 subsections (a), (b), and (c) shall apply with respect to  
21 plan years beginning on or after January 1, 2019.

22 **SEC. 604. CONSUMER OUTREACH, EDUCATION, AND ASSIST-**  
23 **ANCE.**

24 (a) OPEN ENROLLMENT REPORTS.—For plan years  
25 2019 and 2020, the Secretary of Health and Human Serv-

1 ices (referred to in this section as the “Secretary”), in co-  
2 ordination with the Secretary of the Treasury and the Sec-  
3 retary of Labor, shall issue biweekly public reports during  
4 the annual open enrollment period on the performance of  
5 the Federal Exchange and the Small Business Health Op-  
6 tions Program (SHOP) Marketplace. Each such report  
7 shall include a summary, including information on a  
8 State-by-State basis where available, of—

9 (1) the number of unique website visits;

10 (2) the number of individuals who create an ac-  
11 count;

12 (3) the number of calls to the call center;

13 (4) the average wait time for callers contacting  
14 the call center;

15 (5) the number of individuals who enroll in a  
16 qualified health plan; and

17 (6) the percentage of individuals who enroll in  
18 a qualified health plan through each of—

19 (A) the website;

20 (B) the call center;

21 (C) navigators;

22 (D) agents and brokers;

23 (E) the enrollment assistant program;

24 (F) directly from issuers or web brokers;

25 and

1 (G) other means.

2 (b) OPEN ENROLLMENT AFTER ACTION REPORT.—

3 For plan years 2019 and 2020, the Secretary, in coordina-  
4 tion with the Secretary of the Treasury and the Secretary  
5 of Labor, shall publish an after action report not later  
6 than 3 months after the completion of the annual open  
7 enrollment period regarding the performance of the Fed-  
8 eral Exchange and the Small Business Health Options  
9 Program (SHOP) Marketplace for the applicable plan  
10 year. Each such report shall include a summary, including  
11 information on a State-by-State basis where available,  
12 of—

13 (1) the open enrollment data reported under  
14 subsection (a) for the entirety of the enrollment pe-  
15 riod; and

16 (2) activities related to patient navigators de-  
17 scribed in section 1311(i) of the Patient Protection  
18 and Affordable Care Act (42 U.S.C. 18031(i)), in-  
19 cluding—

20 (A) the performance objectives established  
21 by the Secretary for such patient navigators;

22 (B) the number of consumers enrolled by  
23 such a patient navigator;

24 (C) an assessment of how such patient  
25 navigators have met established performance

1 metrics, including a detailed list of all patient  
2 navigators, funding received by patient naviga-  
3 tors, and whether established performance ob-  
4 jectives of patient navigators were met; and

5 (D) with respect to the performance objec-  
6 tives described in subparagraph (A)—

7 (i) whether such objectives assess the  
8 full scope of patient navigator responsibil-  
9 ities, including general education, plan se-  
10 lection, and determination of eligibility for  
11 tax credits, cost-sharing reductions, or  
12 other coverage;

13 (ii) how the Secretary worked with pa-  
14 tient navigators to establish such objec-  
15 tives; and

16 (iii) how the Secretary adjusted such  
17 objectives for case complexity and other  
18 contextual factors.

19 (c) REPORT ON ADVERTISING AND CONSUMER OUT-  
20 REACH.—Not later than 3 months after the completion of  
21 the annual open enrollment period for the 2019 plan year,  
22 the Secretary shall issue a report on advertising and out-  
23 reach to consumers for the open enrollment period for the  
24 2019 plan year. Such report shall include a description  
25 of—

1           (1) the division of spending on individual adver-  
2           tising platforms, including television and radio ad-  
3           vertisements and digital media, to raise consumer  
4           awareness of open enrollment;

5           (2) the division of spending on individual out-  
6           reach platforms, including email and text messages,  
7           to raise consumer awareness of open enrollment; and

8           (3) whether the Secretary conducted targeted  
9           outreach to specific demographic groups and geo-  
10          graphic areas.

11         (d) OUTREACH AND ENROLLMENT ACTIVITIES.—

12           (1) OPEN ENROLLMENT.—Of the amounts col-  
13           lected through the user fees on participating health  
14           insurance issuers pursuant to section 156.50 of title  
15           45, Code of Federal Regulations (or any successor  
16           regulations), the Secretary shall obligate  
17           \$105,800,000 for outreach and enrollment activities  
18           for each of the open enrollment periods for plan  
19           years 2019 and 2020.

20           (2) OUTREACH AND ENROLLMENT ACTIVI-  
21           TIES.—

22           (A) IN GENERAL.—For purposes of this  
23           subsection, the term “outreach and enrollment  
24           activities” means—

1 (i) activities to educate consumers  
2 about coverage options or to encourage  
3 consumers to enroll in or maintain health  
4 insurance coverage (excluding allocations  
5 to the call center for the Federal Ex-  
6 change); and

7 (ii) activities conducted by an in-per-  
8 son consumer assistance program that does  
9 not have a conflict of interest and that,  
10 among other activities, facilitates enroll-  
11 ment of individuals through the Federal  
12 Exchange, and distributes fair and impar-  
13 tial information concerning enrollment  
14 through such Exchange and the availability  
15 of tax credits and cost-sharing reductions.

16 (B) CONNECTION WITH FEDERAL EX-  
17 CHANGE.—Activities conducted under this sub-  
18 section shall be in connection with the operation  
19 of the Federal Exchange, to provide special  
20 benefits to health insurance issuers partici-  
21 pating in the Federal Exchange.

22 (3) CONTRACT AUTHORITY.—The Secretary  
23 may contract with a State to conduct outreach and  
24 enrollment activities for plan years 2019 and 2020.  
25 Any outreach and enrollment activities conducted by

1 a State or other entity at the direction of the State,  
2 in accordance with such a contract, shall be treated  
3 as Federal activities to provide special benefits to  
4 participating health insurance issuers consistent  
5 with OMB Circular No. A-25R.

6 (4) CLARIFICATIONS.—

7 (A) PRIOR FUNDING.—Nothing in this  
8 subsection should be construed as rescinding or  
9 cancelling any funds already obligated on the  
10 date of enactment of this Act for outreach and  
11 enrollment activities for plan year 2019.

12 (B) AVAILABILITY OF FUNDING.—The  
13 Secretary shall ensure that outreach and enroll-  
14 ment activities are conducted in all applicable  
15 States, including, as necessary, by providing for  
16 such activities through contracts described in  
17 paragraph (3).

18 **SEC. 605. OFFERING HEALTH PLANS IN MORE THAN ONE**  
19 **STATE.**

20 Not later than 1 year after the date of enactment  
21 of this Act, the Secretary of Health and Human Services,  
22 in consultation with the National Association of Insurance  
23 Commissioners, shall issue regulations for the implemen-  
24 tation of health care choice compacts established under  
25 section 1333 of the Patient Protection and Affordable

1 Care Act (42 U.S.C. 18053) to allow for the offering of  
2 health plans in more than one State.

3 **SEC. 606. CONSUMER NOTIFICATION.**

4 In addition to any applicable Federal requirements  
5 with respect to short-term limited duration insurance—

6 (1) a State insurance commissioner shall re-  
7 quire the issuer of short-term, limited duration in-  
8 surance approved for sale in the State to display  
9 prominently in marketing materials, the contract,  
10 and application materials provided in connection  
11 with enrollment in such insurance a notice to con-  
12 sumers that includes such information as the State  
13 insurance commissioner determines sufficient to in-  
14 form the individual that coverage and benefits under  
15 such insurance differ from coverage and benefits  
16 under qualified health plans; and

17 (2) a State may establish, implement, or con-  
18 tinue in effect any standard or requirement related  
19 to short-term limited duration insurance, provided  
20 that such standard or requirement does not prevent  
21 the application of any such Federal requirement.