

116TH CONGRESS
1ST SESSION

H. R. 1419

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2019

Mr. DEFAZIO (for himself, Mr. CARBAJAL, and Mr. PERLMUTTER) 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Option Deficit
5 Reduction Act”.

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

7 (a) IN GENERAL.—Part 3 of subtitle D of title I of
8 the Patient Protection and Affordable Care Act (Public
9 Law 111–148) is amended by adding at the end the fol-
10 lowing new section:

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

2 “(a) ESTABLISHMENT AND ADMINISTRATION OF A
3 PUBLIC HEALTH INSURANCE OPTION.—

4 “(1) ESTABLISHMENT.—For years beginning
5 with 2020, the Secretary of Health and Human
6 Services (in this subtitle referred to as the ‘Sec-
7 retary’) shall provide for the offering through Ex-
8 changes established under this title of a health bene-
9 fits plan (in this Act referred to as the ‘public health
10 insurance option’) that ensures choice, competition,
11 and stability of affordable, high-quality coverage
12 throughout the United States in accordance with
13 this section. In designing the option, the Secretary’s
14 primary responsibility is to create a low-cost plan
15 without compromising quality or access to care.

16 “(2) OFFERING THROUGH EXCHANGES.—

17 “(A) EXCLUSIVE TO EXCHANGES.—The
18 public health insurance option shall only be
19 made available through Exchanges established
20 under this title.

21 “(B) ENSURING A LEVEL PLAYING
22 FIELD.—Consistent with this section, the public
23 health insurance option shall comply with re-
24 quirements that are applicable under this title
25 to health benefits plans offered through such
26 Exchanges, including requirements related to

1 benefits, benefit levels, provider networks, no-
2 tices, consumer protections, and cost sharing.

3 “(C) PROVISION OF BENEFIT LEVELS.—

4 The public health insurance option—

5 “(i) shall offer bronze, silver, and gold
6 plans; and

7 “(ii) may offer platinum plans.

8 “(3) ADMINISTRATIVE CONTRACTING.—The
9 Secretary may enter into contracts for the purpose
10 of performing administrative functions (including
11 functions described in subsection (a)(4) of section
12 1874A of the Social Security Act) with respect to
13 the public health insurance option in the same man-
14 ner as the Secretary may enter into contracts under
15 subsection (a)(1) of such section. The Secretary has
16 the same authority with respect to the public health
17 insurance option as the Secretary has under sub-
18 sections (a)(1) and (b) of section 1874A of the So-
19 cial Security Act with respect to title XVIII of such
20 Act. Contracts under this subsection shall not in-
21 volve the transfer of insurance risk to such entity.

22 “(4) OMBUDSMAN.—The Secretary shall estab-
23 lish an office of the ombudsman for the public
24 health insurance option which shall have duties with
25 respect to the public health insurance option similar

1 to the duties of the Medicare Beneficiary Ombuds-
2 man under section 1808(c)(2) of the Social Security
3 Act. In addition, such office shall work with States
4 to ensure that information and notice is provided
5 that the public health insurance option is one of the
6 health plans available through an Exchange.

7 “(5) DATA COLLECTION.—The Secretary shall
8 collect such data as may be required to establish
9 premiums and payment rates for the public health
10 insurance option and for other purposes under this
11 section, including to improve quality and to reduce
12 racial, ethnic, and other disparities in health and
13 health care.

14 “(6) ACCESS TO FEDERAL COURTS.—The provi-
15 sions of Medicare (and related provisions of title II
16 of the Social Security Act) relating to access of
17 Medicare beneficiaries to Federal courts for the en-
18 forcement of rights under Medicare, including with
19 respect to amounts in controversy, shall apply to the
20 public health insurance option and individuals en-
21 rolled under such option under this title in the same
22 manner as such provisions apply to Medicare and
23 Medicare beneficiaries.

24 “(b) PREMIUMS AND FINANCING.—

25 “(1) ESTABLISHMENT OF PREMIUMS.—

1 “(A) IN GENERAL.—The Secretary shall
2 establish geographically adjusted premium rates
3 for the public health insurance option—

4 “(i) in a manner that complies with
5 the premium rules under paragraph (3);
6 and

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

9 “(I) health benefits provided by
10 the public health insurance option;
11 and

12 “(II) administrative costs related
13 to operating the public health insur-
14 ance option.

15 “(B) CONTINGENCY MARGIN.—In estab-
16 lishing premium rates under subparagraph (A),
17 the Secretary shall include an appropriate
18 amount for a contingency margin.

19 “(2) ACCOUNT.—

20 “(A) ESTABLISHMENT.—There is estab-
21 lished in the Treasury of the United States an
22 account for the receipts and disbursements at-
23 tributable to the operation of the public health
24 insurance option, including the start-up funding
25 under subparagraph (B). Section 1854(g) of

1 the Social Security Act shall apply to receipts
2 described in the previous sentence in the same
3 manner as such section applies to payments or
4 premiums described in such section.

5 “(B) START-UP FUNDING.—

6 “(i) IN GENERAL.—In order to pro-
7 vide for the establishment of the public
8 health insurance option there is hereby ap-
9 propriated to the Secretary, out of any
10 funds in the Treasury not otherwise appro-
11 priated, \$2,000,000,000. In order to pro-
12 vide for initial claims reserves before the
13 collection of premiums, there is hereby ap-
14 propriated to the Secretary, out of any
15 funds in the Treasury not otherwise appro-
16 priated, such sums as necessary to cover
17 90 days worth of claims reserves based on
18 projected enrollment.

19 “(ii) AMORTIZATION OF START-UP
20 FUNDING.—The Secretary shall provide for
21 the repayment of the start-up funding pro-
22 vided under clause (i) to the Treasury in
23 an amortized manner over the 10-year pe-
24 riod beginning with 2020.

1 “(iii) LIMITATION ON FUNDING.—

2 Nothing in this subsection shall be con-
3 strued as authorizing any additional appro-
4 priations to the account, other than such
5 amounts as are otherwise provided with re-
6 spect to other health benefits plans partici-
7 pating under the Exchange involved.

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

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

13 “(1) RATES ESTABLISHED BY SECRETARY.—

14 “(A) IN GENERAL.—The Secretary shall
15 establish payment rates for the public health in-
16 surance option for services and health care pro-
17 viders consistent with this subsection and may
18 change such payment rates in accordance with
19 subsection (d).

20 “(B) INITIAL PAYMENT RULES.—

21 “(i) IN GENERAL.—During 2020,
22 2021, and 2022, the Secretary shall set
23 the payment rates under this subsection
24 for services and providers described in sub-
25 paragraph (A) equal to the payment rates

1 for equivalent services and providers under
2 parts A and B of Medicare, subject to
3 clause (ii), paragraphs (2)(A) and (4), and
4 subsection (d).

5 “(ii) EXCEPTIONS.—

6 “(I) PRACTITIONERS’ SERV-
7 ICES.—Payment rates for practi-
8 tioners’ services otherwise established
9 under the fee schedule under section
10 1848 of the Social Security Act shall
11 be applied without regard to the pro-
12 visions under subsection (f) of such
13 section and the update under sub-
14 section (d)(4) under such section for a
15 year as applied under this paragraph
16 shall be not less than 1 percent.

17 “(II) ADJUSTMENTS.—The Sec-
18 retary may determine the extent to
19 which Medicare adjustments applica-
20 ble to base payment rates under parts
21 A and B of Medicare for graduate
22 medical education and dispropor-
23 tionate share hospitals shall apply
24 under this section.

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

6 “(D) PRESCRIPTION DRUGS.—Payment
 7 rates under this subsection for prescription
 8 drugs that are not paid for under part A or
 9 part B of Medicare shall be at rates negotiated
 10 by the Secretary.

11 “(2) INCENTIVES FOR PARTICIPATING PRO-
 12 VIDERS.—

13 “(A) INITIAL INCENTIVE PERIOD.—

14 “(i) IN GENERAL.—The Secretary
 15 shall provide, in the case of services de-
 16 scribed in clause (ii) furnished during
 17 2020, 2021, and 2022, for payment rates
 18 that are 5 percent greater than the rates
 19 established under paragraph (1).

20 “(ii) SERVICES DESCRIBED.—The
 21 services described in this clause are items
 22 and professional services, under the public
 23 health insurance option by a physician or
 24 other health care practitioner who partici-

1 pates in both Medicare and the public
2 health insurance option.

3 “(iii) SPECIAL RULES.—A pediatrician
4 and any other health care practitioner who
5 is a type of practitioner that does not typi-
6 cally participate in Medicare (as deter-
7 mined by the Secretary) shall also be eligi-
8 ble for the increased payment rates under
9 clause (i).

10 “(B) SUBSEQUENT PERIODS.—Beginning
11 with 2023 and for subsequent years, the Sec-
12 retary shall continue to use an administrative
13 process to set such rates in order to promote
14 payment accuracy, to ensure adequate bene-
15 ficiary access to providers, and to promote af-
16 fordability and the efficient delivery of medical
17 care consistent with subsection (a)(1). Such
18 rates shall not be set at levels expected to in-
19 crease average medical costs per enrollee cov-
20 ered under the public health insurance option
21 beyond what would be expected if the process
22 under paragraph (1)(B) and subparagraph (A)
23 were continued, as certified by the Office of the
24 Actuary of the Centers for Medicare & Medicaid
25 Services.

1 “(C) ESTABLISHMENT OF A PROVIDER
2 NETWORK.—Health care providers participating
3 under Medicare are participating providers in
4 the public health insurance option unless they
5 opt out in a process established by the Sec-
6 retary.

7 “(3) ADMINISTRATIVE PROCESS FOR SETTING
8 RATES.—Chapter 5 of title 5, United States Code,
9 shall apply to the process for the initial establish-
10 ment of payment rates under this subsection but not
11 to the specific methodology for establishing such
12 rates or the calculation of such rates.

13 “(4) CONSTRUCTION.—Nothing in this section
14 shall be construed as limiting the Secretary’s author-
15 ity to correct for payments that are excessive or defi-
16 cient, taking into account the provisions of sub-
17 section (a)(1) and any appropriate adjustments
18 based on the demographic characteristics of enrollees
19 covered under the public health insurance option,
20 but in no case shall the correction of payments
21 under this paragraph result in a level of expendi-
22 tures per enrollee that exceeds the level of expendi-
23 tures that would have occurred under paragraphs
24 (1)(B) and (2)(A), as certified by the Office of the

1 Actuary of the Centers for Medicare & Medicaid
2 Services.

3 “(5) CONSTRUCTION.—Nothing in this section
4 shall be construed as affecting the authority of the
5 Secretary to establish payment rates, including pay-
6 ments to provide for the more efficient delivery of
7 services, such as the initiatives provided for under
8 subsection (d).

9 “(6) LIMITATIONS ON REVIEW.—There shall be
10 no administrative or judicial review of a payment
11 rate or methodology established under this sub-
12 section or under subsection (d).

13 “(d) MODERNIZED PAYMENT INITIATIVES AND DE-
14 LIVERY SYSTEM REFORM.—

15 “(1) IN GENERAL.—For plan years beginning
16 with 2020, the Secretary may utilize innovative pay-
17 ment mechanisms and policies to determine pay-
18 ments for items and services under the public health
19 insurance option. The payment mechanisms and
20 policies under this subsection may include patient-
21 centered medical home and other care management
22 payments, accountable care organizations, value-
23 based purchasing, bundling of services, differential
24 payment rates, performance or utilization based pay-
25 ments, partial capitation, and direct contracting with

1 providers. Payment rates under such payment mech-
2 anisms and policies shall not be set at levels ex-
3 pected to increase average medical costs per enrollee
4 covered under the public health insurance option be-
5 yond what would be expected if the process under
6 paragraphs (1)(B) and (2)(A) of subsection (c) were
7 continued, as certified by the Office of the Actuary
8 of the Centers for Medicare & Medicaid Services.

9 “(2) REQUIREMENTS FOR INNOVATIVE PAY-
10 MENTS.—The Secretary shall design and implement
11 the payment mechanisms and policies under this
12 subsection in a manner that—

13 “(A) seeks to—

14 “(i) improve health outcomes;

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

17 “(iii) provide efficient and affordable
18 care;

19 “(iv) address geographic variation in
20 the provision of health services; or

21 “(v) prevent or manage chronic ill-
22 ness; and

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

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

8 “(4) NON-UNIFORMITY PERMITTED.—Nothing
9 in this subtitle shall prevent the Secretary from
10 varying payments based on different payment struc-
11 ture models (such as accountable care organizations
12 and medical homes) under the public health insur-
13 ance option for different geographic areas.

14 “(e) PROVIDER PARTICIPATION.—

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

18 “(2) LICENSURE OR CERTIFICATION.—The Sec-
19 retary shall not allow a health care provider to par-
20 ticipate in the public health insurance option unless
21 such provider is appropriately licensed or certified
22 under State law.

23 “(3) PAYMENT TERMS FOR PROVIDERS.—

24 “(A) PHYSICIANS.—The Secretary shall
25 provide for the annual participation of physi-

1 cians under the public health insurance option,
2 for which payment may be made for services
3 furnished during the year, in one of 2 classes:

4 “(i) PREFERRED PHYSICIANS.—Those
5 physicians who agree to accept the pay-
6 ment rate established under this section
7 (without regard to cost sharing) as the
8 payment in full.

9 “(ii) PARTICIPATING, NON-PRE-
10 FERRED PHYSICIANS.—Those physicians
11 who agree not to impose charges (in rela-
12 tion to the payment rate described in sub-
13 section (c) for such physicians) that exceed
14 the ratio permitted under section
15 1848(g)(2)(C) of the Social Security Act.

16 “(B) OTHER PROVIDERS.—The Secretary
17 shall provide for the participation (on an annual
18 or other basis specified by the Secretary) of
19 health care providers (other than physicians)
20 under the public health insurance option under
21 which payment shall only be available if the
22 provider agrees to accept the payment rate es-
23 tablished under subsection (c) (without regard
24 to cost sharing) as the payment in full.

1 “(4) EXCLUSION OF CERTAIN PROVIDERS.—

2 The Secretary shall exclude from participation under
 3 the public health insurance option a health care pro-
 4 vider that is excluded from participation in a Fed-
 5 eral health care program (as defined in section
 6 1128B(f) of the Social Security Act).

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

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

18 (b) CONFORMING AMENDMENTS.—

19 (1) TREATMENT AS QUALIFIED HEALTH
 20 PLAN.—Section 1301(a)(2) of the Patient Protection
 21 and Affordable Care Act is amended—

22 (A) in the heading, by inserting “, THE
 23 PUBLIC HEALTH INSURANCE OPTION,” before
 24 “AND”; and

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

4 (2) LEVEL PLAYING FIELD.—Section 1324(a)
5 of such Act is amended by inserting “the public
6 health insurance option under section 1325,” before
7 “or a multi-State qualified health plan”.

○