

112TH CONGRESS
1ST SESSION

H. R. 191

To amend the Patient Protection and Affordable Care Act to establish a public health insurance option.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Ms. WOOLSEY (for herself, Mr. GEORGE MILLER of California, Ms. SCHAKOWSKY, Mr. CONYERS, Mr. STARK, Mr. OLVER, Ms. LEE of California, Ms. MOORE, Mr. FRANK of Massachusetts, Mr. ENGEL, Mr. JOHNSON of Georgia, Ms. EDWARDS, Mr. HINCHEY, Ms. ZOE LOFGREN of California, Mr. HONDA, Mr. ACKERMAN, Mr. MURPHY of Connecticut, Mr. WEINER, Mr. ELLISON, Mr. CAPUANO, Ms. MATSUI, Mr. GARAMENDI, Mr. ROTHMAN of New Jersey, Ms. DELAURO, Mr. SARBANES, Ms. HIRONO, Mr. FATTAH, Mr. SCOTT of Virginia, Ms. RICHARDSON, Mr. NADLER, Mr. FARR, Ms. PINGREE of Maine, Mr. FILNER, Mr. HASTINGS of Florida, Ms. JACKSON LEE of Texas, Mr. RYAN of Ohio, Ms. BALDWIN, Mr. TONKO, Ms. SLAUGHTER, Mr. GUTIERREZ, Mr. HOLT, Mr. GRIJALVA, Ms. TSONGAS, Mr. LUJAN, Mr. HIGGINS, Mr. THOMPSON of California, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Patient Protection and Affordable Care Act to establish a public health insurance option.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Option Deficit
3 Reduction Act”.

4 **SEC. 2. PUBLIC HEALTH INSURANCE OPTION.**

5 (a) IN GENERAL.—Part III of subtitle D of title I
6 of the Patient Protection and Affordable Care Act (Public
7 Law 111–148) is amended by adding at the end the fol-
8 lowing new section:

9 **“SEC. 1325. PUBLIC HEALTH INSURANCE OPTION.**

10 “(a) ESTABLISHMENT AND ADMINISTRATION OF A
11 PUBLIC HEALTH INSURANCE OPTION.—

12 “(1) ESTABLISHMENT.—For years beginning
13 with 2014, the Secretary of Health and Human
14 Services (in this subtitle referred to as the ‘Sec-
15 retary’) shall provide for the offering through Ex-
16 changes established under this title of a health bene-
17 fits plan (in this Act referred to as the ‘public health
18 insurance option’) that ensures choice, competition,
19 and stability of affordable, high-quality coverage
20 throughout the United States in accordance with
21 this section. In designing the option, the Secretary’s
22 primary responsibility is to create a low-cost plan
23 without compromising quality or access to care.

24 “(2) OFFERING THROUGH EXCHANGES.—

25 “(A) EXCLUSIVE TO EXCHANGES.—The
26 public health insurance option shall only be

1 made available through Exchanges established
2 under this title.

3 “(B) ENSURING A LEVEL PLAYING
4 FIELD.—Consistent with this section, the public
5 health insurance option shall comply with re-
6 quirements that are applicable under this title
7 to health benefits plans offered through such
8 Exchanges, including requirements related to
9 benefits, benefit levels, provider networks, no-
10 tices, consumer protections, and cost sharing.

11 “(C) PROVISION OF BENEFIT LEVELS.—
12 The public health insurance option—

13 “(i) shall offer bronze, silver, and gold
14 plans; and

15 “(ii) may offer platinum plans.

16 “(3) ADMINISTRATIVE CONTRACTING.—The
17 Secretary may enter into contracts for the purpose
18 of performing administrative functions (including
19 functions described in subsection (a)(4) of section
20 1874A of the Social Security Act) with respect to
21 the public health insurance option in the same man-
22 ner as the Secretary may enter into contracts under
23 subsection (a)(1) of such section. The Secretary has
24 the same authority with respect to the public health
25 insurance option as the Secretary has under sub-

1 sections (a)(1) and (b) of section 1874A of the So-
2 cial Security Act with respect to title XVIII of such
3 Act. Contracts under this subsection shall not in-
4 volve the transfer of insurance risk to such entity.

5 “(4) OMBUDSMAN.—The Secretary shall estab-
6 lish an office of the ombudsman for the public
7 health insurance option which shall have duties with
8 respect to the public health insurance option similar
9 to the duties of the Medicare Beneficiary Ombuds-
10 man under section 1808(c)(2) of the Social Security
11 Act. In addition, such office shall work with States
12 to ensure that information and notice is provided
13 that the public health insurance option is one of the
14 health plans available through an Exchange.

15 “(5) DATA COLLECTION.—The Secretary shall
16 collect such data as may be required to establish
17 premiums and payment rates for the public health
18 insurance option and for other purposes under this
19 section, including to improve quality and to reduce
20 racial, ethnic, and other disparities in health and
21 health care.

22 “(6) ACCESS TO FEDERAL COURTS.—The provi-
23 sions of Medicare (and related provisions of title II
24 of the Social Security Act) relating to access of
25 Medicare beneficiaries to Federal courts for the en-

1 enforcement of rights under Medicare, including with
2 respect to amounts in controversy, shall apply to the
3 public health insurance option and individuals en-
4 rolled under such option under this title in the same
5 manner as such provisions apply to Medicare and
6 Medicare beneficiaries.

7 “(b) PREMIUMS AND FINANCING.—

8 “(1) ESTABLISHMENT OF PREMIUMS.—

9 “(A) IN GENERAL.—The Secretary shall
10 establish geographically adjusted premium rates
11 for the public health insurance option—

12 “(i) in a manner that complies with
13 the premium rules under paragraph (3);
14 and

15 “(ii) at a level sufficient to fully fi-
16 nance the costs of—

17 “(I) health benefits provided by
18 the public health insurance option;
19 and

20 “(II) administrative costs related
21 to operating the public health insur-
22 ance option.

23 “(B) CONTINGENCY MARGIN.—In estab-
24 lishing premium rates under subparagraph (A),

1 the Secretary shall include an appropriate
2 amount for a contingency margin.

3 “(2) ACCOUNT.—

4 “(A) ESTABLISHMENT.—There is estab-
5 lished in the Treasury of the United States an
6 account for the receipts and disbursements at-
7 tributable to the operation of the public health
8 insurance option, including the start-up funding
9 under subparagraph (B). Section 1854(g) of
10 the Social Security Act shall apply to receipts
11 described in the previous sentence in the same
12 manner as such section applies to payments or
13 premiums described in such section.

14 “(B) START-UP FUNDING.—

15 “(i) IN GENERAL.—In order to pro-
16 vide for the establishment of the public
17 health insurance option there is hereby ap-
18 propriated to the Secretary, out of any
19 funds in the Treasury not otherwise appro-
20 priated, \$2,000,000,000. In order to pro-
21 vide for initial claims reserves before the
22 collection of premiums, there is hereby ap-
23 propriated to the Secretary, out of any
24 funds in the Treasury not otherwise appro-
25 priated, such sums as necessary to cover

1 90 days worth of claims reserves based on
2 projected enrollment.

3 “(ii) AMORTIZATION OF START-UP
4 FUNDING.—The Secretary shall provide for
5 the repayment of the startup funding pro-
6 vided under clause (i) to the Treasury in
7 an amortized manner over the 10-year pe-
8 riod beginning with 2014.

9 “(iii) LIMITATION ON FUNDING.—
10 Nothing in this subsection shall be con-
11 strued as authorizing any additional appro-
12 priations to the account, other than such
13 amounts as are otherwise provided with re-
14 spect to other health benefits plans partici-
15 pating under the Exchange involved.

16 “(3) INSURANCE RATING RULES.—The pre-
17 mium rate charged for the public health insurance
18 option may not vary except as provided under sec-
19 tion 2701 of the Public Health Service Act.

20 “(c) PAYMENT RATES FOR ITEMS AND SERVICES.—

21 “(1) RATES ESTABLISHED BY SECRETARY.—

22 “(A) IN GENERAL.—The Secretary shall
23 establish payment rates for the public health in-
24 surance option for services and health care pro-
25 viders consistent with this subsection and may

1 change such payment rates in accordance with
2 subsection (d).

3 “(B) INITIAL PAYMENT RULES.—

4 “(i) IN GENERAL.—During 2014,
5 2015, and 2016, the Secretary shall set
6 the payment rates under this subsection
7 for services and providers described in sub-
8 paragraph (A) equal to the payment rates
9 for equivalent services and providers under
10 parts A and B of Medicare, subject to
11 clause (ii), paragraphs (2)(A) and (4), and
12 subsection (d).

13 “(ii) EXCEPTIONS.—

14 “(I) PRACTITIONERS’ SERV-
15 ICES.—Payment rates for practi-
16 tioners’ services otherwise established
17 under the fee schedule under section
18 1848 of the Social Security Act shall
19 be applied without regard to the pro-
20 visions under subsection (f) of such
21 section and the update under sub-
22 section (d)(4) under such section for a
23 year as applied under this paragraph
24 shall be not less than 1 percent.

1 “(II) ADJUSTMENTS.—The Sec-
2 retary may determine the extent to
3 which Medicare adjustments applica-
4 ble to base payment rates under parts
5 A and B of Medicare for graduate
6 medical education and dispropor-
7 tionate share hospitals shall apply
8 under this section.

9 “(C) FOR NEW SERVICES.—The Secretary
10 shall modify payment rates described in sub-
11 paragraph (B) in order to accommodate pay-
12 ments for services, such as well-child visits, that
13 are not otherwise covered under Medicare.

14 “(D) PRESCRIPTION DRUGS.—Payment
15 rates under this subsection for prescription
16 drugs that are not paid for under part A or
17 part B of Medicare shall be at rates negotiated
18 by the Secretary.

19 “(2) INCENTIVES FOR PARTICIPATING PRO-
20 VIDERS.—

21 “(A) INITIAL INCENTIVE PERIOD.—

22 “(i) IN GENERAL.—The Secretary
23 shall provide, in the case of services de-
24 scribed in clause (ii) furnished during
25 2014, 2015, and 2016, for payment rates

1 that are 5 percent greater than the rates
2 established under paragraph (1).

3 “(ii) SERVICES DESCRIBED.—The
4 services described in this clause are items
5 and professional services, under the public
6 health insurance option by a physician or
7 other health care practitioner who partici-
8 pates in both Medicare and the public
9 health insurance option.

10 “(iii) SPECIAL RULES.—A pediatrician
11 and any other health care practitioner who
12 is a type of practitioner that does not typi-
13 cally participate in Medicare (as deter-
14 mined by the Secretary) shall also be eligi-
15 ble for the increased payment rates under
16 clause (i).

17 “(B) SUBSEQUENT PERIODS.—Beginning
18 with 2017 and for subsequent years, the Sec-
19 retary shall continue to use an administrative
20 process to set such rates in order to promote
21 payment accuracy, to ensure adequate bene-
22 ficiary access to providers, and to promote af-
23 fordability and the efficient delivery of medical
24 care consistent with subsection (a)(1). Such
25 rates shall not be set at levels expected to in-

1 crease average medical costs per enrollee cov-
2 ered under the public health insurance option
3 beyond what would be expected if the process
4 under paragraph (1)(B) and subparagraph (A)
5 were continued, as certified by the Office of the
6 Actuary of the Centers for Medicare & Medicaid
7 Services.

8 “(C) ESTABLISHMENT OF A PROVIDER
9 NETWORK.—Health care providers participating
10 under Medicare are participating providers in
11 the public health insurance option unless they
12 opt out in a process established by the Sec-
13 retary.

14 “(3) ADMINISTRATIVE PROCESS FOR SETTING
15 RATES.—Chapter 5 of title 5, United States Code
16 shall apply to the process for the initial establish-
17 ment of payment rates under this subsection but not
18 to the specific methodology for establishing such
19 rates or the calculation of such rates.

20 “(4) CONSTRUCTION.—Nothing in this section
21 shall be construed as limiting the Secretary’s author-
22 ity to correct for payments that are excessive or defi-
23 cient, taking into account the provisions of sub-
24 section (a)(1) and any appropriate adjustments
25 based on the demographic characteristics of enrollees

1 covered under the public health insurance option,
2 but in no case shall the correction of payments
3 under this paragraph result in a level of expendi-
4 tures per enrollee that exceeds the level of expendi-
5 tures that would have occurred under paragraphs
6 (1)(B) and (2)(A), as certified by the Office of the
7 Actuary of the Centers for Medicare & Medicaid
8 Services.

9 “(5) CONSTRUCTION.—Nothing in this section
10 shall be construed as affecting the authority of the
11 Secretary to establish payment rates, including pay-
12 ments to provide for the more efficient delivery of
13 services, such as the initiatives provided for under
14 subsection (d).

15 “(6) LIMITATIONS ON REVIEW.—There shall be
16 no administrative or judicial review of a payment
17 rate or methodology established under this sub-
18 section or under subsection (d).

19 “(d) MODERNIZED PAYMENT INITIATIVES AND DE-
20 LIVERY SYSTEM REFORM.—

21 “(1) IN GENERAL.—For plan years beginning
22 with 2014, the Secretary may utilize innovative pay-
23 ment mechanisms and policies to determine pay-
24 ments for items and services under the public health
25 insurance option. The payment mechanisms and

1 policies under this subsection may include patient-
2 centered medical home and other care management
3 payments, accountable care organizations, value-
4 based purchasing, bundling of services, differential
5 payment rates, performance or utilization based pay-
6 ments, partial capitation, and direct contracting with
7 providers. Payment rates under such payment mech-
8 anisms and policies shall not be set at levels ex-
9 pected to increase average medical costs per enrollee
10 covered under the public health insurance option be-
11 yond what would be expected if the process under
12 paragraphs (1)(B) and (2)(A) of subsection (c) were
13 continued, as certified by the Office of the Actuary
14 of the Centers for Medicare & Medicaid Services.

15 “(2) REQUIREMENTS FOR INNOVATIVE PAY-
16 MENTS.—The Secretary shall design and implement
17 the payment mechanisms and policies under this
18 subsection in a manner that—

19 “(A) seeks to—

20 “(i) improve health outcomes;

21 “(ii) reduce health disparities (includ-
22 ing racial, ethnic, and other disparities);

23 “(iii) provide efficient and affordable
24 care;

1 “(iv) address geographic variation in
2 the provision of health services; or

3 “(v) prevent or manage chronic ill-
4 ness; and

5 “(B) promotes care that is integrated, pa-
6 tient-centered, high-quality, and efficient.

7 “(3) ENCOURAGING THE USE OF HIGH VALUE
8 SERVICES.—To the extent allowed by the benefit
9 standards applied to all health benefits plans partici-
10 pating under the Exchange involved, the public
11 health insurance option may modify cost sharing and
12 payment rates to encourage the use of services that
13 promote health and value.

14 “(4) NON-UNIFORMITY PERMITTED.—Nothing
15 in this subtitle shall prevent the Secretary from
16 varying payments based on different payment struc-
17 ture models (such as accountable care organizations
18 and medical homes) under the public health insur-
19 ance option for different geographic areas.

20 “(e) PROVIDER PARTICIPATION.—

21 “(1) IN GENERAL.—The Secretary shall estab-
22 lish conditions of participation for health care pro-
23 viders under the public health insurance option.

24 “(2) LICENSURE OR CERTIFICATION.—The Sec-
25 retary shall not allow a health care provider to par-

1 participate in the public health insurance option unless
2 such provider is appropriately licensed or certified
3 under State law.

4 “(3) PAYMENT TERMS FOR PROVIDERS.—

5 “(A) PHYSICIANS.—The Secretary shall
6 provide for the annual participation of physi-
7 cians under the public health insurance option,
8 for which payment may be made for services
9 furnished during the year, in one of 2 classes:

10 “(i) PREFERRED PHYSICIANS.—Those
11 physicians who agree to accept the pay-
12 ment rate established under this section
13 (without regard to cost-sharing) as the
14 payment in full.

15 “(ii) PARTICIPATING, NON-PRE-
16 FERRED PHYSICIANS.—Those physicians
17 who agree not to impose charges (in rela-
18 tion to the payment rate described in sub-
19 section (c) for such physicians) that exceed
20 the ratio permitted under section
21 1848(g)(2)(C) of the Social Security Act.

22 “(B) OTHER PROVIDERS.—The Secretary
23 shall provide for the participation (on an annual
24 or other basis specified by the Secretary) of
25 health care providers (other than physicians)

1 under the public health insurance option under
2 which payment shall only be available if the
3 provider agrees to accept the payment rate es-
4 tablished under subsection (c) (without regard
5 to cost-sharing) as the payment in full.

6 “(4) EXCLUSION OF CERTAIN PROVIDERS.—
7 The Secretary shall exclude from participation under
8 the public health insurance option a health care pro-
9 vider that is excluded from participation in a Fed-
10 eral health care program (as defined in section
11 1128B(f) of the Social Security Act).

12 “(f) APPLICATION OF FRAUD AND ABUSE PROVI-
13 SIONS.—Provisions of law (other than criminal law provi-
14 sions) identified by the Secretary by regulation, in con-
15 sultation with the Inspector General of the Department
16 of Health and Human Services, that impose sanctions
17 with respect to waste, fraud, and abuse under Medicare,
18 such as the False Claims Act (31 U.S.C. 3729 et seq.),
19 shall also apply to the public health insurance option.

20 “(g) MEDICARE DEFINED.—For purposes of this sec-
21 tion, the term ‘Medicare’ means the health insurance pro-
22 grams under title XVIII of the Social Security Act.”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) TREATMENT AS QUALIFIED HEALTH
25 PLAN.—Section 1301(a)(2) of the Patient Protection

1 and Affordable Care Act, as amended by section
2 10104(a) of such Act, is amended—

3 (A) in the heading, by inserting “, THE
4 PUBLIC HEALTH INSURANCE OPTION,” before
5 “AND”; and

6 (B) by inserting “the public health insur-
7 ance option under section 1325,” before “and a
8 multi-State plan”.

9 (2) LEVEL PLAYING FIELD.—Section 1324(a)
10 of such Act, as amended by section 10104(n) of such
11 Act, is amended by inserting “the public health in-
12 surance option under section 1325,” before “or a
13 multi-State qualified health plan”.

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