

115TH CONGRESS
1ST SESSION

S. 1970

To establish a public health plan.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2017

Mr. BENNET (for himself, Mr. KAINE, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish a public health plan.

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 “Medicare-X Choice Act
5 of 2017”.

6 **SEC. 2. ESTABLISHMENT AND ADMINISTRATION OF A PUB-**

7 **LIC HEALTH PLAN.**

8 The Social Security Act is amended by adding at the
9 end the following new title:

1 **“TITLE XXII—MEDICARE**
2 **EXCHANGE HEALTH PLAN**

3 **“SEC. 2201. ESTABLISHMENT.**

4 “(a) ESTABLISHMENT OF PLAN.—

5 “(1) IN GENERAL.—The Secretary shall estab-
6 lish a coordinated and low-cost health plan, to be
7 known as the ‘Medicare Exchange health plan’ (re-
8 ferred to in this section as the ‘health plan’) to pro-
9 vide access to quality health care for enrollees.

10 “(2) TIMEFRAME.—

11 “(A) INDIVIDUAL MARKET AVAIL-
12 ABILITY.—

13 “(i) IN GENERAL.—In accordance
14 with clause (ii), the Secretary shall make
15 the health plan available in the individual
16 market, in certain rating areas, for plan
17 year 2020 and each subsequent plan year,
18 and increase the availability such that the
19 plan is available in the individual market
20 to all residents of all rating areas in the
21 United States for plan year 2023 and each
22 subsequent plan year.

23 “(ii) PRIORITY AREAS.—In deter-
24 mining in which rating areas the Secretary
25 initially will make the health plan avail-

1 able, the Secretary shall give priority to
2 rating areas in which—

3 “(I) not more than 1 health in-
4 surance issuer offers plans on the ap-
5 plicable State or Federal American
6 Health Benefit Exchange (referred to
7 in this title as the ‘Exchange’); or

8 “(II) there is a shortage of
9 health providers or lack of competition
10 that results in a high cost of health
11 care services, including health profes-
12 sional shortage areas and rural areas.

13 “(B) SMALL GROUP MARKET.—The Sec-
14 retary shall make the health plan available in
15 the small group market in all rating areas for
16 plan year 2024.

17 “(b) ESTABLISHMENT OF FUNDS.—

18 “(1) PLAN RESERVE FUND.—

19 “(A) IN GENERAL.—There is established in
20 the Treasury of the United States a ‘Plan Re-
21 serve Fund’, to be administered by the Sec-
22 retary of Health and Human Services, for pur-
23 poses of establishing the Medicare Exchange
24 health plan and administering such plan, con-
25 sisting of amounts appropriated to such fund.

1 “(B) APPROPRIATION.—There is appro-
2 priated \$1,000,000,000, out of monies in the
3 Treasury not otherwise obligated, to the Plan
4 Reserve Fund for fiscal year 2018.

5 “(2) DATA AND TECHNOLOGY FUND.—There is
6 established in the Treasury of the United States a
7 ‘Data and Technology Fund’, to be administered by
8 the Secretary of Health and Human Services, acting
9 through the Chief Actuary of the Centers for Medi-
10 care & Medicaid Services, for purposes of updating
11 technology and performing data collection under sec-
12 tion 2205 in order to establish appropriate pre-
13 miums for all geographic regions of the United
14 States. There are authorized to be appropriated to
15 the Data and Technology Fund such sums as may
16 be necessary for fiscal year 2018.

17 “(c) RULEMAKING.—The Secretary may promulgate
18 such regulations as may be necessary to carry out this
19 title.

20 **“SEC. 2202. AVAILABILITY OF PLAN.**

21 “(a) ELIGIBILITY.—An individual shall be eligible to
22 enroll in the health plan if such individual, for the entire
23 period for which enrollment is sought—

1 “(1) is a qualified individual within the mean-
2 ing of section 1312 of the Patient Protection and
3 Affordable Care Act (42 U.S.C. 18032); and

4 “(2) is not eligible for benefits under the Medi-
5 care program under title XVIII.

6 “(b) EXCHANGES.—In accordance with the time-
7 frame under section 2201(a)(2), the health plan shall be
8 made available through the American Health Benefit Ex-
9 changes described in sections 1311 and 1321 of the Pa-
10 tient Protection and Affordable Care Act (42 U.S.C.
11 18031, 18041), including the Small Business Health Op-
12 tions Program Exchange.

13 **“SEC. 2203. PLAN REQUIREMENTS.**

14 “(a) GENERAL REQUIREMENTS.—The health plan
15 shall comply with all requirements of subtitle D of title
16 I of the Patient Protection and Affordable Care Act (42
17 U.S.C. 18021 et seq.) and title XXVII of the Public
18 Health Service Act (42 U.S.C. 300gg et seq.) applicable
19 to qualified health plans, and such health plan shall be
20 a qualified health plan, including for purposes of the Inter-
21 nal Revenue Code of 1986.

22 “(b) LEVELS OF COVERAGE.—The Secretary—

23 “(1) shall make available a silver level and gold
24 level version of the plan, in accordance with section
25 1301(a)(1)(C)(ii); and

1 “(2) may make available no more than 2
2 versions of the plan for each of the 4 levels of cov-
3 erage described in subparagraphs (A) through (D) of
4 section 1302(d)(1) of the Patient Protection and Af-
5 fordable Care Act (42 U.S.C. 18022(d)(1)).

6 **“SEC. 2204. ADMINISTRATIVE CONTRACTING.**

7 “(a) IN GENERAL.—The Secretary may enter into
8 contracts for the purpose of performing administrative
9 functions (including functions described in subsection
10 (a)(4) of section 1874A) with respect to the health plan
11 in the same manner as the Secretary may enter into con-
12 tracts under subsection (a)(1) of such section. The Sec-
13 retary shall have the same authority with respect to the
14 public health insurance option as the Secretary has under
15 such subsection (a)(1) and subsection (b) of section 1874A
16 with respect to title XVIII.

17 “(b) TRANSFER OF INSURANCE RISK.—Any contract
18 under subsection (a) shall not involve the transfer of in-
19 surance risk from the Secretary to the entity entering into
20 such contract with the Secretary, except in the case of an
21 alternative payment model under section 2209(h).

22 **“SEC. 2205. DATA COLLECTION.**

23 “Subject to all applicable privacy requirements, in-
24 cluding the requirements under the regulations promul-
25 gated pursuant to section 264(c) of the Health Insurance

1 Portability and Accountability Act of 1996 (42 U.S.C.
2 1320d–2 note), the Secretary may collect data from State
3 insurance commissioners and other relevant entities to es-
4 tablish rates for premiums and for other purposes includ-
5 ing to improve quality, and reduce racial, ethnic, and other
6 disparities, with respect to the health plan.

7 **“SEC. 2206. PREMIUMS; RISK POOLS; REINSURANCE.**

8 “(a) PREMIUM AMOUNTS.—The Secretary shall es-
9 tablish premiums for the health plan that cover the full
10 actuarial cost of offering such plan, including the adminis-
11 trative costs of offering such plan. Such premiums shall
12 vary geographically and between the small group market
13 and the individual market in accordance with differences
14 in the cost of providing such coverage. If, for any plan
15 year, the amount collected in premiums exceeds the
16 amount required for health care benefits and administra-
17 tive costs in that plan year, such excess amounts shall re-
18 main available to the Secretary to administer the health
19 plan and finance beneficiary costs in subsequent years.

20 “(b) RISK POOL.—All enrollees in the health plan
21 within a State shall be members of a single risk pool, ex-
22 cept that the Secretary may establish separate risk pools
23 for the individual market and small group market if the
24 State has not exercised its authority under section

1 1312(c)(3) of the Patient Protection and Affordable Care
2 Act (42 U.S.C. 18032(c)(3)).

3 “(c) REINSURANCE.—Notwithstanding subsection
4 (b), the Secretary may establish a mechanism to pool the
5 costs of the highest-cost patients on a nationwide basis
6 to the extent such costs are not already pooled pursuant
7 to section 1343 of the Patient Protection and Affordable
8 Care Act (42 U.S.C. 18063).

9 **“SEC. 2207. REIMBURSEMENT RATES.**

10 “(a) MEDICARE RATES.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2) and subsections (b) and (c) and subject to
13 subsection (d), the Secretary shall reimburse health
14 care providers furnishing items and services under
15 the health plan at rates determined for equivalent
16 items and services under the original Medicare fee-
17 for-service program under parts A and B of title
18 XVIII.

19 “(2) AUTHORITY TO INCREASE PAYMENTS
20 RATES IN RURAL AREAS.—If the Secretary deter-
21 mines appropriate, the Secretary may increase the
22 reimbursements rates described in paragraph (1) by
23 up to 25 percent for items and services furnished in
24 rural areas (as defined in section 1886(d)(2)(D)).

1 “(b) PRESCRIPTION DRUGS.—Subject to subsection
2 (d), payment rates for prescription drugs shall be at a rate
3 negotiated by the Secretary. Such negotiations may be in
4 conjunction with negotiations for covered part D drugs
5 under part D of title XVIII.

6 “(c) ADDITIONAL ITEMS AND SERVICES.—Subject to
7 subsection (d), the Secretary shall establish reimburse-
8 ment rates for any items and services provided under the
9 health plan that are not items and services provided under
10 the original Medicare fee-for-service program under parts
11 A and B of title XVIII.

12 “(d) INNOVATIVE PAYMENT METHODS.—The Sec-
13 retary may utilize innovative payment methods, including
14 value-based payment arrangements, in making payments
15 for items and services (including prescription drugs) fur-
16 nished under the health plan.

17 **“SEC. 2208. PARTICIPATING PROVIDERS.**

18 “(a) IN GENERAL.—A health care provider that is
19 enrolled under the Medicare program under section
20 1866(j) or is a participating provider under a State Med-
21 icaid plan under title XIX on the date of enactment of
22 this Act shall be a participating provider under the health
23 plan.

24 “(b) ADDITIONAL PROVIDERS.—The Secretary shall
25 establish a process to allow health care providers not de-

1 scribed in subsection (a) to become a participating pro-
2 vider under the health plan.

3 “(c) OPT-OUT.—The Secretary shall establish a proc-
4 ess by which a health care provider that is a participating
5 provider under the health plan pursuant to subsection (a)
6 or (b) may opt-out of being such a participating provider.

7 “(d) REQUIREMENT TO PARTICIPATE IN ORDER TO
8 BE ENROLLED UNDER MEDICARE.—Beginning January
9 1, 2019, a health care provider may not be enrolled under
10 the Medicare program under section 1866(j) unless the
11 provider is also a participating provider under the health
12 plan.

13 **“SEC. 2209. DELIVERY SYSTEM REFORM FOR AN ENHANCED**
14 **HEALTH PLAN.**

15 “(a) IN GENERAL.—For plan years beginning with
16 plan year 2020, the Secretary may utilize innovative pay-
17 ment mechanisms and policies to determine payments for
18 items and services under the health plan. The payment
19 mechanisms and policies under this section may include
20 patient-centered medical home and other care manage-
21 ment payments, accountable care organizations, value-
22 based purchasing, bundling of services, differential pay-
23 ment rates, performance or utilization based payments,
24 telehealth, remote patient monitoring, partial capitation,
25 and direct contracting with providers.

1 “(b) REQUIREMENTS FOR INNOVATIVE PAYMENTS.—

2 The Secretary shall design and implement the payment
3 mechanisms and policies under this section in a manner
4 that—

5 “(1) seeks to—

6 “(A) improve health outcomes;

7 “(B) reduce health disparities (including
8 racial, ethnic, and other disparities);

9 “(C) provide efficient and affordable care;

10 “(D) address geographic variation in the
11 provision of health services; or

12 “(E) prevent or manage chronic illness;

13 and

14 “(2) promotes care that is integrated, patient-
15 centered, quality, and efficient.

16 “(c) ENCOURAGING THE USE OF HIGH-VALUE SERV-
17 ICES.—To the extent allowed by the benefit standards ap-
18 plied to all health benefits plans participating in the Ex-
19 changes (as described in section 2202(b)), the health plan
20 may modify cost-sharing and payment rates to encourage
21 the use of services that promote health and value.

22 “(d) PROMOTION OF DELIVERY SYSTEM REFORM.—

23 The Secretary shall monitor and evaluate the progress of
24 payment and delivery system reforms under this section

1 and shall seek to implement such reforms subject to the
2 following:

3 “(1) To the extent that the Secretary finds a
4 payment and delivery system reform successful in
5 improving quality and reducing costs, the Secretary
6 shall implement such reform on as large a geo-
7 graphic scale as practical and economical.

8 “(2) The Secretary may delay the implementa-
9 tion of such a reform in geographic areas in which
10 such implementation would place the public health
11 insurance option at a competitive disadvantage.

12 “(3) The Secretary may prioritize implementa-
13 tion of such a reform in high-cost geographic areas
14 or otherwise in order to reduce total program costs
15 or to promote high-value care.

16 “(e) NON-UNIFORMITY PERMITTED.—Nothing in
17 this section shall prevent the Secretary from varying pay-
18 ments based on different payment structure models (such
19 as accountable care organizations and medical homes)
20 under the health plan for different geographic areas.

21 “(f) INTEGRATION WITH SOCIAL SERVICES.—The
22 Secretary shall establish processes and, when appropriate,
23 collaborate with other agencies to integrate medical care
24 under the health plan with food, housing, transportation,

1 and income assistance if the Secretary determines that
2 such integration is expected to—

3 “(1) reduce spending without reducing the qual-
4 ity of patient care; or

5 “(2) improve the quality of patient care without
6 increasing spending.

7 “(g) TELEHEALTH.—The Secretary shall ensure the
8 integration of telehealth tools that increase patient access
9 to medical care, particularly in remote or underserved
10 areas, if the Secretary determines that such integration
11 is expected to—

12 “(1) reduce spending without reducing the qual-
13 ity of patient care; or

14 “(2) improve the quality of patient care without
15 increasing spending.

16 “(h) ALTERNATIVE PAYMENT MODEL.—

17 “(1) IN GENERAL.—The Secretary shall evalu-
18 ate the possibility of providing incentives, and, if ap-
19 propriate, apply incentives, for enrollees in the
20 health plan who receive services from providers who
21 are participating in an alternative payment model
22 (as defined in section 1833(z)(3)(C)).

23 “(2) AUTHORITY TO USE APMS IN USE UNDER
24 TRADITIONAL MEDICARE.—Nothing in this section
25 shall preclude the Secretary from using alternative

1 payment models (as so defined) under this title that
2 are in use under title XVIII.

3 **“SEC. 2210. NO EFFECT ON MEDICARE BENEFITS OR MEDI-**
4 **CARE TRUST FUNDS.**

5 “Nothing in this title shall—

6 “(1) affect the benefits available under title
7 XVIII; or

8 “(2) impact the Federal Hospital Insurance
9 Trust Fund under section 1817 or the Federal Sup-
10 plementary Medical Insurance Trust Fund under
11 section 1841 (including the Medicare Prescription
12 Drug Account within such Trust Fund).”.

13 **SEC. 3. AUTHORITY TO NEGOTIATE FAIR PRICES FOR MEDI-**
14 **CARE PRESCRIPTION DRUGS.**

15 (a) **IN GENERAL.**—Section 1860D–11 of the Social
16 Security Act (42 U.S.C. 1395w–111) is amended by strik-
17 ing subsection (i).

18 (b) **EFFECTIVE DATE.**—The amendment made by
19 this section shall take effect on the date of the enactment
20 of this Act.

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