

111TH CONGRESS
2D SESSION

H. R. 5808

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

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2010

Ms. WOOLSEY (for herself, Ms. BALDWIN, Mr. BECERRA, Mr. BLUMENAUER, Mr. BOSWELL, Ms. CORRINE BROWN of Florida, Mrs. CAPPS, Mr. CAPUANO, Mr. CARSON of Indiana, Mrs. CHRISTENSEN, Ms. CHU, Ms. CLARKE, Mr. CLAY, Mr. CLEAVER, Mr. CLYBURN, Mr. COHEN, Mr. CONYERS, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. DEFazio, Mr. DOYLE, Ms. EDWARDS of Maryland, Mr. ELLISON, Mr. ENGEL, Ms. ESHOO, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. FRANK of Massachusetts, Ms. FUDGE, Mr. GARAMENDI, Mr. GRAYSON, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Mr. HARE, Ms. HARMAN, Mr. HASTINGS of Florida, Mr. HINCHAY, Ms. HIRONO, Mr. HOLT, Mr. HONDA, Mr. JACKSON of Illinois, Ms. JACKSON LEE of Texas, Mr. JOHNSON of Georgia, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY, Mr. KILDEE, Ms. KILPATRICK of Michigan, Mr. KUCINICH, Mr. LANGEVIN, Ms. LEE of California, Mr. LEWIS of Georgia, Ms. ZOE LOFGREN of California, Mr. LUJÁN, Mrs. MALONEY, Mr. MARKEY of Massachusetts, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. MURPHY of Connecticut, Mr. NADLER of New York, Mrs. NAPOLITANO, Ms. NORTON, Mr. OBERSTAR, Mr. OLVER, Mr. PASTOR of Arizona, Mr. PAYNE, Ms. PINGREE of Maine, Mr. POLIS of Colorado, Mr. PRICE of North Carolina, Mr. RANGEL, Ms. RICHARDSON, Mr. ROTHMAN of New Jersey, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN of Ohio, Ms. LINDA T. SÁNCHEZ of California, Mr. SARBANES, Ms. SCHAKOWSKY, Mr. SCOTT of Virginia, Mr. SERRANO, Ms. SHEA-PORTER, Mr. SHERMAN, Mr. SIRES, Ms. SLAUGHTER, Ms. SPEIER, Mr. STARK, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Mr. TIERNEY, Mr. TONKO, Mr. TOWNS, Ms. VELÁZQUEZ, Ms. WATERS, Ms. WATSON, Mr. WATT, Mr. WELCH, Mr. WU, Mr. YARMUTH, Mr. DEUTCH, Mr. DELAHUNT, Mr. PIERLUISI, Mr. ACKERMAN, Mr. ISRAEL, Mrs. LOWEY, Mr. SCHIFF, Mr. DOGGETT, Mr. BERMAN, Ms. TSONGAS, Mr. HIGGINS, Mr. SABLAN, Ms. DEGETTE, Mr. WEINER, Mr. MICHAUD, Ms. DELAURO, Mr. GEORGE MILLER of California, Mr. WAXMAN, Mr. LARSON of Connecticut, Mr. LEVIN, Mr. PALLONE, Mr. ANDREWS, and

Mrs. DAVIS of California) 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. PUBLIC HEALTH INSURANCE OPTION.**

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

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

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

11 “(1) ESTABLISHMENT.—For years beginning
12 with 2014, the Secretary of Health and Human
13 Services (in this subtitle referred to as the ‘Sec-
14 retary’) shall provide for the offering through Ex-
15 changes established under this title of a health bene-
16 fits plan (in this Act referred to as the ‘public health
17 insurance option’) that ensures choice, competition,
18 and stability of affordable, high-quality coverage
19 throughout the United States in accordance with

1 this section. In designing the option, the Secretary's
2 primary responsibility is to create a low-cost plan
3 without compromising quality or access to care.

4 “(2) OFFERING THROUGH EXCHANGES.—

5 “(A) EXCLUSIVE TO THE EXCHANGE.—

6 The public health insurance option shall only be
7 made available through Exchanges established
8 under this title.

9 “(B) ENSURING A LEVEL PLAYING

10 FIELD.—Consistent with this section, the public
11 health insurance option shall comply with re-
12 quirements that are applicable under this title
13 to health benefits plans offered through such
14 Exchanges, including requirements related to
15 benefits, benefit levels, provider networks, no-
16 tices, consumer protections, and cost sharing.

17 “(C) PROVISION OF BENEFIT LEVELS.—

18 The public health insurance option—

19 “(i) shall offer bronze, silver, and gold
20 plans; and

21 “(ii) may offer platinum plans.

22 “(3) ADMINISTRATIVE CONTRACTING.—The

23 Secretary may enter into contracts for the purpose
24 of performing administrative functions (including
25 functions described in subsection (a)(4) of section

1 1874A of the Social Security Act) with respect to
2 the public health insurance option in the same man-
3 ner as the Secretary may enter into contracts under
4 subsection (a)(1) of such section. The Secretary has
5 the same authority with respect to the public health
6 insurance option as the Secretary has under sub-
7 sections (a)(1) and (b) of section 1874A of the So-
8 cial Security Act with respect to title XVIII of such
9 Act. Contracts under this subsection shall not in-
10 volve the transfer of insurance risk to such entity.

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

21 “(5) DATA COLLECTION.—The Secretary shall
22 collect such data as may be required to establish
23 premiums and payment rates for the public health
24 insurance option and for other purposes under this
25 section, including to improve quality and to reduce

1 racial, ethnic, and other disparities in health and
2 health care.

3 “(6) ACCESS TO FEDERAL COURTS.—The provi-
4 sions of Medicare (and related provisions of title II
5 of the Social Security Act) relating to access of
6 Medicare beneficiaries to Federal courts for the en-
7 forcement of rights under Medicare, including with
8 respect to amounts in controversy, shall apply to the
9 public health insurance option and individuals en-
10 rolled under such option under this title in the same
11 manner as such provisions apply to Medicare and
12 Medicare beneficiaries.

13 “(b) PREMIUMS AND FINANCING.—

14 “(1) ESTABLISHMENT OF PREMIUMS.—

15 “(A) IN GENERAL.—The Secretary shall
16 establish geographically adjusted premium rates
17 for the public health insurance option—

18 “(i) in a manner that complies with
19 the premium rules under paragraph (3);
20 and

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

23 “(I) health benefits provided by
24 the public health insurance option;
25 and

1 “(II) administrative costs related
2 to operating the public health insur-
3 ance option.

4 “(B) CONTINGENCY MARGIN.—In estab-
5 lishing premium rates under subparagraph (A),
6 the Secretary shall include an appropriate
7 amount for a contingency margin.

8 “(2) ACCOUNT.—

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

19 “(B) START-UP FUNDING.—

20 “(i) IN GENERAL.—In order to pro-
21 vide for the establishment of the public
22 health insurance option there is hereby ap-
23 propriated to the Secretary, out of any
24 funds in the Treasury not otherwise appro-
25 priated, \$2,000,000,000. In order to pro-

1 vide for initial claims reserves before the
2 collection of premiums, there is hereby ap-
3 propriated to the Secretary, out of any
4 funds in the Treasury not otherwise appro-
5 priated, such sums as necessary to cover
6 90 days worth of claims reserves based on
7 projected enrollment.

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

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

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

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

1 “(1) RATES ESTABLISHED BY SECRETARY.—

2 “(A) IN GENERAL.—The Secretary shall
3 establish payment rates for the public health in-
4 surance option for services and health care pro-
5 viders consistent with this subsection and may
6 change such payment rates in accordance with
7 subsection (d).

8 “(B) INITIAL PAYMENT RULES.—

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

18 “(ii) EXCEPTIONS.—

19 “(I) PRACTITIONERS’ SERV-
20 ICES.—Payment rates for practi-
21 tioners’ services otherwise established
22 under the fee schedule under section
23 1848 of the Social Security Act shall
24 be applied without regard to the pro-
25 visions under subsection (f) of such

1 section and the update under sub-
2 section (d)(4) under such section for a
3 year as applied under this paragraph
4 shall be not less than 1 percent.

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

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

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

23 “(2) INCENTIVES FOR PARTICIPATING PRO-
24 VIDERS.—

25 “(A) INITIAL INCENTIVE PERIOD.—

1 “(i) IN GENERAL.—The Secretary
2 shall provide, in the case of services de-
3 scribed in clause (ii) furnished during
4 2014, 2015, and 2016, for payment rates
5 that are 5 percent greater than the rates
6 established under paragraph (1).

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

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

21 “(B) SUBSEQUENT PERIODS.—Beginning
22 with 2017 and for subsequent years, the Sec-
23 retary shall continue to use an administrative
24 process to set such rates in order to promote
25 payment accuracy, to ensure adequate bene-

1 ficiary access to providers, and to promote af-
2 fordability and the efficient delivery of medical
3 care consistent with subsection (a)(1). Such
4 rates shall not be set at levels expected to in-
5 crease average medical costs per enrollee cov-
6 ered under the public health insurance option
7 beyond what would be expected if the process
8 under paragraph (1)(B) and subparagraph (A)
9 were continued, as certified by the Office of the
10 Actuary of the Centers for Medicare & Medicaid
11 Services.

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

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

24 “(4) CONSTRUCTION.—Nothing in this section
25 shall be construed as limiting the Secretary’s author-

1 ity to correct for payments that are excessive or defi-
2 cient, taking into account the provisions of sub-
3 section (a)(1) and any appropriate adjustments
4 based on the demographic characteristics of enrollees
5 covered under the public health insurance option,
6 but in no case shall the correction of payments
7 under this paragraph result in a level of expendi-
8 tures per enrollee that exceeds the level of expendi-
9 tures that would have occurred under paragraphs
10 (1)(B) and (2)(A), as certified by the Office of the
11 Actuary of the Centers for Medicare & Medicaid
12 Services.

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

19 “(6) LIMITATIONS ON REVIEW.—There shall be
20 no administrative or judicial review of a payment
21 rate or methodology established under this sub-
22 section or under subsection (d).

23 “(d) MODERNIZED PAYMENT INITIATIVES AND DE-
24 LIVERY SYSTEM REFORM.—

1 “(1) IN GENERAL.—For plan years beginning
2 with 2014, the Secretary may utilize innovative pay-
3 ment mechanisms and policies to determine pay-
4 ments for items and services under the public health
5 insurance option. The payment mechanisms and
6 policies under this subsection may include patient-
7 centered medical home and other care management
8 payments, accountable care organizations, value-
9 based purchasing, bundling of services, differential
10 payment rates, performance or utilization based pay-
11 ments, partial capitation, and direct contracting with
12 providers. Payment rates under such payment mech-
13 anisms and policies shall not be set at levels ex-
14 pected to increase average medical costs per enrollee
15 covered under the public health insurance option be-
16 yond what would be expected if the process under
17 paragraphs (1)(B) and (2)(A) of subsection (c) were
18 continued, as certified by the Office of the Actuary
19 of the Centers for Medicare & Medicaid Services.

20 “(2) REQUIREMENTS FOR INNOVATIVE PAY-
21 MENTS.—The Secretary shall design and implement
22 the payment mechanisms and policies under this
23 subsection in a manner that—

24 “(A) seeks to—

25 “(i) improve health outcomes;

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

3 “(iii) provide efficient and affordable
4 care;

5 “(iv) address geographic variation in
6 the provision of health services; or

7 “(v) prevent or manage chronic ill-
8 ness; and

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

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

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

24 “(e) PROVIDER PARTICIPATION.—

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

4 “(2) LICENSURE OR CERTIFICATION.—The Sec-
5 retary shall not allow a health care provider to par-
6 ticipate in the public health insurance option unless
7 such provider is appropriately licensed or certified
8 under State law.

9 “(3) PAYMENT TERMS FOR PROVIDERS.—

10 “(A) PHYSICIANS.—The Secretary shall
11 provide for the annual participation of physi-
12 cians under the public health insurance option,
13 for which payment may be made for services
14 furnished during the year, in one of 2 classes:

15 “(i) PREFERRED PHYSICIANS.—Those
16 physicians who agree to accept the pay-
17 ment rate established under this section
18 (without regard to cost-sharing) as the
19 payment in full.

20 “(ii) PARTICIPATING, NON-PRE-
21 FERRED PHYSICIANS.—Those physicians
22 who agree not to impose charges (in rela-
23 tion to the payment rate described in sub-
24 section (c) for such physicians) that exceed

1 the ratio permitted under section
2 1848(g)(2)(C) of the Social Security Act.

3 “(B) OTHER PROVIDERS.—The Secretary
4 shall provide for the participation (on an annual
5 or other basis specified by the Secretary) of
6 health care providers (other than physicians)
7 under the public health insurance option under
8 which payment shall only be available if the
9 provider agrees to accept the payment rate es-
10 tablished under subsection (c) (without regard
11 to cost-sharing) as the payment in full.

12 “(4) EXCLUSION OF CERTAIN PROVIDERS.—
13 The Secretary shall exclude from participation under
14 the public health insurance option a health care pro-
15 vider that is excluded from participation in a Fed-
16 eral health care program (as defined in section
17 1128B(f) of the Social Security Act).

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

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

4 (b) CONFORMING AMENDMENTS.—

5 (1) TREATMENT AS QUALIFIED HEALTH
 6 PLAN.—Section 1301(a)(2) of the Patient Protection
 7 and Affordable Care Act, as amended by section
 8 10104(a) of such Act, is amended—

9 (A) in the heading, by inserting “, THE
 10 PUBLIC HEALTH INSURANCE OPTION,” before
 11 “AND”; and

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

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

○