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116TH CONGRESS
1ST SESSION

S. 1033

To amend the Public Health Service Act to establish a public health insurance option, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2019

Mr. WHITEHOUSE (for himself, Mr. BROWN, Ms. BALDWIN, Mr. DURBIN, Mr. MENENDEZ, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To amend the Public Health Service Act to establish a public health insurance option, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Consumer Health Options and Insurance Competition Enhancement Act'' or the ''CHOICE Act''.

SEC. 2. PUBLIC HEALTH INSURANCE OPTION.

(a) IN GENERAL.—Part C of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–91) is amended by adding at the end the following:

"SEC. 2795. PUBLIC HEALTH INSURANCE OPTION.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—For plan years beginning in 2020, the Secretary shall establish, and provide for the offering through the Exchanges, of a qualified health plan (in this Act referred to as the 'public health insurance option') that provides value, choice, competition, and stability of affordable, high-quality coverage throughout the United States in accordance with this section.

"(2) PRIMARY RESPONSIBILITY.—In designing the public health insurance option, the primary responsibility of the Secretary shall be to create an affordable health plan without compromising quality or access to care.

"(b) ADMINISTRATING THE PUBLIC HEALTH INSURANCE OPTION.—

"(1) OFFERED THROUGH EXCHANGES.—

"(A) EXCLUSIVE TO EXCHANGES.—The public health insurance option shall be made available through the Exchanges.

"(B) ENSURING A LEVEL PLAYING FIELD.—Consistent with this section, the public health insurance option shall—

"(i) comply with requirements under title I of the Patient Protection and Affordable Care Act, and the amendments made by that title, that are applicable to health plans offered through the Exchanges, including provider networks, notices, consumer protections, and cost-sharing; and

"(ii) provide a benefit package that is comprehensive and meets the health care needs of patients, including benefits described in section 1302(b) of the Patient Protection and Affordable Care Act.

"(C) PREEMPTION.—Notwithstanding section 1303(a)(1) of the Patient Protection and Affordable Care Act, a State law that prohibits the public health insurance option from offering the coverage described in subparagraph (B) shall be preempted.

"(D) PROVISION OF BENEFIT LEVELS.—The public health insurance option shall offer

silver and gold plans and may offer bronze plans.

''(2) ADMINISTRATIVE CONTRACTING.—

''(A) AUTHORITIES.—The Secretary may enter into contracts for the purpose of performing administrative functions (including functions described in subsection (a)(4) of section 1874A of the Social Security Act) with respect to the public health insurance option in the same manner as the Secretary may enter into contracts under subsection (a)(1) of such section. The Secretary shall have the same authority with respect to the public health insurance option as the Secretary has under such subsection (a)(1) and subsection (b) of section 1874A of the Social Security Act with respect to title XVIII of such Act.

''(B) TRANSFER OF INSURANCE RISK.—Any contract under this paragraph shall not involve the transfer of insurance risk from the Secretary to the entity entering into such contract with the Secretary.

''(3) STATE ADVISORY COUNCIL.—

''(A) ESTABLISHMENT.—A State may establish a public or nonprofit entity to serve as

the State Advisory Council to provide recommendations to the Secretary on the operations and policies of the public health insurance option offered through the Exchange operating in the State.

''(B) RECOMMENDATIONS.—A State Advisory Council established under subparagraph (A) shall provide recommendations on at least the following:

''(i) Policies and procedures to integrate quality improvement and cost containment mechanisms into the health care delivery system.

''(ii) Mechanisms to facilitate public awareness of the availability of the public health insurance option.

''(iii) Alternative payment models and value-based insurance design under the public health insurance option that encourage quality improvement and cost control.

''(C) MEMBERS.—The members of any State Advisory Council shall be representatives of the public and include health care consumers and health care providers.

"(D) APPLICABILITY OF RECOMMENDATIONS.—The Secretary may apply the recommendations of a State Advisory Council to the public health insurance option in that State, in any other State, or in all States.

"(4) DATA COLLECTION.—The Secretary shall collect such data as may be required—

"(A) to establish rates for premiums and health care provider reimbursement under subsection (c); and

"(B) for other purposes under this section, including to improve quality, and reduce racial, ethnic, socioeconomic, and other disparities, in health and health care.

"(c) FINANCING THE PUBLIC HEALTH INSURANCE OPTION.—

"(1) PREMIUMS.—

"(A) ESTABLISHMENT.—The Secretary shall establish geographically adjusted premium rates for the public health insurance option—

"(i) in a manner that complies with the requirement for premium rates under subparagraph (C) and considers the data collected under subsection (b)(4); and

"(ii) at a level sufficient to fully finance—

"(I) the costs of health benefits provided by the public health insurance option; and

"(II) administrative costs related to operating the public health insurance option.

"(B) CONTINGENCY MARGIN.—In establishing premium rates under subparagraph (A), the Secretary shall include an appropriate amount for a contingency margin.

"(C) VARIATIONS IN PREMIUM RATES.—The premium rate charged for the public health insurance option may not vary except as provided under section 2701.

"(2) HEALTH CARE PROVIDER PAYMENT RATES FOR ITEMS AND SERVICES.—

"(A) IN GENERAL.—

"(i) RATES NEGOTIATED BY THE SECRETARY.—Not later than January 1, 2020, and except as provided in clause (ii), the Secretary shall, through a negotiated agreement with health care providers, establish rates for reimbursing health care

providers for providing the benefits covered by the public health insurance option.

''(ii) MEDICARE REIMBURSEMENT RATES.—If the Secretary and health care providers are unable to reach a negotiated agreement on a reimbursement rate, the Secretary shall reimburse providers at rates determined for equivalent items and services under the original Medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act.

''(iii) FOR NEW SERVICES.—The Secretary shall modify reimbursement rates described in clause (ii) in order to accommodate payments for services, such as well-child visits, that are not otherwise covered under the original Medicare fee-for-service program.

''(B) PRESCRIPTION DRUGS.—Any payment rate under this subsection for a prescription drug shall be at a rate negotiated by the Secretary. If the Secretary is unable to reach a negotiated agreement on such a reimbursement rate, the Secretary shall use rates determined for equivalent drugs paid for under the original

Medicare fee-for-service program. The Secretary shall modify such rates in order to accommodate payments for drugs that are not otherwise covered under the original Medicare fee-for-service program.

''(3) ACCOUNT.—

''(A) ESTABLISHMENT.—There is established in the Treasury of the United States an account for the receipts and disbursements attributable to the operation of the public health insurance option, including the startup funding under subparagraph (C) and appropriations authorized under subparagraph (D).

''(B) PROHIBITION OF STATE IMPOSITION OF TAXES.—Section 1854(g) of the Social Security Act shall apply to receipts and disbursements described in subparagraph (A) in the same manner as such section applies to payments or premiums described in such section.

''(C) STARTUP FUNDING.—

''(i) AUTHORIZATION OF FUNDING.—There are authorized to be appropriated such sums as may be necessary to establish the public health insurance option and

cover 90 days of claims reserves based on projected enrollment.

"(ii) AMORTIZATION OF STARTUP FUNDING.—The Secretary shall provide for the repayment of the startup funding provided under clause (i) to the Treasury in an amortized manner over the 10-year period beginning on January 1, 2020.

"(D) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.—To carry out paragraph (2) of subsection (b), there are authorized to be appropriated such sums as may be necessary.

"(E) LIMITATION.—Any provision of law restricting the use of Federal funds with respect to any reproductive health service shall not apply to funds appropriated under this subsection.

"(d) HEALTH CARE PROVIDER PARTICIPATION.—

"(1) PROVIDER PARTICIPATION.—

"(A) IN GENERAL.—The Secretary shall establish conditions of participation for health care providers under the public health insurance option.

"(B) LICENSURE OR CERTIFICATION.—The Secretary shall not allow a health care pro-

vider to participate in the public health insurance option unless such provider is appropriately licensed or certified under State law.

''(C) CLARIFICATION.—Notwithstanding subparagraph (A), a health care provider may not be prohibited from participating in the public health insurance option for reasons other than the ability of such provider to provide covered services.

''(2) ESTABLISHMENT OF A PROVIDER NETWORK.—

''(A) MEDICARE AND MEDICAID PARTICIPATING PROVIDERS.—A health care provider that is a participating provider of services or supplier under the Medicare program under title XVIII of the Social Security Act or under a State Medicaid plan under title XIX of such Act is a participating provider in the public health insurance option unless the health care provider opts out of participating in the public health insurance option through a process established by the Secretary.

''(B) ADDITIONAL PROVIDERS.—The Secretary shall establish a process to allow health care providers not described in subparagraph

(A) to become participating providers in the public health insurance option.''.

(b) CONFORMING AMENDMENTS.—

(1) TREATMENT AS A QUALIFIED HEALTH PLAN.—Section 1301(a)(2) of the Patient Protection and Affordable Care Act (42 U.S.C. 18021(a)(2)) is amended—

(A) in the paragraph heading, by inserting '', THE PUBLIC HEALTH INSURANCE OPTION,'' before ''AND''; and

(B) by inserting ''the public health insurance option under section 2795 of the Public Health Service Act,'' before ''and a multi-State plan''.

(2) LEVEL PLAYING FIELD.—Section 1324(a) of the Patient Protection and Affordable Care Act (42 U.S.C. 18044(a)) is amended by inserting ''the public health insurance option under section 2795 of the Public Health Service Act,'' before ''or a multi-State qualified health plan''.

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