

117TH CONGRESS
1ST SESSION

S. 168

To provide temporary licensing reciprocity for telehealth and interstate health care treatment.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2021

Mr. MURPHY (for himself and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide temporary licensing reciprocity for telehealth and interstate health care treatment.

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 “Temporary Reciprocity
5 to Ensure Access to Treatment Act” or the “TREAT
6 Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

9 (1) It is necessary to regulate, on a temporary
10 and emergency basis, the provision of interstate

1 commerce as it pertains to treatment by medical
2 professionals licensed in one State to patients in
3 other States.

4 (2) COVID–19, the disease caused by SARS–
5 CoV–2, has created a national public health emer-
6 gency, as declared by the Secretary of Health and
7 Human Services under section 319 of the Public
8 Health Service Act (42 U.S.C. 247d) on January
9 31, 2020, and by the President under the National
10 Emergencies Act on March 13, 2020.

11 (3) The COVID–19 pandemic has resulted in
12 closing many businesses and nonprofit organizations,
13 including colleges and universities, and large areas
14 of the country remain under full or partial stay-at-
15 home orders, precluding the ability to seek routine
16 or elective medical treatment and consultation. The
17 closing of campus-based in-person learning at insti-
18 tutions of higher education has also meant that up
19 to 1,000,000 students have returned to live with
20 their families across State lines from where they
21 may have been receiving medical care in the univer-
22 sity setting. Furthermore, in many rural areas, in-
23 person medical treatment is inaccessible. Even in
24 urban areas, the pandemic has severely disrupted ac-
25 cess to medical care, requiring medical professionals

1 licensed in one State to provide treatment to pa-
2 tients residing nearby but across a State line and
3 unable to visit the medical professional's office in
4 the State of licensure.

5 (4) It is vital that hospitals, temporary surge or
6 field facilities, skilled nursing facilities, and nursing
7 homes in areas with high caseloads of COVID-19
8 patients be able to have access to qualified medical
9 professionals, including such professionals licensed
10 in other States, without the delays that would be re-
11 quired for individualized licensing during a time
12 when State agencies' capacity to review and process
13 licensing requests are limited by the pandemic.

14 (5) The provision of services by medical profes-
15 sionals, including services provided at no cost and
16 services provided to patients in a State other than
17 the State or States in which the medical professional
18 maintains an office for professional services, affects
19 interstate commerce. When used to provide services
20 to patients located in a State other than the State
21 in which the medical professional is located, tele-
22 health services, as defined in section 3, utilize facili-
23 ties of interstate commerce.

24 (6) The inability of patients to visit in-State
25 health care providers during the current crisis sub-

stantially affects interstate commerce. Economic activity has been limited by public health authorities and other government officials to “flatten the curve” of infections and hospitalizations and thereby prevent the health care system from becoming overwhelmed. Maximizing the efficient and effective use of health care resources is therefore vital to reopening the economy.

(7) Barriers to the efficient delivery of health care services will lead to a shortage of those services that substantially affect health care availability across State lines. Shortages in health care services in one State prompt interstate travel to obtain health care in other States, even though discouraging such travel, particularly among the sick, is vital to containing the contagion and reopening the national economy.

SEC. 3. DEFINITIONS.

In this Act:

(1) the term “health care professional” means an individual who—

(A) has a valid and unrestricted license or certification from, or is otherwise authorized by, a State, the District of Columbia, or a territory

1 or possession of the United States, for any
 2 health profession, including mental health; and

3 (B) is not affirmatively excluded from
 4 practice in the licensing or certifying jurisdic-
 5 tion or in any other jurisdiction;

6 (2) the term “Secretary” means the Secretary
 7 of Health and Human Services; and

8 (3) the term “telehealth services” means use of
 9 telecommunications and information technology (in-
 10 cluding synchronous or asynchronous audio-visual,
 11 audio-only, or store and forward technology) to pro-
 12 vide access to physical and mental health assess-
 13 ment, diagnosis, treatment, intervention, consulta-
 14 tion, supervision, and information across distance.

15 **SEC. 4. TEMPORARY AUTHORIZATION OF TELEHEALTH**
 16 **AND INTERSTATE TREATMENT.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
 18 sion of Federal or State law or regulation regarding the
 19 licensure or certification of health care providers or the
 20 provision of telehealth services, a health care professional
 21 may practice within the scope of the individual’s license,
 22 certification, or authorization described in section 3(1)(A),
 23 either in-person or through telehealth, in any State, the
 24 District of Columbia, or any territory or possession of the
 25 United States, or any other location designated by the

1 Secretary, based on the licensure, certification, or author-
2 ization such individual in any one State, the District of
3 Columbia, or territory or possession of the United States.

4 (b) SCOPE OF TELEHEALTH SERVICES.—Telehealth
5 services authorized by this section include services pro-
6 vided to any patient regardless of whether the health care
7 professional has a prior treatment relationship with the
8 patient, provided that, if the health care professional does
9 not have a prior treatment relationship with the patient,
10 a new relationship may be established only via a written
11 acknowledgment or synchronous technology.

12 (c) INITIATION OF TELEHEALTH SERVICES.—Before
13 providing telehealth services authorized by this section, the
14 health care professional shall—

15 (1) verify the identification of the patient re-
16 ceiving health services;

17 (2) obtain oral or written acknowledgment from
18 the patient (or legal representative of the patient) to
19 perform telehealth services, and if such acknowledg-
20 ment is oral, make a record of such acknowledg-
21 ment; and

22 (3) obtain or confirm an alternative method of
23 contacting the patient in case of a technological fail-
24 ure.

1 (d) WRITTEN NOTICE OF PROVISION OF SERV-
 2 ICES.—As soon as practicable, but not later than 30 days
 3 after first providing services pursuant to this section in
 4 a jurisdiction other than the jurisdiction in which a health
 5 care professional is licensed, certified, or otherwise author-
 6 ized, such health care professional shall provide written
 7 notice to the applicable licensing, certifying, or authorizing
 8 authority in the jurisdiction in which the health care pro-
 9 fessional provided such services. Such notice shall include
 10 the health care professional's—

11 (1) name;

12 (2) email address;

13 (3) phone number;

14 (4) State of primary license, certification, or
 15 authorization; and

16 (5) license, certification, or authorization type,
 17 and applicable number or identifying information
 18 with respect to such license, certification, or author-
 19 ization.

20 (e) CLARIFICATION.—Nothing in this section author-
 21 izes a health care professional to—

22 (1) practice beyond the scope of practice au-
 23 thorized by—

24 (A) any State, District of Columbia, terri-
 25 torial, or local authority in the jurisdiction in

1 which the health care professional holds a li-
2 cense, certification, or authorization described
3 in section 3(1)(A); or

4 (B) any State, District of Columbia, terri-
5 torial, or local authority in the jurisdiction in
6 which the patient receiving services is located;

7 (2) provide any service or subset of services
8 prohibited by any such authority in the jurisdiction
9 in which the patient receiving services is located;

10 (3) provide any service or subset of services in
11 a manner prohibited by any such authority the juris-
12 diction in which the patient receiving services is lo-
13 cated; or

14 (4) provide any service or subset of services in
15 a manner other than the manner prescribed by any
16 such authority in the jurisdiction in which the pa-
17 tient receiving services is located.

18 (f) INVESTIGATIVE AND DISCIPLINARY AUTHOR-
19 ITY.—A health care professional providing services pursu-
20 ant to the authority under this section shall be subject
21 to investigation and disciplinary action by the licensing,
22 certifying, or authorizing authorities in the jurisdiction in
23 which the patient receiving services is located. The juris-
24 diction in which the patient receiving services is located
25 shall have the authority to preclude the health care pro-

1 vider from practicing further in its jurisdiction, whether
 2 such practice is authorized by the laws of such jurisdiction
 3 or the authority granted under this section, and shall re-
 4 port any such preclusion to the licensing authority in the
 5 jurisdiction in which the health care provider is licensed,
 6 certified, or authorized.

7 (g) MULTIPLE JURISDICTION LICENSURE.—Notwith-
 8 standing any other provision of this section, a health care
 9 professional shall be subject to the requirements of the
 10 jurisdiction of licensure if the professional is licensed in
 11 the State, the District of Columbia, or territory or posses-
 12 sion where the patient is located.

13 (h) INTERSTATE LICENSURE COMPACTS.—If a
 14 health care professional is licensed in multiple jurisdic-
 15 tions through an interstate licensure compact, with respect
 16 to services provided to a patient located in a jurisdiction
 17 covered by such compact, the health care professional shall
 18 be subject to the requirements of the compact and not this
 19 section.

20 **SEC. 5. APPLICATION.**

21 This Act shall apply during the period beginning on
 22 the date of enactment of this Act and ending on the date
 23 that is at least 180 days (as determined by the Secretary)
 24 after the end of the public health emergency declared by
 25 the Secretary of Health and Human Services under sec-

1 tion 319 of the Public Health Service Act (42 U.S.C.
2 247d) on January 31, 2020, with respect to COVID–19.

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