H. R. 2010

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2021

Mr. DeFazio 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.

Be it enacted by the Senate and House of Representa-
tives 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 fol-
lowing new section:

(continued)
“SEC. 1325. PUBLIC HEALTH INSURANCE OPTION.

“(a) Establishment and Administration of a Public Health Insurance Option.—

“(1) Establishment.—For years beginning with 2022, 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

VerDate Sep 11 2014 02:16 May 18, 2021 Jkt 019200 PO 00000 Frm 00002 Fmt 6652 Sfmt 6201 E:\BILLS\H2010.IH H2010kjohnson on DSK79L0C42PROD with BILLS
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(e)(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 start-up funding provided under clause (i) to the Treasury in an amortized manner over the 10-year period beginning with 2022.
“(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 2022, 2023, and 2024, 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 applicable 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 sub-
paragraph (B) in order to accommodate pay-
ments 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 2022, 2023, and 2024, for payment rates that are 5 percent greater than the rates established under paragraph (1).

“(ii) Services described.—The services described in this clause are items and professional services, under the public health insurance option by a physician or other health care practitioner who partici-
pates in both Medicare and the public health insurance option.

“(iii) Special rules.—A pediatrician and any other health care practitioner who is a type of practitioner that does not typically participate in Medicare (as determined by the Secretary) shall also be eligible for the increased payment rates under clause (i).

“(B) Subsequent periods.—Beginning with 2025 and for subsequent years, the Secretary shall continue to use an administrative process to set such rates in order to promote payment accuracy, to ensure adequate beneficiary access to providers, and to promote affordability and the efficient delivery of medical care consistent with subsection (a)(1). Such rates 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 paragraph (1)(B) and subparagraph (A) were continued, as certified by the Office of the Actuary of the Centers for Medicare & Medicaid Services.
“(C) Establishment of a Provider Network.—Health care providers participating under Medicare are participating providers in the public health insurance option unless they opt out in a process established by the Secretary.

“(3) Administrative Process for Setting Rates.—Chapter 5 of title 5, United States Code, shall apply to the process for the initial establishment of payment rates under this subsection but not to the specific methodology for establishing such rates or the calculation of such rates.

“(4) Construction.—Nothing in this section shall be construed as limiting the Secretary’s authority to correct for payments that are excessive or deficient, taking into account the provisions of subsection (a)(1) and any appropriate adjustments based on the demographic characteristics of enrollees covered under the public health insurance option, but in no case shall the correction of payments under this paragraph result in a level of expenditures per enrollee that exceeds the level of expenditures that would have occurred under paragraphs (1)(B) and (2)(A), as certified by the Office of the
Actuary of the Centers for Medicare & Medicaid Services.

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

“(6) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review of a payment rate or methodology established under this subsection or under subsection (d).

“(d) MODERNIZED PAYMENT INITIATIVES AND DELIVERY SYSTEM REFORM.—

“(1) IN GENERAL.—For plan years beginning with 2022, the Secretary may utilize innovative payment mechanisms and policies to determine payments for items and services under the public health insurance option. The payment mechanisms and policies under this subsection may include patient-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

“(v) prevent or manage chronic illness; and

“(B) promotes care that is integrated, patient-centered, high-quality, and efficient.
“(3) Encouraging the use of high value services.—To the extent allowed by the benefit standards applied to all health benefits plans participating under the Exchange involved, the public health insurance option may modify cost sharing and payment rates to encourage the use of services that promote health and value.

“(4) Non-uniformity permitted.—Nothing in this subtitle shall prevent the Secretary from varying payments based on different payment structure models (such as accountable care organizations and medical homes) under the public health insurance option for different geographic areas.

“(e) Provider Participation.—

“(1) In general.—The Secretary shall establish conditions of participation for health care providers under the public health insurance option.

“(2) Licensure or certification.—The Secretary shall not allow a health care provider to participate in the public health insurance option unless such provider is appropriately licensed or certified under State law.

“(3) Payment terms for providers.—

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

“(i) PREFERRED PHYSICIANS.—Those physicians who agree to accept the payment rate established under this section (without regard to cost sharing) as the payment in full.

“(ii) PARTICIPATING, NON-PREFERRED PHYSICIANS.—Those physicians who agree not to impose charges (in relation to the payment rate described in subsection (e) for such physicians) that exceed the ratio permitted under section 1848(g)(2)(C) of the Social Security Act.

“(B) OTHER PROVIDERS.—The Secretary shall provide for the participation (on an annual or other basis specified by the Secretary) of health care providers (other than physicians) 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 (e) (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 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 is amended by inserting “the public health insurance option under section 1325,” before “or a multi-State qualified health plan”.

○