

115TH CONGRESS
2D SESSION

H. R. 5155

To amend the Patient Protection and Affordable Care Act to improve affordability of, undo sabotage with respect to, and increase access to health insurance coverage, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2018

Mr. PALLONE (for himself, Mr. SCOTT of Virginia, and Mr. NEAL) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Patient Protection and Affordable Care Act to improve affordability of, undo sabotage with respect to, and increase access to health insurance coverage, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Undo Sabotage and Expand Affordability of Health In-
6 surance Act of 2018”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EXPANDING AFFORDABILITY

Sec. 101. Improve affordability and reduce premium costs for consumers.

Sec. 102. Lower out-of-pocket costs for consumers.

Sec. 103. Expand affordability for working families.

TITLE II—UNDOING SABOTAGE

Sec. 201. Protect comprehensive coverage for small businesses and workers.

Sec. 202. Prevent junk plans and continue protections for consumers with pre-existing conditions.

Sec. 203. Ensure plans provide comprehensive benefits.

Sec. 204. Undo Administration sabotage by requiring open enrollment outreach, education, and funding for navigators.

Sec. 205. Improve marketplace stability to prevent sabotage from raising premiums.

TITLE III—STATE INNOVATION AND TRANSPARENCY

Sec. 301. Fund State health insurance education programs for consumers.

Sec. 302. Fund State innovations to expand coverage.

Sec. 303. Preserve State option to implement health care marketplaces.

Sec. 304. Promote transparency and accountability in the Administration's expenditures of Exchange user fees.

3 **TITLE I—EXPANDING** 4 **AFFORDABILITY**

5 **SEC. 101. IMPROVE AFFORDABILITY AND REDUCE PRE-** 6 **MIUM COSTS FOR CONSUMERS.**

7 (a) IN GENERAL.—Section 36B(b)(3)(A) of the In-
 8 ternal Revenue Code of 1986 is amended to read as fol-
 9 lows:

10 “(A) APPLICABLE PERCENTAGE.—The ap-
 11 plicable percentage for any taxable year shall be
 12 the percentage such that the applicable percent-
 13 age for any taxpayer whose household income is
 14 within an income tier specified in the following

1 table shall increase, on a sliding scale in a lin-
 2 ear manner, from the initial premium percent-
 3 age to the final premium percentage specified in
 4 such table for such income tier:

| “In the case of household income (expressed as a percent of poverty line) within the following income tier: | The initial premium percentage is— | The final premium percentage is— |
|--|--|-------------------------------------|
| Over 100.0% up to 133.0% | 0.0% | 1.0% |
| 133.0% up to 150.0% | 1.0% | 2.0% |
| 150.0% up to 200.0% | 2.0% | 4.0% |
| 200.0% up to 250.0% | 4.0% | 6.0% |
| 250.0% up to 300.0% | 6.0% | 7.0% |
| 300.0% up to 400.0% | 7.0% | 8.5% |
| 400.0% and higher | 8.5% | 8.5%”. |

5 (b) CONFORMING AMENDMENT.—Section
 6 36B(c)(1)(A) of the Internal Revenue Code of 1986 is
 7 amended by striking “but does not exceed 400 percent”.

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to taxable years beginning after
 10 December 31, 2019.

11 **SEC. 102. LOWER OUT-OF-POCKET COSTS FOR CONSUMERS.**

12 (a) EXPANSION OF ELIGIBILITY.—

13 (1) IN GENERAL.—Section 1402(c) of the Pa-
 14 tient Protection and Affordable Care Act (42 U.S.C.
 15 18071(c)) is amended—

16 (A) by striking paragraphs (1) and (2) and
 17 inserting the following:

18 “(1) IN GENERAL.—The reduction in cost-shar-
 19 ing under this subsection shall be achieved, with re-
 20 spect to an issuer of a qualified health plan to which

1 this section applies, by reducing cost-sharing under
2 the plan (and the applicable out-of pocket limit
3 under section 1302(c)(1)) in a manner and amount
4 sufficient to—

5 “(A) in the case of an eligible insured
6 whose household income is not less than 100
7 percent but not more than 250 percent of the
8 poverty line for a family of the size involved, in-
9 crease the plan’s share of the total allowed
10 costs of benefits provided under the plan to 94
11 percent of such costs; and

12 “(B) in the case of an eligible insured
13 whose household income is more than 250 per-
14 cent but not more than 400 percent of the pov-
15 erty line for a family of the size involved, in-
16 crease the plan’s share of the total allowed
17 costs of benefits provided under the plan to 87
18 percent of such costs.”; and

19 (B) by redesignating paragraphs (3), (4),
20 and (5) as paragraphs (2), (3), and (4), respec-
21 tively.

22 (2) EFFECTIVE DATE.—The amendments made
23 by paragraph (1) shall apply with respect to plan
24 years beginning after December 31, 2019.

1 (b) FUNDING COST SHARING REDUCTIONS.—Section
2 1402 of the Patient Protection and Affordable Care Act
3 (42 U.S.C. 18071) is amended by adding at the end the
4 following new subsection:

5 “(g) FUNDING.—Out of any funds in the Treasury
6 not otherwise appropriated, there is hereby appropriated
7 to the Secretary such sums as may be necessary for pay-
8 ments under this section.”.

9 **SEC. 103. EXPAND AFFORDABILITY FOR WORKING FAMI-**
10 **LIES.**

11 (a) IN GENERAL.—Clause (i) of section 36B(c)(2)(C)
12 of the Internal Revenue Code of 1986 is amended to read
13 as follows:

14 “(i) COVERAGE MUST BE AFFORD-
15 ABLE.—

16 “(I) EMPLOYEES.—An employee
17 shall not be treated as eligible for
18 minimum essential coverage if such
19 coverage consists of an eligible em-
20 ployer-sponsored plan (as defined in
21 section 5000A(f)(2)) and the employ-
22 ee’s required contribution (within the
23 meaning of section 5000A(e)(1)(B))
24 with respect to the plan exceeds 9.5

1 percent of the employee's household
2 income.

3 “(II) FAMILY MEMBERS.—An in-
4 dividual who is eligible to enroll in an
5 eligible employer-sponsored plan (as
6 defined in section 5000A(f)(2)) by
7 reason of a relationship the individual
8 bears to the employee shall not be
9 treated as eligible for minimum essen-
10 tial coverage by reason of such eligi-
11 bility to enroll if the employee's re-
12 quired contribution (within the mean-
13 ing of section 5000A(e)(1)(B), deter-
14 mined by substituting ‘family’ for
15 ‘self-only’) with respect to the plan ex-
16 ceeds 9.5 percent of the employee's
17 household income.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Clause (ii) of section 36B(c)(2)(C) of the
20 Internal Revenue Code of 1986 is amended by strik-
21 ing “Except as provided in clause (iii), an employee”
22 and inserting “An individual”.

23 (2) Clause (iii) of section 36B(c)(2)(C) of such
24 Code is amended by striking “the last sentence of
25 clause (i)” and inserting “clause (i)(II)”.

1 (3) Clause (iv) of section 36B(c)(2)(C) of such
2 Code is amended by striking “9.5 percent under
3 clause (i)(II)” and inserting “the 9.5 percent under
4 clauses (i)(I) and (i)(II)”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years beginning after
7 December 31, 2019.

8 **TITLE II—UNDOING SABOTAGE**

9 **SEC. 201. PROTECT COMPREHENSIVE COVERAGE FOR** 10 **SMALL BUSINESSES AND WORKERS.**

11 Notwithstanding any other provision of law, the Sec-
12 retary of Labor may not take any action to implement,
13 finalize, or enforce the proposed rule published on January
14 5, 2018, on pages 614 through 636 of volume 83 of the
15 Federal Register, or any substantially similar proposed
16 rule.

17 **SEC. 202. PREVENT JUNK PLANS AND CONTINUE PROTEC-** 18 **TIONS FOR CONSUMERS WITH PREEXISTING** 19 **CONDITIONS.**

20 (a) INCLUDING SHORT-TERM LIMITED DURATION
21 INSURANCE AS INDIVIDUAL HEALTH INSURANCE COV-
22 ERAGE.—Section 2791(b)(5) of the Public Health Service
23 Act (42 U.S.C. 300g–91(b)(5)) is amended by striking
24 “but does not include short-term limited duration insur-

1 ance” and inserting “, including short-term limited dura-
2 tion insurance”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to plan years begin-
5 ning after December 31, 2018.

6 **SEC. 203. ENSURE PLANS PROVIDE COMPREHENSIVE BENE-**
7 **FITS.**

8 (a) ESSENTIAL HEALTH BENEFITS.—Section
9 1302(b)(4) of the Patient Protection and Affordable Care
10 Act (42 U.S.C. 18022(b)(4)) is amended—

11 (1) in subparagraph (A), by inserting “and so
12 that benefits are included within each of such cat-
13 egories”;

14 (2) in subparagraph (G), by striking at the end
15 “and”;

16 (3) in subparagraph (H), by striking the period
17 at the end and inserting “; and”; and

18 (4) by adding at the end the following new sub-
19 paragraph:

20 “(I) ensure that, beginning January 1,
21 2019—

22 “(i) in the case of health benefits that
23 are established as essential health benefits,
24 there shall not be substitution of such ben-
25 efits across benefit categories;

1 “(ii) a qualified health plan shall not
2 be treated as providing coverage for the es-
3 sential health benefits unless under such
4 plan—

5 “(I) coverage of prescription
6 drugs provides for access to a wide
7 variety of classes of drugs within the
8 prescription drug formulary of such
9 plan; and

10 “(II) in the case that a drug that
11 is medically necessary for an enrollee
12 under such plan is not included within
13 such formulary, such individual has
14 access to such drug through an excep-
15 tions process established by the plan;
16 and

17 “(iii) habilitative services are covered
18 at parity with rehabilitative services.”.

19 (b) STANDARD BENEFIT PLANS.—Section 1302(d) of
20 the Patient Protection and Affordable Care Act (42
21 U.S.C. 18022(d)) is amended by adding at the end the
22 following new paragraph:

23 “(5) STANDARD BENEFIT PLANS.—

24 “(A) IN GENERAL.—For purposes of pro-
25 viding individuals with the opportunity to make

1 simpler comparisons of health plans offered by
2 different health insurance issuers and simplify
3 the selection process, the Secretary shall, for
4 each plan year beginning with plan year 2020,
5 through rulemaking, specify a structure de-
6 scribed in subparagraph (B)(i) for a standard
7 benefit plan for such plan year for each of the
8 bronze, silver, and gold levels of coverage and
9 for each actuarial value variation of a silver
10 plan resulting from the application of section
11 1402(c). A standard benefit plan for a plan
12 year for a level of coverage or actuarial value
13 variation of a silver plan shall be modeled on
14 the most commonly purchased plans (deter-
15 mined by enrollments in such plans) during the
16 previous 2 plan years offered in the federally fa-
17 cilitated Exchange operated pursuant to section
18 1321(c) in such level or variation and shall in-
19 clude coverage of deductible-exempt services
20 consistent with actual purchasing patterns of
21 consumers in the previous two plan years.

22 “(B) STANDARD BENEFIT PLAN.—For
23 purposes of this paragraph, the term ‘standard
24 benefit plan’ means a qualified health plan to

1 be offered through an Exchange on the indi-
2 vidual market that has either—

3 “(i) a standardized cost-sharing struc-
4 ture specified by the Secretary pursuant to
5 rulemaking; or

6 “(ii) a standardized cost-sharing
7 structure specified by the Secretary pursu-
8 ant to rulemaking that is modified by the
9 health insurance issuer of such plan only
10 to the extent necessary to align with high
11 deductible health plan requirements under
12 section 223 of the Internal Revenue Code
13 of 1986 or the applicable annual limitation
14 on cost sharing under subsection (c) and
15 actuarial value requirements specified by
16 the Secretary.”.

17 **SEC. 204. UNDO ADMINISTRATION SABOTAGE BY REQUIR-**
18 **ING OPEN ENROLLMENT OUTREACH, EDU-**
19 **CATION, AND FUNDING FOR NAVIGATORS.**

20 Section 1321(c) of the Patient Protection and Afford-
21 able Care Act (42 U.S.C. 18041(c)) is amended by adding
22 at the end the following new paragraph:

23 “(3) NAVIGATOR PROGRAM AND OUTREACH
24 AND ENROLLMENT ACTIVITIES.—

25 “(A) NAVIGATOR PROGRAM.—

1 “(i) IN GENERAL.—In the case of an
2 Exchange established or operated by the
3 Secretary pursuant to this subsection, the
4 Secretary shall establish a program under
5 which it awards grants to entities that
6 would be described in paragraph (2) of sec-
7 tion 1311(i) to carry out the duties that
8 would be described in paragraph (3) of
9 such section if the references in such sec-
10 tion 1311(i) to ‘this subsection’ and ‘para-
11 graph (1)’ were each instead a reference to
12 ‘paragraph (3)(A) of section 1321(c)’.

13 “(ii) APPLICATION OF STATE EX-
14 CHANGE NAVIGATOR PROVISIONS.—For
15 purposes of carrying out this subpara-
16 graph, the provisions of paragraphs (2)
17 through (5) of section 1311(i) shall apply
18 to the Secretary with respect to an Ex-
19 change described in clause (i) and the pro-
20 gram under this subparagraph in the same
21 manner as such provisions apply to a State
22 with respect to an Exchange described in
23 section 1311(i) and the program estab-
24 lished under such section.

1 “(iii) FUNDING.—For purposes of
2 carrying out this subparagraph, the Sec-
3 retary shall obligate \$100,000,000 out of
4 amounts collected through the user fees on
5 participating health insurance issuers pur-
6 suant to section 156.50 of title 45, Code of
7 Federal Regulations (or any successor reg-
8 ulations) for each of fiscal years 2019
9 through 2021. Such amount shall remain
10 available without fiscal year limitation
11 until expended.

12 “(B) OUTREACH AND EDUCATIONAL AC-
13 TIVITIES.—

14 “(i) IN GENERAL.—In the case of an
15 Exchange established or operated by the
16 Secretary pursuant to this subsection, the
17 Secretary shall carry out outreach and
18 educational activities for purposes of in-
19 forming potential enrollees in qualified
20 health plans offered through the Exchange
21 of the availability of coverage under such
22 plans and financial assistance for coverage
23 under such plans.

24 “(ii) FUNDING.—For purposes of car-
25 rying out this subparagraph, the Secretary

1 shall obligate \$100,000,000 out of the
2 amounts collected through the user fees on
3 participating health insurance issuers pur-
4 suant to section 156.50 of title 45, Code of
5 Federal Regulations (or any successor reg-
6 ulations) for each of fiscal years 2019
7 through 2021. Such amount shall remain
8 available without fiscal year limitation
9 until expended.”.

10 **SEC. 205. IMPROVE MARKETPLACE STABILITY TO PREVENT**
11 **SABOTAGE FROM RAISING PREMIUMS.**

12 (a) FUND.—

13 (1) IN GENERAL.—There is hereby established
14 the National Reinsurance Program Fund to be ad-
15 ministered by the Secretary of Health and Human
16 Services for purposes of carrying out a national rein-
17 surance program to make reinsurance payments, in
18 accordance with this section.

19 (2) APPROPRIATION.—There is hereby appro-
20 priated to the Fund established under paragraph
21 (1), out of any funds in the Treasury not otherwise
22 appropriated, such sums as are necessary for car-
23 rying out the purpose described in such paragraph.

24 (b) PAYMENTS.—

1 (1) IN GENERAL.—The Secretary of Health and
2 Human Services shall use amounts available in the
3 Fund to establish a national reinsurance program
4 under which the Secretary makes reinsurance pay-
5 ments to health insurance issuers with respect to
6 claims for individuals enrolled under qualifying rein-
7 surance plans offered by such issuers for plan year
8 2019 or a subsequent plan year that exceed, subject
9 to paragraph (2), \$50,000 in an amount equal to 75
10 percent of the amount of such claims, but not to ex-
11 ceed \$1,000,000.

12 (2) INDEXING.—For plan year 2020 or subse-
13 quent plan year, in lieu of each dollar amount speci-
14 fied in paragraph (1), each such dollar amount ap-
15 plied under this subsection for such plan year shall
16 be the dollar amount applied under this subsection
17 for the previous year, increased by the annual per-
18 centage increase in the Consumer Price Index for All
19 Urban Consumers (all items; United States city av-
20 erage as of June of the previous fiscal year).

21 (3) METHODS.—Payments under this sub-
22 section shall be based on such a method as the Sec-
23 retary determines. The Secretary may establish a
24 payment method by which interim payments of
25 amounts under this subsection are made during a

1 plan year based on the Secretary’s best estimate of
2 amounts that will be payable after obtaining all of
3 necessary information.

4 (c) QUALIFYING REINSURANCE PLAN.—

5 (1) IN GENERAL.—For purposes of this section,
6 the term “qualifying reinsurance plan” means, with
7 respect to a health insurance issuer a qualified
8 health plan (as defined in section 1301 of the Pa-
9 tient Protection and Affordable Care Act (42 U.S.C.
10 18021)) offered by such issuer on the individual
11 market. Such term does not include a grandfathered
12 health plan (as defined in section 1251 of such Act
13 (42 U.S.C. 18011)), transitional health plan, or a
14 standard health plan offered in connection with a
15 basic health program established under section 1331
16 of such Act (42 U.S.C. 18051).

17 (2) TRANSITIONAL HEALTH PLAN.—For pur-
18 poses of paragraph (1), the term “transitional health
19 plan” means a plan continued under the letter
20 issued by the Centers for Medicare & Medicaid Serv-
21 ices on November 14, 2013, to the State Insurance
22 Commissioners outlining a transitional policy for
23 coverage in the individual and small group markets
24 to which section 1251 of the Patient Protection and
25 Affordable Care Act (42 U.S.C. 18011) does not

1 apply, and under the extension of the transitional
2 policy for such coverage set forth in the Insurance
3 Standards Bulletin Series guidance issued by the
4 Centers for Medicare & Medicaid Services on March
5 5, 2014, February 29, 2016, and February 13,
6 2017, or under any subsequent extensions thereof.

7 (d) COORDINATION WITH RISK ADJUSTMENT.—The
8 Secretary shall make adjustments to the risk adjustment
9 program operated under section 1343 of the Patient Pro-
10 tection and Affordable Care Act (42 U.S.C. 18063), as
11 appropriate, to account for the effects of this section on
12 the actuarial risk of enrollees.

13 **TITLE III—STATE INNOVATION**
14 **AND TRANSPARENCY**

15 **SEC. 301. FUND STATE HEALTH INSURANCE EDUCATION**
16 **PROGRAMS FOR CONSUMERS.**

17 Section 2793(e) of the Public Health Service Act (42
18 U.S.C. 300gg–93(e)) is amended by adding at the end the
19 following new paragraph:

20 “(3) APPROPRIATIONS.—For purposes of car-
21 rying out this section, there is hereby appropriated
22 to the Secretary, out of any funds in the Treasury
23 not otherwise appropriated, \$100,000,000 for each
24 of the fiscal years 2019 through 2021. Such amount
25 shall remain available until expended.”.

1 **SEC. 302. FUND STATE INNOVATIONS TO EXPAND COV-**
2 **ERAGE.**

3 (a) **IN GENERAL.**—Subject to subsection (d), the Sec-
4 retary of Health and Human Services shall award grants
5 to eligible State agencies to enable such States to explore
6 innovative solutions to promote greater enrollment in
7 health insurance coverage in the individual and small
8 group markets, including activities described in subsection
9 (c).

10 (b) **ELIGIBILITY.**—For purposes of subsection (a), el-
11 igible State agencies are Exchanges established by a State
12 under title I of the Patient Protection and Affordable Care
13 Act and State agencies with primary responsibility over
14 health and human services for the State involved.

15 (c) **USE OF FUNDS.**—For purposes of subsection (a),
16 the activities described in this subsection are the following:

17 (1) State efforts to streamline health insurance
18 enrollment procedures in order to reduce burdens on
19 consumers and facilitate greater enrollment in health
20 insurance coverage in the individual and small group
21 markets, including automatic enrollment and re-
22 enrollment of, or pre-populated applications for, in-
23 dividuals without health insurance who are eligible
24 for tax credits under section 36B of the Internal
25 Revenue Code of 1986, with the ability to opt out
26 of such enrollment.

1 (2) State investment in technology to improve
2 data sharing and collection for the purposes of facili-
3 tating greater enrollment in health insurance cov-
4 erage in such markets.

5 (3) Implementation of a State version of an in-
6 dividual mandate to be enrolled in health insurance
7 coverage.

8 (4) Feasibility studies to develop comprehensive
9 and coherent State plan for increasing enrollment in
10 the individual and small group market.

11 (d) FUNDING.—For purposes of carrying out this
12 section, there is hereby appropriated, out of any funds in
13 the Treasury not otherwise appropriated, \$200,000,000
14 for each of the fiscal years 2019 through 2021. Such
15 amount shall remain available until expended.

16 **SEC. 303. PRESERVE STATE OPTION TO IMPLEMENT**
17 **HEALTH CARE MARKETPLACES.**

18 Section 1311(a)(4) of the Patient Protection and Af-
19 fordable Care Act (42 U.S.C. 18031(a)(4)) is amended—

20 (1) by striking subparagraph (B);

21 (2) by striking “RENEWABILITY OF GRANT”
22 and all that follows through “Subject to subsection
23 (d)(4)” and inserting “RENEWABILITY OF GRANT.—
24 Subject to subsection (d)(4)”;

1 (3) by redesignating clauses (i) and (ii) as sub-
2 paragraphs (A) and (B), respectively, with appro-
3 priate indentation; and

4 (4) in subparagraph (A), as redesignated by
5 paragraph (3), by redesignating subclauses (I) and
6 (II) as clauses (i) and (ii), respectively, with appro-
7 priate indentation.

8 **SEC. 304. PROMOTE TRANSPARENCY AND ACCOUNT-**
9 **ABILITY IN THE ADMINISTRATION'S EXPENDI-**
10 **TURES OF EXCHANGE USER FEES.**

11 For each of plan years 2018, 2019, and 2020, not
12 later than the date that is 3 months after of the end of
13 such fiscal year, the Secretary of Health and Human Serv-
14 ices shall submit to the appropriate committees of Con-
15 gress and make available to the public an annual report
16 on the expenditure by the Department of Health and
17 Human Services of user fees collected pursuant to section
18 156.50 of title 45, Code of Federal Regulations (or any
19 successor regulations). Each such report for a plan year
20 shall include a detailed accounting of the amount of such
21 user fees collected during such plan year and of the
22 amount of such expenditures used during such plan year
23 for the federally facilitated Exchange operated pursuant
24 to section 1321(c) of the Patient Protection and Afford-
25 able Care Act (42 U.S.C. 18041(c)) on outreach and en-

- 1 rollment activities, navigators, maintenance of
- 2 Healthcare.gov, and operation of call centers.

