

116TH CONGRESS  
1ST SESSION

# S. 1033

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

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.

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”.

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

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

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

6 “(a) ESTABLISHMENT.—

7 “(1) IN GENERAL.—For plan years beginning  
 8 in 2020, the Secretary shall establish, and provide  
 9 for the offering through the Exchanges, of a quali-  
 10 fied health plan (in this Act referred to as the ‘pub-  
 11 lic health insurance option’) that provides value,  
 12 choice, competition, and stability of affordable, high-  
 13 quality coverage throughout the United States in ac-  
 14 cordance with this section.

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

20 “(b) ADMINISTERING THE PUBLIC HEALTH INSUR-  
 21 ANCE OPTION.—

22 “(1) OFFERED THROUGH EXCHANGES.—

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

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

4                   “(i) comply with requirements under  
5                   title I of the Patient Protection and Af-  
6                   fordable Care Act, and the amendments  
7                   made by that title, that are applicable to  
8                   health plans offered through the Ex-  
9                   changes, including provider networks, no-  
10                  tices, consumer protections, and cost-shar-  
11                  ing; and

12                   “(ii) provide a benefit package that is  
13                   comprehensive and meets the health care  
14                   needs of patients, including benefits de-  
15                   scribed in section 1302(b) of the Patient  
16                   Protection and Affordable Care Act.

17           “(C) PREEMPTION.—Notwithstanding sec-  
18           tion 1303(a)(1) of the Patient Protection and  
19           Affordable Care Act, a State law that prohibits  
20           the public health insurance option from offering  
21           the coverage described in subparagraph (B)  
22           shall be preempted.

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

1 silver and gold plans and may offer bronze  
2 plans.

3 “(2) ADMINISTRATIVE CONTRACTING.—

4 “(A) AUTHORITIES.—The Secretary may  
5 enter into contracts for the purpose of per-  
6 forming administrative functions (including  
7 functions described in subsection (a)(4) of sec-  
8 tion 1874A of the Social Security Act) with re-  
9 spect to the public health insurance option in  
10 the same manner as the Secretary may enter  
11 into contracts under subsection (a)(1) of such  
12 section. The Secretary shall have the same au-  
13 thority with respect to the public health insur-  
14 ance option as the Secretary has under such  
15 subsection (a)(1) and subsection (b) of section  
16 1874A of the Social Security Act with respect  
17 to title XVIII of such Act.

18 “(B) TRANSFER OF INSURANCE RISK.—  
19 Any contract under this paragraph shall not in-  
20 volve the transfer of insurance risk from the  
21 Secretary to the entity entering into such con-  
22 tract with the Secretary.

23 “(3) STATE ADVISORY COUNCIL.—

24 “(A) ESTABLISHMENT.—A State may es-  
25 tablish a public or nonprofit entity to serve as

1 the State Advisory Council to provide rec-  
2 ommendations to the Secretary on the oper-  
3 ations and policies of the public health insur-  
4 ance option offered through the Exchange oper-  
5 ating in the State.

6 “(B) RECOMMENDATIONS.—A State Advi-  
7 sory Council established under subparagraph  
8 (A) shall provide recommendations on at least  
9 the following:

10 “(i) Policies and procedures to inte-  
11 grate quality improvement and cost con-  
12 tainment mechanisms into the health care  
13 delivery system.

14 “(ii) Mechanisms to facilitate public  
15 awareness of the availability of the public  
16 health insurance option.

17 “(iii) Alternative payment models and  
18 value-based insurance design under the  
19 public health insurance option that encour-  
20 age quality improvement and cost control.

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

1           “(D) APPLICABILITY OF RECOMMENDA-  
 2           TIONS.—The Secretary may apply the rec-  
 3           ommendations of a State Advisory Council to  
 4           the public health insurance option in that State,  
 5           in any other State, or in all States.

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

8           “(A) to establish rates for premiums and  
 9           health care provider reimbursement under sub-  
 10          section (c); and

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

15          “(c) FINANCING THE PUBLIC HEALTH INSURANCE  
 16          OPTION.—

17          “(1) PREMIUMS.—

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

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

1 “(ii) at a level sufficient to fully fi-  
 2 nance—

3 “(I) the costs of health benefits  
 4 provided by the public health insur-  
 5 ance option; and

6 “(II) administrative costs related  
 7 to operating the public health insur-  
 8 ance option.

9 “(B) CONTINGENCY MARGIN.—In estab-  
 10 lishing premium rates under subparagraph (A),  
 11 the Secretary shall include an appropriate  
 12 amount for a contingency margin.

13 “(C) VARIATIONS IN PREMIUM RATES.—  
 14 The premium rate charged for the public health  
 15 insurance option may not vary except as pro-  
 16 vided under section 2701.

17 “(2) HEALTH CARE PROVIDER PAYMENT RATES  
 18 FOR ITEMS AND SERVICES.—

19 “(A) IN GENERAL.—

20 “(i) RATES NEGOTIATED BY THE SEC-  
 21 RETARY.—Not later than January 1, 2020,  
 22 and except as provided in clause (ii), the  
 23 Secretary shall, through a negotiated  
 24 agreement with health care providers, es-  
 25 tablish rates for reimbursing health care

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

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

12 “(iii) FOR NEW SERVICES.—The Sec-  
 13 retary shall modify reimbursement rates  
 14 described in clause (ii) in order to accom-  
 15 modate payments for services, such as  
 16 well-child visits, that are not otherwise cov-  
 17 ered under the original Medicare fee-for-  
 18 service program.

19 “(B) PRESCRIPTION DRUGS.—Any pay-  
 20 ment rate under this subsection for a prescrip-  
 21 tion drug shall be at a rate negotiated by the  
 22 Secretary. If the Secretary is unable to reach a  
 23 negotiated agreement on such a reimbursement  
 24 rate, the Secretary shall use rates determined  
 25 for equivalent drugs paid for under the original



1 Medicare fee-for-service program. The Secretary  
2 shall modify such rates in order to accommo-  
3 date payments for drugs that are not otherwise  
4 covered under the original Medicare fee-for-  
5 service program.

6 “(3) ACCOUNT.—

7 “(A) ESTABLISHMENT.—There is estab-  
8 lished in the Treasury of the United States an  
9 account for the receipts and disbursements at-  
10 tributable to the operation of the public health  
11 insurance option, including the startup funding  
12 under subparagraph (C) and appropriations au-  
13 thorized under subparagraph (D).

14 “(B) PROHIBITION OF STATE IMPOSITION  
15 OF TAXES.—Section 1854(g) of the Social Se-  
16 curity Act shall apply to receipts and disburse-  
17 ments described in subparagraph (A) in the  
18 same manner as such section applies to pay-  
19 ments or premiums described in such section.

20 “(C) STARTUP FUNDING.—

21 “(i) AUTHORIZATION OF FUNDING.—  
22 There are authorized to be appropriated  
23 such sums as may be necessary to estab-  
24 lish the public health insurance option and

1 cover 90 days of claims reserves based on  
2 projected enrollment.

3 “(ii) AMORTIZATION OF STARTUP  
4 FUNDING.—The Secretary shall provide for  
5 the repayment of the startup funding pro-  
6 vided under clause (i) to the Treasury in  
7 an amortized manner over the 10-year pe-  
8 riod beginning on January 1, 2020.

9 “(D) ADDITIONAL AUTHORIZATION OF AP-  
10 PROPRIATIONS.—To carry out paragraph (2) of  
11 subsection (b), there are authorized to be ap-  
12 propriated such sums as may be necessary.

13 “(E) LIMITATION.—Any provision of law  
14 restricting the use of Federal funds with re-  
15 spect to any reproductive health service shall  
16 not apply to funds appropriated under this sub-  
17 section.

18 “(d) HEALTH CARE PROVIDER PARTICIPATION.—

19 “(1) PROVIDER PARTICIPATION.—

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

24 “(B) LICENSURE OR CERTIFICATION.—

25 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

1 (A) to become participating providers in the  
2 public health insurance option.”.

3 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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