

115TH CONGRESS  
1ST SESSION

# S. 194

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2017

Mr. WHITEHOUSE (for himself, Mr. BROWN, and Mr. FRANKEN) 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.

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 “Consumer Health Op-  
5 tions and Insurance Competition Enhancement Act” or  
6 the “CHOICE Act”.

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

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

1 **“SEC. 2795. PUBLIC HEALTH INSURANCE OPTION.**

2 “(a) ESTABLISHMENT.—

3 “(1) IN GENERAL.—For plan years beginning  
4 in 2019, the Secretary shall establish, and provide  
5 for the offering through the Exchanges, of a quali-  
6 fied health plan (in this Act referred to as the ‘pub-  
7 lic health insurance option’) that provides value,  
8 choice, competition, and stability of affordable, high-  
9 quality coverage throughout the United States in ac-  
10 cordance with this section.

11 “(2) PRIMARY RESPONSIBILITY.—In designing  
12 the public health insurance option, the primary re-  
13 sponsibility of the Secretary shall be to create an af-  
14 fordable health plan without compromising quality  
15 or access to care.

16 “(b) ADMINISTERING THE PUBLIC HEALTH INSUR-  
17 ANCE OPTION.—

18 “(1) OFFERED THROUGH EXCHANGES.—

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

22 “(B) ENSURING A LEVEL PLAYING  
23 FIELD.—Consistent with this section, the public  
24 health insurance option shall comply with re-  
25 quirements under title I of the Patient Protec-  
26 tion and Affordable Care Act, and the amend-

ments made by that title, that are applicable to health plans offered through the 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 shall offer bronze, silver, and gold 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 in-

1            involve the transfer of insurance risk from the  
2            Secretary to the entity entering into such con-  
3            tract with the Secretary.

4            “(3) STATE ADVISORY COUNCIL.—

5                    “(A) ESTABLISHMENT.—A State may es-  
6                    tablish a public or nonprofit entity to serve as  
7                    the State Advisory Council to provide rec-  
8                    ommendations to the Secretary on the oper-  
9                    ations and policies of the public health insur-  
10                    ance option offered through the Exchange oper-  
11                    ating in the State.

12                   “(B) RECOMMENDATIONS.—A State Advi-  
13                   sory Council established under subparagraph  
14                   (A) shall provide recommendations on at least  
15                   the following:

16                            “(i) Policies and procedures to inte-  
17                            grate quality improvement and cost con-  
18                            tainment mechanisms into the health care  
19                            delivery system.

20                            “(ii) Mechanisms to facilitate public  
21                            awareness of the availability of the public  
22                            health insurance option.

23                            “(iii) Alternative payment models and  
24                            value-based insurance design under the

1 public health insurance option that encour-  
 2 age quality improvement and cost control.

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

7 “(D) APPLICABILITY OF RECOMMENDA-  
 8 TIONS.—The Secretary may apply the rec-  
 9 ommendations of a State Advisory Council to  
 10 the public health insurance option in that State,  
 11 in any other State, or in all States.

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

14 “(A) to establish rates for premiums and  
 15 health care provider reimbursement under sub-  
 16 section (c); and

17 “(B) for other purposes under this section,  
 18 including to improve quality, and reduce racial,  
 19 ethnic, and other disparities, in health and  
 20 health care.

21 “(c) FINANCING THE PUBLIC HEALTH INSURANCE  
 22 OPTION.—

23 “(1) PREMIUMS.—

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

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

8                   “(ii) at a level sufficient to fully fi-  
9                   nance—

10                   “(I) the costs of health benefits  
11                   provided by the public health insur-  
12                   ance option; and

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

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

20           “(C) VARIATIONS IN PREMIUM RATES.—  
21           The premium rate charged for the public health  
22           insurance option may not vary except as pro-  
23           vided under section 2701.

24           “(2) HEALTH CARE PROVIDER PAYMENT RATES  
25           FOR ITEMS AND SERVICES.—

1 “(A) IN GENERAL.—

2 “(i) RATES NEGOTIATED BY THE SEC-  
3 RETARY.—Not later than January 1, 2018,  
4 and except as provided in clause (ii), the  
5 Secretary shall, through a negotiated  
6 agreement with health care providers, es-  
7 tablish rates for reimbursing health care  
8 providers for providing the benefits covered  
9 by the public health insurance option.

10 “(ii) MEDICARE REIMBURSEMENT  
11 RATES.—If the Secretary and health care  
12 providers are unable to reach a negotiated  
13 agreement on a reimbursement rate, the  
14 Secretary shall reimburse providers at  
15 rates determined for equivalent items and  
16 services under the original medicare fee-  
17 for-service program under parts A and B  
18 of title XVIII of the Social Security Act.

19 “(iii) FOR NEW SERVICES.—The Sec-  
20 retary shall modify reimbursement rates  
21 described in clause (ii) in order to accom-  
22 modate payments for services, such as  
23 well-child visits, that are not otherwise cov-  
24 ered under the original medicare fee-for-  
25 service program.

1           “(B) PRESCRIPTION DRUGS.—Any pay-  
 2           ment rate under this subsection for a prescrip-  
 3           tion drug shall be at a rate negotiated by the  
 4           Secretary. If the Secretary is unable to reach a  
 5           negotiated agreement on such a reimbursement  
 6           rate, the Secretary shall use rates determined  
 7           for equivalent drugs paid for under the original  
 8           medicare fee-for-service program. The Secretary  
 9           shall modify such rates in order to accommo-  
 10          date payments for drugs that are not otherwise  
 11          covered under the original medicare fee-for-  
 12          service program.

13          “(3) ACCOUNT.—

14               “(A) ESTABLISHMENT.—There is estab-  
 15               lished in the Treasury of the United States an  
 16               account for the receipts and disbursements at-  
 17               tributable to the operation of the public health  
 18               insurance option, including the startup funding  
 19               under subparagraph (C) and appropriations au-  
 20               thorized under subparagraph (D).

21               “(B) PROHIBITION OF STATE IMPOSITION  
 22               OF TAXES.—Section 1854(g) of the Social Se-  
 23               curity Act shall apply to receipts and disburse-  
 24               ments described in subparagraph (A) in the



1 same manner as such section applies to pay-  
 2 ments or premiums described in such section.

3 “(C) STARTUP FUNDING.—

4 “(i) AUTHORIZATION OF FUNDING.—

5 There are authorized to be appropriated  
 6 such sums as may be necessary to estab-  
 7 lish the public health insurance option and  
 8 cover 90 days of claims reserves based on  
 9 projected enrollment.

10 “(ii) AMORTIZATION OF STARTUP

11 FUNDING.—The Secretary shall provide for  
 12 the repayment of the startup funding pro-  
 13 vided under clause (i) to the Treasury in  
 14 an amortized manner over the 10-year pe-  
 15 riod beginning on January 1, 2019.

16 “(D) ADDITIONAL AUTHORIZATION OF AP-

17 PROPRIATIONS.—To carry out paragraph (2) of  
 18 subsection (b), there are authorized to be ap-  
 19 propriated such sums as may be necessary.

20 “(d) HEALTH CARE PROVIDER PARTICIPATION.—

21 “(1) PROVIDER PARTICIPATION.—

22 “(A) IN GENERAL.—The Secretary shall  
 23 establish conditions of participation for health  
 24 care providers under the public health insurance  
 25 option.

1 “(B) LICENSURE OR CERTIFICATION.—

2 The Secretary shall not allow a health care pro-  
 3 vider to participate in the public health insur-  
 4 ance option unless such provider is appro-  
 5 priately licensed or certified under State law.

6 “(2) ESTABLISHMENT OF A PROVIDER NET-  
 7 WORK.—

8 “(A) MEDICARE AND MEDICAID PARTICI-  
 9 PATING PROVIDERS.—A health care provider  
 10 that is a participating provider of services or  
 11 supplier under the Medicare program under  
 12 title XVIII of the Social Security Act or under  
 13 a State Medicaid plan under title XIX of such  
 14 Act is a participating provider in the public  
 15 health insurance option unless the health care  
 16 provider opts out of participating in the public  
 17 health insurance option through a process es-  
 18 tablished by the Secretary.

19 “(B) ADDITIONAL PROVIDERS.—The Sec-  
 20 retary shall establish a process to allow health  
 21 care providers not described in subparagraph  
 22 (A) to become participating providers in the  
 23 public health insurance option.”.

24 (b) CONFORMING AMENDMENTS.—

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

5           (A) in the paragraph heading, by inserting  
6 “, THE PUBLIC HEALTH INSURANCE OPTION,”  
7 before “AND”; and

8           (B) by inserting “the public health insur-  
9 ance option under section 2795 of the Public  
10 Health Service Act,” before “and a multi-State  
11 plan”.

12          (2) LEVEL PLAYING FIELD.—Section 1324(a)  
13 of the Patient Protection and Affordable Care Act  
14 (42 U.S.C. 18044(a)) is amended by inserting “the  
15 public health insurance option under section 2795 of  
16 the Public Health Service Act,” before “or a multi-  
17 State qualified health plan”.

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