

**SENATE . . . . . No. 766**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Jason M. Lewis*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a public health option.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>1/23/2023</i>

**SENATE . . . . . No. 766**

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By Mr. Lewis, a petition (accompanied by bill, Senate, No. 766) of Jason M. Lewis and Rebecca L. Rausch for legislation to establish a public health option. Health Care Financing.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 787 OF 2021-2022.]

**The Commonwealth of Massachusetts**

—————  
**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
—————

An Act establishing a public health option.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. The General Laws are hereby amended by inserting after chapter 176Q the  
2 following new chapter:-

3           CHAPTER 176S. PUBLIC HEALTH INSURANCE OPTION

4           Section 1. As used in this chapter, the following words shall, unless the context clearly  
5 requires otherwise, have the following meanings:—

6           “Commonwealth Connector Board”, the board of the commonwealth health insurance  
7 connector, established by subsection (b) of section 2 of chapter 176Q.

8           “Commonwealth Connector”, the commonwealth health insurance connector authority,  
9 established by subsection

10 (a) of section 2 of chapter 176Q.

11 “Connector seal of approval”, the approval given by the board of the connector to  
12 indicate that a health benefit plan meets certain standards regarding quality and value, as  
13 established by section 10 of Chapter 176Q.

14 “Carrier”, an insurer licensed or otherwise authorized to transact accident and health  
15 insurance under chapter 175; a nonprofit hospital service corporation organized under chapter  
16 176A; a nonprofit medical service corporation organized under chapter 176B; a health  
17 maintenance organization organized under chapter 176G.

18 “Health benefit plan”, any individual, general, blanket or group policy of health, accident  
19 and sickness insurance issued by an insurer licensed under chapter 175; a group hospital service  
20 plan issued by a non-profit hospital service corporation under chapter 176A; a group medical  
21 service plan issued by a non-profit medical service corporation under chapter 176B; a group  
22 health maintenance contract issued by a health maintenance organization under chapter 176G; a  
23 coverage for young adults health insurance plan under section 10 of chapter 176J. The words  
24 “health benefit plan” shall not include accident only, credit-only, limited scope vision or dental  
25 benefits if offered separately, hospital indemnity insurance policies if offered as independent,  
26 non-coordinated benefits which for the purposes of this chapter shall mean policies issued under  
27 chapter 175 which provide a benefit not to exceed \$500 per day, as adjusted on an annual basis  
28 by the amount of increase in the average weekly wages in the commonwealth as defined in  
29 section 1 of chapter 152, to be paid to an insured or a dependent, including the spouse of an  
30 insured, on the basis of a hospitalization of the insured or a dependent, disability income  
31 insurance, coverage issued as a supplement to liability insurance, specified disease insurance that

32 is purchased as a supplement and not as a substitute for a health plan and meets any requirements  
33 the commissioner by regulation may set, insurance arising out of a workers' compensation law or  
34 similar law, automobile medical payment insurance, insurance under which benefits are payable  
35 with or without regard to fault and which is statutorily required to be contained in a liability  
36 insurance policy or equivalent self-insurance, long-term care if offered separately, coverage  
37 supplemental to the coverage provided under 10 U.S.C. section 55 if offered as a separate  
38 insurance policy, or any policy subject to chapter 176K or any similar policies issued on a group  
39 basis, Medicare Advantage plans or Medicare Prescription drug plans. A health plan issued,  
40 renewed or delivered within or without the commonwealth to an individual who is enrolled in a  
41 qualifying student health insurance program under section 18 of chapter 15A shall not be  
42 considered a health plan for the purposes of this chapter and shall be governed by said chapter  
43 15A. The commissioner of insurance may by regulation define other health coverage as a health  
44 benefit plan for the purposes of this chapter.

45 "Eligible individuals", an individual who is a resident of the commonwealth; provided  
46 however, that the individual is not offered subsidized health insurance by an employer with more  
47 than 50 employees.

48 "Eligible small groups", groups, any sole proprietorship, labor union, educational,  
49 professional, civic, trade, church, not-for-profit or social organization or firms, corporations,  
50 partnerships or associations actively engaged in business that on at least 50 per cent of its  
51 working days during the preceding year employed at least one but not more than 50 employees.

52 "Eligible large groups", groups, any labor union, educational, professional, civic, trade,  
53 church, not-for-profit or social organization or firms, corporations, partnerships or associations

54 actively engaged in business that on at least 50 per cent of its working days during the preceding  
55 year employed at least 51 employees.

56 "Public Option", the public health benefits plan offered through the Commonwealth  
57 Connector, established by section 2.

58 "Trust Fund", the Public Health Insurance Trust Fund, established by section 7.

59 Section 2. The Commonwealth Connector Authority shall provide for the offering a  
60 public health benefits plan - the public health insurance option - to eligible individuals and  
61 groups, to ensure choice, competition, and stability of affordable, high quality coverage  
62 throughout Massachusetts. The public option shall:-

63 (a) be made available exclusively through the Commonwealth Connector, alongside  
64 health benefit plans receiving the Connector seal of approval;

65 (b) meet all the requirements established for health benefit plans to receive the  
66 Commonwealth Connector seal of approval;

67 (c) meet the Connector's standards for minimum creditable coverage; and

68 (d) comply with subsections (b), (c), and (d) of section 5 of chapter 176Q.

69 Section 3. The public option shall be made available to eligible individuals and eligible  
70 small groups through the Connector no later than January 1, 2025. In addition the public option  
71 shall be made available to eligible large groups no later than July 1, 2025.

72 Section 4. The executive director of the commonwealth connector may contract with  
73 managed care organizations or other such health benefits administrators to administer aspects of

74 plans offered under the public health insurance option. Notwithstanding any general or special  
75 law to the contrary, the executive director shall collaborate with the secretary of health and  
76 human services and the commissioner of insurance to ensure that only Medicaid managed care  
77 organizations, that have contracted with the commonwealth as of January 1, 2024, to deliver  
78 such managed care services, are so contracted with to administer aspects of the public option.  
79 The executive director may accept applications from non-Medicaid managed care organizations  
80 for the provision of such services after January 1, 2025.

81 Section 5. A report on the activities, receipts, expenditures, and enrollments of the public  
82 option shall be included in the Commonwealth Connector's annual reports and shall be subject to  
83 the prescription and oversight of the Commonwealth Connector Board and state auditor as per  
84 section 14 and section 15 of chapter 176Q.

85 Section 6. The Commonwealth Connector shall establish premium rates for the public  
86 health insurance option at a level sufficient to fully finance the costs of:-

87 (a) health benefits provided by the public option; and

88 (b) administrative costs related to operating the public option.

89 Section 7. The Connector Board shall establish payment rates for the Public Health  
90 Insurance Option for services and providers based on parts A and B of Medicare. The  
91 Commonwealth Connector Board may determine the extent to which adjustments to base  
92 Medicare payment rates shall be made in order to fairly reimburse providers and medical goods  
93 and device makers, as well as to maintain a a strong provider network.

94 Section 8. Health care providers (including physicians and hospitals) participating in  
95 Medicare are participating providers in the public option unless they opt out through a process to  
96 be established by the Commonwealth Connector. This opt-out process must ensure that:

97 (a) no provider shall be subject to a penalty for not participating in the public health  
98 insurance option;

99 (b) the connector shall include information on how providers participating in Medicare  
100 who chose to opt out of participating in the public health insurance option may opt back in; and

101 (c) there shall be an annual enrollment period in which providers may decide whether to  
102 participate in the public health insurance option.

103 Section 9. The Commonwealth Connector may adopt regulations to implement this  
104 chapter.

105 SECTION 2. Chapter 26 of the General Laws is hereby amended by inserting after  
106 section 8J the following new section:-

107 Section 8K. (a) The commissioner of insurance is hereby authorized to make an  
108 assessment against all health plans, health insurers, and health maintenance organizations in the  
109 Commonwealth, as well as the public health insurance option established by section 2 of chapter  
110 176R of the General Laws (which shall be referred to herein as "risk-adjusted health plans") , if  
111 the actuarial risk of the enrollees of such plans or coverage for a year is less than the average  
112 actuarial risk of all enrollees in all risk-adjusted health plans for such year. Self-insured group  
113 health plans (which are subject to the provisions of the Employee Retirement Income Security  
114 Act of 1974), shall be exempted from such risk adjustment.

115 (b) Using the criteria and methods developed under subsection (c), the commissioner of  
116 insurance shall provide a payment to risk-adjusted health plans (with respect to health insurance  
117 coverage) if the actuarial risk of the enrollees of such plans or coverage for a year is greater than  
118 the average actuarial risk of all enrollees in all risk-adjusted health plans for such year that are  
119 not self-insured group health plans (which are subject to the provisions of the Employee  
120 Retirement Income Security Act of 1974).

121 (c) The commissioner shall establish criteria and methods to be used in carrying out the  
122 risk adjustment activities under this section. In calculating the actuarial risk of risk-adjusted  
123 health plans, the commissioner may utilize data including but not limited to enrollee  
124 demographics, inpatient and outpatient diagnoses (in similar fashion as such data are used under  
125 parts C and D of title XVIII of the Social Security Act), and such other information as the  
126 commissioner determines may be necessary such as the actual medical costs of enrollees during  
127 the previous year. Upon request, such risk-adjusted health plans shall make information available  
128 to the division of insurance for the purposes of risk adjustment under this section. Such  
129 information shall be limited to the minimum amount of personal information necessary, shall be  
130 confidential, and shall not constitute a public record.

131 (d) Section 123 of chapter 58 of the Session Laws of 2006 is hereby amended by striking  
132 out the last two sentences of the section, beginning with “The director shall collaborate with the  
133 secretary...”

134 SECTION 3. Chapter 29 of the General Laws is hereby amended by inserting after  
135 section 2XXX the following new section:-



136 Section 2FFFF. There is hereby established and set up on the books of the  
137 commonwealth a separate fund to be known as the Public Health Insurance Option Trust Fund,  
138 in this section called the trust fund. Amounts credited to the trust fund shall be expended without  
139 further appropriation for operation of the public health insurance option. Not later than January  
140 1, the comptroller shall report an update of revenues for the current fiscal year. The comptroller  
141 shall file this report with the secretary of administration and finance, the office of Medicaid, the  
142 joint committee on health care financing, and the house and senate committees on ways and  
143 means.

144 SECTION 4. Subsection (a) of section 5 of Chapter 176Q of the General Laws, as  
145 appearing in the 2020 Official Edition, is hereby amended by inserting, after the words  
146 "underwritten by a carrier," the following words:- , as well as the public health insurance option,

147 SECTION 5. Section 1 of Chapter 176Q of the General Laws, as appearing in the 2020  
148 Official Edition, is hereby amended by inserting, after the definition of "Eligible Small Groups",  
149 the following definition:-

150 "Eligible large groups", groups, any labor union, educational, professional, civic, trade,  
151 church, not-for-profit or social organization or firms, corporations, partnerships or associations  
152 actively engaged in business that on at least 50 per cent of its working days during the preceding  
153 year employed at least 51 employees.'

154 SECTION 6. Section 4(a) of Chapter 176Q of the General Laws, as appearing in the 2020  
155 Official Edition, is hereby amended by inserting prior to the words "groups as defined," the  
156 following words:- eligible small and large

157 SECTION 7. Section 4(b) of Chapter 176Q of the General Laws, as appearing in the  
158 2020 Official Edition, is hereby amended by striking out the phrase “or small group” and  
159 inserting in its place the following words:- , small group, or large group

160 SECTION 8. Effective no later than July 1, 2024, the board of the Commonwealth  
161 Connector shall, consistent with the Board’s powers and duties as enumerated in section 3 of  
162 chapter 176J, extend its seal of approval to large group plans and offer such plans, alongside a  
163 public health insurance option for large groups, through the Connector.