

**AMENDMENT TO H.R. \_\_\_\_\_**

**OFFERED BY MR. TONKO OF NEW YORK**

Insert after section 1 the following:

1 **TITLE I—PROVISIONS RELATED**  
2 **TO PPACA**

Redesignate section 2 as section 101.

Add at the end the following:

3 **SEC. 102. PRESERVATION OF AVAILABLE COVERAGE**  
4 **CHOICES FOR ALL AMERICANS.**

5 Section 101 (repealing the Patient Protection and Af-  
6 fordable Care Act (Public Law 111–148)) shall not take  
7 effect unless and until the Director of the Office of Man-  
8 agement and Budget, in consultation with the Director of  
9 the Congressional Budget Office, certifies to the Congress  
10 that—

11 (1) the repeals effected by such section—

12 (A) will not decrease the number of indi-  
13 viduals who will gain health coverage, compared  
14 to the estimated number of individuals expected  
15 to gain such coverage under the Patient Protec-  
16 tion and Affordable Care Act if section 101 did  
17 not take effect; and

1 (B) will not prevent subtitle D of title I of  
2 the Patient Protection and Affordable Care Act  
3 (relating to available coverage choices for all  
4 Americans, including exchanges), as amended  
5 by section 10104 of such Act and section  
6 1204(a) of the Health Care and Education Rec-  
7 onciliation Act of 2010 from becoming effective  
8 and being implemented; and

9 (2) the provisions of title II have become effec-  
10 tive and have been fully implemented.

11 **TITLE II—PUBLIC HEALTH**  
12 **INSURANCE OPTION**

13 **SEC. 201. ESTABLISHMENT AND ADMINISTRATION OF A**  
14 **PUBLIC HEALTH INSURANCE OPTION AS AN**  
15 **EXCHANGE-QUALIFIED HEALTH BENEFITS**  
16 **PLAN.**

17 (a) ESTABLISHMENT.—For years beginning with  
18 2014, the Secretary of Health and Human Services (in  
19 this title referred to as the “Secretary”) shall provide for  
20 the offering of an Exchange-participating health benefits  
21 plan (in this division referred to as the “public health in-  
22 surance option”) that ensures choice, competition, and  
23 stability of affordable, high quality coverage throughout  
24 the United States in accordance with this title. In design-  
25 ing the option, the Secretary’s primary responsibility is

1 to create a low-cost plan without compromising quality or  
2 access to care.

3 (b) OFFERING AS AN EXCHANGE-PARTICIPATING  
4 HEALTH BENEFITS PLAN.—

5 (1) EXCLUSIVE TO THE EXCHANGE.—The pub-  
6 lic health insurance option shall only be made avail-  
7 able through the Health Insurance Exchange.

8 (2) ENSURING A LEVEL PLAYING FIELD.—Con-  
9 sistent with this title, the public health insurance op-  
10 tion shall comply with requirements that are applica-  
11 ble under this title to an Exchange-participating  
12 health benefits plan, including requirements related  
13 to benefits, benefit levels, provider networks, notices,  
14 consumer protections, and cost-sharing.

15 (3) PROVISION OF BENEFIT LEVELS.—The pub-  
16 lic health insurance option—

17 (A) shall offer basic, enhanced, and pre-  
18 mium plans; and

19 (B) may offer premium-plus plans.

20 (c) ADMINISTRATIVE CONTRACTING.—The Secretary  
21 may enter into contracts for the purpose of performing  
22 administrative functions (including functions described in  
23 subsection (a)(4) of section 1874A of the Social Security  
24 Act) with respect to the public health insurance option in  
25 the same manner as the Secretary may enter into con-

1 tracts under subsection (a)(1) of such section. The Sec-  
2 retary has the same authority with respect to the public  
3 health insurance option as the Secretary has under sub-  
4 sections (a)(1) and (b) of section 1874A of the Social Se-  
5 curity Act with respect to title XVIII of such Act. Con-  
6 tracts under this subsection shall not involve the transfer  
7 of insurance risk to such entity.

8 (d) OMBUDSMAN.—The Secretary shall establish an  
9 office of the ombudsman for the public health insurance  
10 option which shall have duties with respect to the public  
11 health insurance option similar to the duties of the Medi-  
12 care Beneficiary Ombudsman under section 1808(c)(2) of  
13 the Social Security Act.

14 (e) DATA COLLECTION.—The Secretary shall collect  
15 such data as may be required to establish premiums and  
16 payment rates for the public health insurance option and  
17 for other purposes under this title, including to improve  
18 quality and to reduce racial, ethnic, and other disparities  
19 in health and health care. Nothing in this title may be  
20 construed as authorizing the Secretary (or any employee  
21 or contractor) to create or maintain lists of non-medical  
22 personal property.

23 (f) TREATMENT OF PUBLIC HEALTH INSURANCE OP-  
24 TION.—With respect to the public health insurance option,

1 the Secretary shall be treated as a QHBP offering entity  
2 offering an Exchange-participating health benefits plan.

3 (g) ACCESS TO FEDERAL COURTS.—The provisions  
4 of Medicare (and related provisions of title II of the Social  
5 Security Act) relating to access of Medicare beneficiaries  
6 to Federal courts for the enforcement of rights under  
7 Medicare, including with respect to amounts in con-  
8 troversy, shall apply to the public health insurance option  
9 and individuals enrolled under such option under this title  
10 in the same manner as such provisions apply to Medicare  
11 and Medicare beneficiaries.

12 **SEC. 202. PREMIUMS AND FINANCING.**

13 (a) ESTABLISHMENT OF PREMIUMS.—

14 (1) IN GENERAL.—The Secretary shall establish  
15 geographically adjusted premium rates for the public  
16 health insurance option—

17 (A) in a manner that complies with the  
18 premium rules established by the Commissioner  
19 under section 213 for Exchange-participating  
20 health benefits plans; and

21 (B) at a level sufficient to fully finance the  
22 costs of—

23 (i) health benefits provided by the  
24 public health insurance option; and

1 (ii) administrative costs related to op-  
2 erating the public health insurance option.

3 (2) CONTINGENCY MARGIN.—In establishing  
4 premium rates under paragraph (1), the Secretary  
5 shall include an appropriate amount for a contin-  
6 gency margin (which shall be not less than 90 days  
7 of estimated claims). Before setting such appropriate  
8 amount for years starting with 2016, the Secretary  
9 shall solicit a recommendation on such amount from  
10 the American Academy of Actuaries.

11 (b) ACCOUNT.—

12 (1) ESTABLISHMENT.—There is established in  
13 the Treasury of the United States an Account for  
14 the receipts and disbursements attributable to the  
15 operation of the public health insurance option, in-  
16 cluding the start-up funding under paragraph (2).  
17 Section 1854(g) of the Social Security Act shall  
18 apply to receipts described in the previous sentence  
19 in the same manner as such section applies to pay-  
20 ments or premiums described in such section.

21 (2) START-UP FUNDING.—

22 (A) IN GENERAL.—In order to provide for  
23 the establishment of the public health insurance  
24 option, there is hereby appropriated to the Sec-  
25 retary, out of any funds in the Treasury not

1 otherwise appropriated, \$2,000,000,000. In  
2 order to provide for initial claims reserves be-  
3 fore the collection of premiums, there are here-  
4 by appropriated to the Secretary, out of any  
5 funds in the Treasury not otherwise appro-  
6 priated, such sums as necessary to cover 90  
7 days worth of claims reserves based on pro-  
8 jected enrollment.

9 (B) AMORTIZATION OF START-UP FUND-  
10 ING.—The Secretary shall provide for the re-  
11 payment of the startup funding provided under  
12 subparagraph (A) to the Treasury in an amor-  
13 tized manner over the 10-year period beginning  
14 with 2014.

15 (C) LIMITATION ON FUNDING.—Nothing in  
16 this section shall be construed as authorizing  
17 any additional appropriations to the Account,  
18 other than such amounts as are otherwise pro-  
19 vided with respect to other Exchange-partici-  
20 pating health benefits plans.

21 (3) NO BAILOUTS.—In no case shall the public  
22 health insurance option receive any Federal funds  
23 for purposes of insolvency in any manner similar to  
24 the manner in which entities receive Federal funding

1 under the Troubled Assets Relief Program of the  
2 Secretary of the Treasury.

3 **SEC. 203. PAYMENT RATES FOR ITEMS AND SERVICES.**

4 (a) PAYMENT RATES FOR ITEMS AND SERVICES.—

5 (1) RATES ESTABLISHED BY SECRETARY.—

6 (A) IN GENERAL.—The Secretary shall es-  
7 tablish payment rates for the public health in-  
8 surance option for services and health care pro-  
9 viders consistent with this subsection and may  
10 change such payment rates in accordance with  
11 subsection (d).

12 (B) INITIAL PAYMENT RULES.—

13 (i) IN GENERAL.—During 2014,  
14 2015, and 2016, the Secretary shall set  
15 the payment rates under this subsection  
16 for services and providers described in sub-  
17 paragraph (A) equal to the payment rates  
18 for equivalent services and providers under  
19 parts A and B of Medicare, subject to  
20 clause (ii), paragraphs (2)(A) and (4), and  
21 subsection (d).

22 (ii) EXCEPTIONS.—

23 (I) PRACTITIONERS' SERVICES.—

24 Payment rates for practitioners' serv-  
25 ices otherwise established under the



1 fee schedule under section 1848 of the  
2 Social Security Act shall be applied  
3 without regard to the provisions under  
4 subsection (f) of such section and the  
5 update under subsection (d)(4) under  
6 such section for a year as applied  
7 under this paragraph shall be not less  
8 than 1 percent.

9 (II) ADJUSTMENTS.—The Sec-  
10 retary may determine the extent to  
11 which Medicare adjustments applica-  
12 ble to base payment rates under parts  
13 A and B of Medicare for graduate  
14 medical education and dispropor-  
15 tionate share hospitals shall apply  
16 under this section.

17 (C) FOR NEW SERVICES.—The Secretary  
18 shall modify payment rates described in sub-  
19 paragraph (B) in order to accommodate pay-  
20 ments for services, such as well-child visits, that  
21 are not otherwise covered under Medicare.

22 (D) PRESCRIPTION DRUGS.—Payment  
23 rates under this subsection for prescription  
24 drugs that are not paid for under part A or

1 part B of Medicare shall be at rates negotiated  
2 by the Secretary.

3 (2) INCENTIVES FOR PARTICIPATING PRO-  
4 VIDERS.—

5 (A) INITIAL INCENTIVE PERIOD.—

6 (i) IN GENERAL.—The Secretary shall  
7 provide, in the case of services described in  
8 clause (ii) furnished during 2014, 2015,  
9 and 2016, for payment rates that are 5  
10 percent greater than the rates established  
11 under paragraph (1).

12 (ii) SERVICES DESCRIBED.—The serv-  
13 ices described in this clause are items and  
14 professional services, under the public  
15 health insurance option by a physician or  
16 other health care practitioner who partici-  
17 pates in both Medicare and the public  
18 health insurance option.

19 (iii) SPECIAL RULES.—A pediatrician  
20 and any other health care practitioner who  
21 is a type of practitioner that does not typi-  
22 cally participate in Medicare (as deter-  
23 mined by the Secretary) shall also be eligi-  
24 ble for the increased payment rates under  
25 clause (i).

1           (B) SUBSEQUENT PERIODS.—Beginning  
2           with 2017 and for subsequent years, the Sec-  
3           retary shall continue to use an administrative  
4           process to set such rates in order to promote  
5           payment accuracy, to ensure adequate bene-  
6           ficiary access to providers, and to promote af-  
7           fordability and the efficient delivery of medical  
8           care consistent with subsection (a)(1). Such  
9           rates shall not be set at levels expected to in-  
10          crease average medical costs per enrollee cov-  
11          ered under the public health insurance option  
12          beyond what would be expected if the process  
13          under paragraph (1)(B) and subparagraph (A)  
14          were continued, as certified by the Office of the  
15          Actuary of the Centers for Medicare & Medicaid  
16          Services.

17           (C) ESTABLISHMENT OF A PROVIDER NET-  
18          WORK.—Health care providers participating  
19          under Medicare are participating providers in  
20          the public health insurance option unless they  
21          opt out in a process established by the Sec-  
22          retary.

23           (3) ADMINISTRATIVE PROCESS FOR SETTING  
24          RATES.—Chapter 5 of title 5, United States Code  
25          shall apply to the process for the initial establish-

1       ment of payment rates under this subsection but not  
2       to the specific methodology for establishing such  
3       rates or the calculation of such rates.

4           (4) CONSTRUCTION.—Nothing in this section  
5       shall be construed as limiting the Secretary’s author-  
6       ity to correct for payments that are excessive or defi-  
7       cient, taking into account the provisions of sub-  
8       section (a)(1) and any appropriate adjustments  
9       based on the demographic characteristics of enrollees  
10      covered under the public health insurance option,  
11      but in no case shall the correction of payments  
12      under this paragraph result in a level of expendi-  
13      tures per enrollee that exceeds the level of expendi-  
14      tures that would have occurred under paragraphs  
15      (1)(B) and (2)(A), as certified by the Office of the  
16      Actuary of the Centers for Medicare & Medicaid  
17      Services.

18           (5) CONSTRUCTION.—Nothing in this section  
19      shall be construed as affecting the authority of the  
20      Secretary to establish payment rates, including pay-  
21      ments to provide for the more efficient delivery of  
22      services, such as the initiatives provided for under  
23      subsection (d).

24           (6) LIMITATIONS ON REVIEW.—There shall be  
25      no administrative or judicial review of a payment

1 rate or methodology established under this sub-  
2 section or under subsection (d).

3 **SEC. 204. MODERNIZED PAYMENT INITIATIVES AND DELIV-**  
4 **ERY SYSTEM REFORM.**

5 (a) IN GENERAL.—For plan years beginning with  
6 2014, the Secretary may utilize innovative payment mech-  
7 anisms and policies to determine payments for items and  
8 services under the public health insurance option. The  
9 payment mechanisms and policies under this section may  
10 include patient-centered medical home and other care  
11 management payments, accountable care organizations,  
12 value-based purchasing, bundling of services, differential  
13 payment rates, performance or utilization based payments,  
14 partial capitation, and direct contracting with providers.

15 (b) REQUIREMENTS FOR INNOVATIVE PAYMENTS.—  
16 The Secretary shall design and implement the payment  
17 mechanisms and policies under this section in a manner  
18 that—

19 (1) seeks to—

20 (A) improve health outcomes;

21 (B) reduce health disparities (including ra-  
22 cial, ethnic, and other disparities);

23 (C) provide efficient and affordable care;

24 (D) address geographic variation in the  
25 provision of health services; or

1 (E) prevent or manage chronic illness; and

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

4 (c) ENCOURAGING THE USE OF HIGH VALUE SERV-  
5 ICES.—To the extent allowed by the benefit standards ap-  
6 plied to all Exchange-participating health benefits plans,  
7 the public health insurance option may modify cost-shar-  
8 ing and payment rates to encourage the use of services  
9 that promote health and value.

10 (d) PROMOTION OF DELIVERY SYSTEM REFORM.—  
11 The Secretary shall monitor and evaluate the progress of  
12 payment and delivery system reforms under this Act and  
13 shall seek to implement such reforms subject to the fol-  
14 lowing:

15 (1) To the extent that the Secretary finds a  
16 payment and delivery system reform successful in  
17 improving quality and reducing costs, the Secretary  
18 shall implement such reform on as large a geo-  
19 graphic scale as practical and economical.

20 (2) The Secretary may delay the implementa-  
21 tion of such a reform in geographic areas in which  
22 such implementation would place the public health  
23 insurance option at a competitive disadvantage.

24 (3) The Secretary may prioritize implementa-  
25 tion of such a reform in high cost geographic areas

1 or otherwise in order to reduce total program costs  
2 or to promote high value care.

3 (e) NON-UNIFORMITY PERMITTED.—Nothing in this  
4 title shall prevent the Secretary from varying payments  
5 based on different payment structure models (such as ac-  
6 countable care organizations and medical homes) under  
7 the public health insurance option for different geographic  
8 areas.

9 **SEC. 205. PROVIDER PARTICIPATION.**

10 (a) IN GENERAL.—The Secretary shall establish con-  
11 ditions of participation for health care providers under the  
12 public health insurance option.

13 (b) LICENSURE OR CERTIFICATION.—

14 (1) IN GENERAL.—Except as provided in para-  
15 graph (2), the Secretary shall not allow a health  
16 care provider to participate in the public health in-  
17 surance option unless such provider is appropriately  
18 licensed, certified, or otherwise permitted to practice  
19 under State law.

20 (2) SPECIAL RULE FOR IHS FACILITIES AND  
21 PROVIDERS.—The requirements under paragraph (1)  
22 shall not apply to—

23 (A) a facility that is operated by the In-  
24 dian Health Service;

1 (B) a facility operated by an Indian Tribe  
2 or tribal organization under the Indian Self-De-  
3 termination Act (Public Law 93–638);

4 (C) a health care professional employed by  
5 the Indian Health Service; or

6 (D) a health care professional—

7 (i) who is employed to provide health  
8 care services in a facility operated by an  
9 Indian Tribe or tribal organization under  
10 the Indian Self-Determination Act; and

11 (ii) who is licensed or certified in any  
12 State.

13 (c) PAYMENT TERMS FOR PROVIDERS.—

14 (1) PHYSICIANS.—The Secretary shall provide  
15 for the annual participation of physicians under the  
16 public health insurance option, for which payment  
17 may be made for services furnished during the year,  
18 in one of 2 classes:

19 (A) PREFERRED PHYSICIANS.—Those phy-  
20 sicians who agree to accept the payment under  
21 section 203 (without regard to cost-sharing) as  
22 the payment in full.

23 (B) PARTICIPATING, NON-PREFERRED  
24 PHYSICIANS.—Those physicians who agree not  
25 to impose charges (in relation to the payment



1 described in section 203 for such physicians)  
2 that exceed the sum of the in-network cost-  
3 sharing plus 15 percent of the total payment  
4 for each item and service. The Secretary shall  
5 reduce the payment described in section 203 for  
6 such physicians.

7 (2) OTHER PROVIDERS.—The Secretary shall  
8 provide for the participation (on an annual or other  
9 basis specified by the Secretary) of health care pro-  
10 viders (other than physicians) under the public  
11 health insurance option under which payment shall  
12 only be available if the provider agrees to accept the  
13 payment under section 203 (without regard to cost-  
14 sharing) as the payment in full.

15 (d) EXCLUSION OF CERTAIN PROVIDERS.—The Sec-  
16 retary shall exclude from participation under the public  
17 health insurance option a health care provider that is ex-  
18 cluded from participation in a Federal health care pro-  
19 gram (as defined in section 1128B(f) of the Social Secu-  
20 rity Act).

21 **SEC. 206. APPLICATION OF FRAUD AND ABUSE PROVI-**  
22 **SIONS.**

23 Provisions of civil law identified by the Secretary by  
24 regulation, in consultation with the Inspector General of  
25 the Department of Health and Human Services, that im-

1 pose sanctions with respect to waste, fraud, and abuse  
2 under Medicare, such as sections 3729 through 3733 of  
3 title 31, United States Code (commonly known as the  
4 False Claims Act), shall also apply to the public health  
5 insurance option.

6 **SEC. 207. APPLICATION OF HIPAA INSURANCE REQUIRE-**  
7 **MENTS.**

8 The requirements of sections 2701 through 2792 of  
9 the Public Health Service Act shall apply to the public  
10 health insurance option in the same manner as they apply  
11 to health insurance coverage offered by a health insurance  
12 issuer in the individual market.

13 **SEC. 208. APPLICATION OF HEALTH INFORMATION PRI-**  
14 **VACY, SECURITY, AND ELECTRONIC TRANS-**  
15 **ACTION REQUIREMENTS.**

16 Part C of title XI of the Social Security Act, relating  
17 to standards for protections against the wrongful disclo-  
18 sure of individually identifiable health information, health  
19 information security, and the electronic exchange of health  
20 care information, shall apply to the public health insur-  
21 ance option in the same manner as such part applies to  
22 other health plans (as defined in section 1171(5) of such  
23 Act).

1 **SEC. 209. ENROLLMENT IN PUBLIC HEALTH INSURANCE**

2 **OPTION IS VOLUNTARY.**

3 Nothing in this division shall be construed as requir-  
4 ing anyone to enroll in the public health insurance option.  
5 Enrollment in such option is voluntary.

6 **SEC. 210. ENROLLMENT IN PUBLIC HEALTH INSURANCE**

7 **OPTION BY MEMBERS OF CONGRESS.**

8 Notwithstanding any other provision of this Act,  
9 Members of Congress may enroll in the public health in-  
10 surance option.

11 **SEC. 211. REIMBURSEMENT OF SECRETARY OF VETERANS**

12 **AFFAIRS.**

13 The Secretary of Health and Human Services shall  
14 seek to enter into a memorandum of understanding with  
15 the Secretary of Veterans Affairs regarding the recovery  
16 of costs related to non-service-connected care or services  
17 provided by the Secretary of Veterans Affairs to an indi-  
18 vidual covered under the public health insurance option  
19 in a manner consistent with recovery of costs related to  
20 non-service-connected care from private health insurance  
21 plans.

