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114TH CONGRESS
1ST SESSION

H. R. 265

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2015

Ms. SCHAKOWSKY (for herself, Mr. JOHNSON of Georgia, Mr. TAKANO, Mr. CUMMINGS, Mr. LEVIN, Mr. HONDA, Ms. SLAUGHTER, Ms. PINGREE, Mr. DEUTCH, Ms. CHU of California, Ms. DELAURO, Mr. MCDERMOTT, Mr. HASTINGS, Ms. LEE, Ms. NORTON, Mr. LEWIS, Mr. ELLISON, Mr. COHEN, Mr. POCAN, Mr. HUFFMAN, Mr. YARMUTH, Mr. NADLER, Mr. FARR, Mr. ENGEL, Mr. SARBANES, Ms. MOORE, Mr. MCGOVERN, and Mr. POLIS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

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

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 "Public Option Deficit Reduction Act".

SEC. 2. PUBLIC HEALTH INSURANCE OPTION.

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

"SEC. 1325. PUBLIC HEALTH INSURANCE OPTION.

"(a) ESTABLISHMENT AND ADMINISTRATION OF A PUBLIC HEALTH INSURANCE OPTION.—

"(1) ESTABLISHMENT.—For years beginning with 2015, the Secretary of Health and Human Services (in this subtitle referred to as the 'Secretary') shall provide for the offering through Exchanges established under this title of a health benefits plan (in this Act referred to as the 'public health insurance option') that ensures choice, competition, and stability of affordable, high-quality coverage throughout the United States in accordance with this section. In designing the option, the Secretary's primary responsibility is to create a low-cost plan without compromising quality or access to care.

"(2) OFFERING THROUGH EXCHANGES.—

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

"(B) ENSURING A LEVEL PLAYING FIELD.—Consistent with this section, the public health insurance option shall comply with requirements that are applicable under this title to health benefits plans offered through such Exchanges, including requirements related to benefits, benefit levels, provider networks, notices, consumer protections, and cost sharing.

"(C) PROVISION OF BENEFIT LEVELS.—The public health insurance option—

"(i) shall offer bronze, silver, and gold plans; and

"(ii) may offer platinum plans.

"(3) ADMINISTRATIVE CONTRACTING.—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 has the same authority with respect to the public health insurance option as the Secretary has under subsections (a)(1) and (b) of section 1874A of the Social Security Act with respect to title XVIII of such

Act. Contracts under this subsection shall not involve the transfer of insurance risk to such entity.

"(4) OMBUDSMAN.—The Secretary shall establish an office of the ombudsman for the public health insurance option which shall have duties with respect to the public health insurance option similar to the duties of the Medicare Beneficiary Ombudsman under section 1808(c)(2) of the Social Security Act. In addition, such office shall work with States to ensure that information and notice is provided that the public health insurance option is one of the health plans available through an Exchange.

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

"(6) ACCESS TO FEDERAL COURTS.—The provisions of Medicare (and related provisions of title II of the Social Security Act) relating to access of Medicare beneficiaries to Federal courts for the enforcement of rights under Medicare, including with respect to amounts in controversy, shall apply to the

public health insurance option and individuals enrolled under such option under this title in the same manner as such provisions apply to Medicare and Medicare beneficiaries.

"(b) PREMIUMS AND FINANCING.—

"(1) ESTABLISHMENT OF PREMIUMS.—

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

"(i) in a manner that complies with the premium rules under paragraph (3); and

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

"(I) 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.

"(2) 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 start-up funding under subparagraph (B). Section 1854(g) of the Social Security Act shall apply to receipts described in the previous sentence in the same manner as such section applies to payments or premiums described in such section.

"(B) START-UP FUNDING.—

"(i) IN GENERAL.—In order to provide for the establishment of the public health insurance option there is hereby appropriated to the Secretary, out of any funds in the Treasury not otherwise appropriated, $2,000,000,000. In order to provide for initial claims reserves before the collection of premiums, there is hereby appropriated to the Secretary, out of any funds in the Treasury not otherwise appropriated, such sums as necessary to cover 90 days worth of claims reserves based on projected enrollment.

"(ii) AMORTIZATION OF START-UP 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 with 2015.

"(iii) LIMITATION ON FUNDING.—Nothing in this subsection shall be construed as authorizing any additional appropriations to the account, other than such amounts as are otherwise provided with respect to other health benefits plans participating under the Exchange involved.

"(3) INSURANCE RATING RULES.—The premium rate charged for the public health insurance option may not vary except as provided under section 2701 of the Public Health Service Act.

"(c) PAYMENT RATES FOR ITEMS AND SERVICES.—

"(1) RATES ESTABLISHED BY SECRETARY.—

"(A) IN GENERAL.—The Secretary shall establish payment rates for the public health insurance option for services and health care providers consistent with this subsection and may change such payment rates in accordance with subsection (d).

"(B) INITIAL PAYMENT RULES.—

"(i) IN GENERAL.—During 2015, 2016, and 2017, the Secretary shall set the payment rates under this subsection for services and providers described in subparagraph (A) equal to the payment rates for equivalent services and providers under parts A and B of Medicare, subject to clause (ii), paragraphs (2)(A) and (4), and subsection (d).

"(ii) EXCEPTIONS.—

"(I) PRACTITIONERS' SERVICES.—Payment rates for practitioners' services otherwise established under the fee schedule under section 1848 of the Social Security Act shall be applied without regard to the provisions under subsection (f) of such section and the update under subsection (d)(4) under such section for a year as applied under this paragraph shall be not less than 1 percent.

"(II) ADJUSTMENTS.—The Secretary may determine the extent to which Medicare adjustments applica-

ble to base payment rates under parts A and B of Medicare for graduate medical education and disproportionate share hospitals shall apply under this section.

"(C) FOR NEW SERVICES.—The Secretary shall modify payment rates described in subparagraph (B) in order to accommodate payments for services, such as well-child visits, that are not otherwise covered under Medicare.

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

"(2) INCENTIVES FOR PARTICIPATING PROVIDERS.—

"(A) INITIAL INCENTIVE PERIOD.—

"(i) IN GENERAL.—The Secretary shall provide, in the case of services described in clause (ii) furnished during 2015, 2016, and 2017, for payment rates that are 5 percent greater than the rates established under paragraph (1).

1 "(ii) SERVICES DESCRIBED.—The
2 services described in this clause are items
3 and professional services, under the public
4 health insurance option by a physician or
5 other health care practitioner who partici-
6 pates in both Medicare and the public
7 health insurance option.
8 "(iii) SPECIAL RULES.—A pediatrician
9 and any other health care practitioner who
10 is a type of practitioner that does not typi-
11 cally participate in Medicare (as deter-
12 mined by the Secretary) shall also be eligi-
13 ble for the increased payment rates under
14 clause (i).
15 "(B) SUBSEQUENT PERIODS.—Beginning
16 with 2018 and for subsequent years, the Sec-
17 retary shall continue to use an administrative
18 process to set such rates in order to promote
19 payment accuracy, to ensure adequate bene-
20 ficiary access to providers, and to promote af-
21 fordability and the efficient delivery of medical
22 care consistent with subsection (a)(1). Such
23 rates shall not be set at levels expected to in-
24 crease average medical costs per enrollee cov-
25 ered under the public health insurance option

1 beyond what would be expected if the process
2 under paragraph (1)(B) and subparagraph (A)
3 were continued, as certified by the Office of the
4 Actuary of the Centers for Medicare & Medicaid
5 Services.

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

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

18 "(4) CONSTRUCTION.—Nothing in this section
19 shall be construed as limiting the Secretary's author-
20 ity to correct for payments that are excessive or defi-
21 cient, taking into account the provisions of sub-
22 section (a)(1) and any appropriate adjustments
23 based on the demographic characteristics of enrollees
24 covered under the public health insurance option,
25 but in no case shall the correction of payments

1 under this paragraph result in a level of expendi-
2 tures per enrollee that exceeds the level of expendi-
3 tures that would have occurred under paragraphs
4 (1)(B) and (2)(A), as certified by the Office of the
5 Actuary of the Centers for Medicare & Medicaid
6 Services.

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

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

17 "(d) MODERNIZED PAYMENT INITIATIVES AND DE-
18 LIVERY SYSTEM REFORM.—

19 "(1) IN GENERAL.—For plan years beginning
20 with 2015, the Secretary may utilize innovative pay-
21 ment mechanisms and policies to determine pay-
22 ments for items and services under the public health
23 insurance option. The payment mechanisms and
24 policies under this subsection may include patient-
25 centered medical home and other care management

payments, accountable care organizations, value-based purchasing, bundling of services, differential payment rates, performance or utilization based payments, partial capitation, and direct contracting with providers. Payment rates under such payment mechanisms and policies shall not be set at levels expected to increase average medical costs per enrollee covered under the public health insurance option beyond what would be expected if the process under paragraphs (1)(B) and (2)(A) of subsection (c) were continued, as certified by the Office of the Actuary of the Centers for Medicare & Medicaid Services.

"(2) REQUIREMENTS FOR INNOVATIVE PAYMENTS.—The Secretary shall design and implement the payment mechanisms and policies under this subsection in a manner that—

"(A) seeks to—

"(i) improve health outcomes;

"(ii) reduce health disparities (including racial, ethnic, and other disparities);

"(iii) provide efficient and affordable care;

"(iv) address geographic variation in the provision of health services; or

1 "(v) prevent or manage chronic ill-
2 ness; and
3 "(B) promotes care that is integrated, pa-
4 tient-centered, high-quality, and efficient.
5 "(3) ENCOURAGING THE USE OF HIGH VALUE
6 SERVICES.—To the extent allowed by the benefit
7 standards applied to all health benefits plans partici-
8 pating under the Exchange involved, the public
9 health insurance option may modify cost sharing and
10 payment rates to encourage the use of services that
11 promote health and value.
12 "(4) NON-UNIFORMITY PERMITTED.—Nothing
13 in this subtitle shall prevent the Secretary from
14 varying payments based on different payment struc-
15 ture models (such as accountable care organizations
16 and medical homes) under the public health insur-
17 ance option for different geographic areas.
18 "(e) PROVIDER PARTICIPATION.—
19 "(1) IN GENERAL.—The Secretary shall estab-
20 lish conditions of participation for health care pro-
21 viders under the public health insurance option.
22 "(2) LICENSURE OR CERTIFICATION.—The Sec-
23 retary shall not allow a health care provider to par-
24 ticipate in the public health insurance option unless

1 such provider is appropriately licensed or certified
2 under State law.
3 "(3) PAYMENT TERMS FOR PROVIDERS.—
4 "(A) PHYSICIANS.—The Secretary shall
5 provide for the annual participation of physi-
6 cians under the public health insurance option,
7 for which payment may be made for services
8 furnished during the year, in one of 2 classes:
9 "(i) PREFERRED PHYSICIANS.—Those
10 physicians who agree to accept the pay-
11 ment rate established under this section
12 (without regard to cost-sharing) as the
13 payment in full.
14 "(ii) PARTICIPATING, NON-PRE-
15 FERRED PHYSICIANS.—Those physicians
16 who agree not to impose charges (in rela-
17 tion to the payment rate described in sub-
18 section (c) for such physicians) that exceed
19 the ratio permitted under section
20 1848(g)(2)(C) of the Social Security Act.
21 "(B) OTHER PROVIDERS.—The Secretary
22 shall provide for the participation (on an annual
23 or other basis specified by the Secretary) of
24 health care providers (other than physicians)
25 under the public health insurance option under

which payment shall only be available if the provider agrees to accept the payment rate established under subsection (c) (without regard to cost-sharing) as the payment in full.

"(4) EXCLUSION OF CERTAIN PROVIDERS.—The Secretary shall exclude from participation under the public health insurance option a health care provider that is excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act).

"(f) APPLICATION OF FRAUD AND ABUSE PROVISIONS.—Provisions of law (other than criminal law provisions) identified by the Secretary by regulation, in consultation with the Inspector General of the Department of Health and Human Services, that impose sanctions with respect to waste, fraud, and abuse under Medicare, such as the False Claims Act (31 U.S.C. 3729 et seq.), shall also apply to the public health insurance option.

"(g) MEDICARE DEFINED.—For purposes of this section, the term 'Medicare' means the health insurance programs under title XVIII of the Social Security Act.".

(b) CONFORMING AMENDMENTS.—

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

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

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

(B) by inserting "the public health insurance option under section 1325," before "and a multi-State plan".

(2) LEVEL PLAYING FIELD.—Section 1324(a) of such Act, as amended by section 10104(n) of such Act, is amended by inserting "the public health insurance option under section 1325," before "or a multi-State qualified health plan".

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