

117TH CONGRESS
1ST SESSION

S. 1988

To amend title XVIII of the Social Security Act to protect access to telehealth services under the Medicare program.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2021

Mr. MANCHIN (for himself, Ms. ERNST, Mrs. SHAHEEN, and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to protect access to telehealth services under the Medicare program.

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 “Protecting Rural Tele-
5 health Access Act”.

6 **SEC. 2. ELIMINATION OF RESTRICTIONS RELATING TO**
7 **TELEHEALTH SERVICES.**

8 (a) **ELIMINATION OF GEOGRAPHIC REQUIREMENTS**
9 **FOR ORIGINATING SITES.**—Section 1834(m)(4)(C) of the

1 Social Security Act (42 U.S.C. 1395m(m)(4)(C)) is
2 amended—

3 (1) in clause (i), in the matter preceding sub-
4 clause (I), by inserting “and clause (iii)” after “and
5 (7)”; and

6 (2) by adding at the end the following new
7 clause:

8 “(iii) ELIMINATION OF GEOGRAPHIC
9 REQUIREMENTS FOR ORIGINATING
10 SITES.—The geographic requirements de-
11 scribed in clause (i) shall not apply with
12 respect to telehealth services furnished on
13 or after January 1, 2021.”.

14 (b) ELIMINATION OF RESTRICTIONS IN WHICH
15 TELEHEALTH SERVICES MAY BE FURNISHED IN THE
16 HOME.—Section 1834(m)(4)(C)(ii)(X) of the Social Secu-
17 rity Act (42 U.S.C. 1395m(m)(4)(C)(i)(X) is amended to
18 read as follows:.

19 “(X)(aa) For the period begin-
20 ning on the date of the enactment of
21 this subclause and ending on Decem-
22 ber 31, 2020, the home of an indi-
23 vidual but only for purposes of section
24 1881(b)(3)(B) or telehealth services
25 described in paragraph (7).

1 “(bb) For the period beginning
 2 on or after January 1, 2021, the
 3 home of an individual.”.

4 (c) ELIMINATION OF RESTRICTIONS ON STORE-AND-
 5 FORWARD TECHNOLOGIES.—The second sentence of sec-
 6 tion 1834(m)(1) of the Social Security Act (42 U.S.C.
 7 1395m(m)(1)) is amended by striking “in the case of any
 8 Federal telemedicine demonstration program conducted in
 9 Alaska or Hawaii,”.

10 **SEC. 3. TELEHEALTH FLEXIBILITIES FOR CRITICAL ACCESS**
 11 **HOSPITALS.**

12 Section 1834(m) of the Social Security Act (42
 13 U.S.C. 1395m(m)) is amended—

14 (1) in the first sentence of paragraph (1), by
 15 striking “paragraph (8)” and inserting “paragraphs
 16 (8) and (9)”;

17 (2) in paragraph (2)(A), by striking “paragraph
 18 (8)” and inserting “paragraphs (8) and (9)”;

19 (3) in paragraph (4)—

20 (A) in subparagraph (A), by striking
 21 “paragraph (8)” and inserting “paragraphs (8)
 22 and (9)”;

23 (B) in subparagraph (F)(i), by striking
 24 “paragraph (8)” and inserting “paragraphs (8)
 25 and (9)”; and

1 (4) by adding at the end the following new
2 paragraph:

3 “(9) TELEHEALTH FLEXIBILITIES FOR CRIT-
4 ICAL ACCESS HOSPITALS.—

5 “(A) IN GENERAL.—On or after the date
6 of the enactment of this paragraph—

7 “(i) the Secretary shall pay for tele-
8 health services that are furnished via a
9 telecommunications system by a critical ac-
10 cess hospital, including any practitioner
11 authorized to provide such services within
12 the facility, that is a qualified provider (as
13 defined in subparagraph (B)) to an eligible
14 telehealth individual enrolled under this
15 part notwithstanding that the critical ac-
16 cess hospital providing the telehealth serv-
17 ice is not at the same location as the bene-
18 ficiary, if such services complement a plan
19 of care that includes in-person care at
20 some point, as may be appropriate;

21 “(ii) the amount of payment to a crit-
22 ical access hospital that serves as a distant
23 site for such a telehealth service shall be
24 determined under subparagraph (C); and

25 “(iii) for purposes of this subsection—

1 “(I) the term ‘distant site’ in-
2 cludes a critical access hospital that
3 furnishes a telehealth service to an eli-
4 gible telehealth individual; and

5 “(II) the term ‘telehealth serv-
6 ices’ includes behavioral health serv-
7 ices and any other outpatient critical
8 access hospital service that is fur-
9 nished using telehealth to the extent
10 that payment codes corresponding to
11 services identified by the Secretary
12 under clause (i) or (ii) of paragraph
13 (4)(F) are listed on the corresponding
14 claim for such critical access hospital
15 service.

16 “(B) DEFINITION OF QUALIFIED PRO-
17 VIDER.—For purposes of this subsection, the
18 term ‘qualified provider’ means, with respect to
19 a telehealth service described in subparagraph
20 (A)(i) that is furnished to an eligible telehealth
21 individual, a critical access hospital that has an
22 established patient relationship with such indi-
23 vidual as defined by the State in which the indi-
24 vidual is located.

“(C) PAYMENT.—The amount of payment to a critical access hospital that serves as a distant site that furnishes a telehealth service to an eligible telehealth individual under this paragraph shall be equal to 101 percent of the reasonable costs of the hospital in providing such services, unless the hospital makes an election under paragraph (2) of section 1834(g) to be paid for such services based on the methodology described in such paragraph. Telehealth services furnished by a critical access hospital shall be counted for purposes of determining the provider productivity rate of the critical access hospital for purposes of payment under such section.

“(D) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement this paragraph through program instruction, interim final rule, or otherwise.”.

SEC. 4. EXTENDING MEDICARE TELEHEALTH FLEXIBILITIES FOR FEDERALLY QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.

Section 1834(m)(8) of the Social Security Act (42 U.S.C. 1395m(m)(8)) is amended—

1 (1) in the paragraph heading by striking “DUR-
2 ING EMERGENCY PERIOD”;

3 (2) in subparagraph (A), in the matter pre-
4 ceding clause (i), by inserting “and after such emer-
5 gency period” after “1135(g)(1)(B)”;

6 (3) by striking subparagraph (B) and inserting
7 the following:

8 “(B) PAYMENT.—

9 “(i) IN GENERAL.—A telehealth serv-
10 ice furnished by a Federally qualified
11 health center or a rural health clinic to an
12 eligible telehealth individual pursuant to
13 this paragraph or after the date of the en-
14 actment of this subparagraph shall be re-
15 imbursed under this title at a separate
16 telehealth payment rate as determined
17 under the methodology established by the
18 Secretary pursuant to clause (ii).

19 “(ii) PAYMENT METHODOLOGY.—The
20 Secretary shall establish a methodology for
21 determining the appropriate payment rate
22 for telehealth services described in clause
23 (i). Such methodology shall consider—

1 “(I) the geography of Federally
 2 qualified health centers and rural
 3 health clinics;

4 “(II) costs associated with the
 5 delivery of such telehealth services as
 6 allowable costs for the center or clinic;
 7 and

8 “(III) the full cost of providing
 9 the services via telehealth.

10 “(iii) IMPLEMENTATION.—

11 “(I) CODING SYSTEM.—The Sec-
 12 retary shall establish an effective cod-
 13 ing system for telehealth services de-
 14 scribed in clause (i) that is reflective
 15 of the services provided at a center or
 16 clinic.

17 “(II) IMPLEMENTATION.—Not-
 18 withstanding any other provision of
 19 law, the Secretary may implement this
 20 subparagraph through program in-
 21 struction, interim final rule, or other-
 22 wise.”; and

23 (4) by adding at the end the following new sub-
 24 paragraph:

1 “(C) REQUIREMENT DURING ADDITIONAL
2 PERIOD.—

3 “(i) IN GENERAL.—Beginning on the
4 first day after the end of the emergency
5 period described in section 1135(g)(1)(B),
6 payment may only be made under this
7 paragraph for a telehealth service de-
8 scribed in subparagraph (A)(i) that is fur-
9 nished to an eligible telehealth individual if
10 such service is furnished by a qualified
11 provider (as defined in clause (ii)).

12 “(ii) DEFINITION OF QUALIFIED PRO-
13 VIDER.—For purposes of this subpara-
14 graph, the term ‘qualified provider’ means,
15 with respect to a telehealth service de-
16 scribed in subparagraph (A)(i) that is fur-
17 nished to an eligible telehealth individual, a
18 Federally qualified health center or rural
19 health clinic that has an established pa-
20 tient relationship with such individual as
21 defined by the State in which the indi-
22 vidual is located.”.

1 **SEC. 5. ALLOWANCE OF CERTAIN TELEHEALTH SERVICES**
 2 **FURNISHED USING AUDIO-ONLY TECH-**
 3 **NOLOGY.**

4 Section 1834(m)(4) of the Social Security Act (42
 5 U.S.C. 1395m(m)(4)) of the Social Security Act (42
 6 U.S.C. 1395m(m)(4)) is amended by adding at the end
 7 the following new subparagraph:

8 “(G) TELECOMMUNICATIONS SYSTEM.—

9 “(i) IN GENERAL.—Notwithstanding
 10 paragraph (1) and section 410.78(a)(3) of
 11 title 42, Code of Federal Regulations (or
 12 any successor regulation), subject to clause
 13 (v), the term ‘telecommunications system’
 14 includes, in the case of the furnishing of a
 15 specified telehealth service (as defined in
 16 clause (ii)) a communications system that
 17 uses audio-only technology.

18 “(ii) SPECIFIED TELEHEALTH SERV-
 19 ICE.—In this subparagraph, the term
 20 ‘specified telehealth service’ means a tele-
 21 health service described in clause (iii) that
 22 is furnished by a qualified provider (as de-
 23 fined in clause (iv)).

24 “(iii) TELEHEALTH SERVICE DE-
 25 SCRIBED.—A telehealth service described

1 in this clause is a telehealth service con-
 2 sisting of—

3 “(I) evaluation and management
 4 services;

5 “(II) behavioral health counseling
 6 and educational services; and

7 “(III) other services determined
 8 appropriate by the Secretary.

9 “(iv) QUALIFIED PROVIDER DE-
 10 FINED.—

11 “(I) IN GENERAL.—For purposes
 12 of clause (ii), the term ‘qualified pro-
 13 vider’ means, with respect to a speci-
 14 fied telehealth service that is fur-
 15 nished to an eligible telehealth indi-
 16 vidual—

17 “(aa) a physician or practi-
 18 tioner who has an established pa-
 19 tient relationship with such indi-
 20 vidual as defined by the State in
 21 which the individual is located; or

22 “(bb) a critical access hos-
 23 pital (as defined in section
 24 1861(mm)(1)), a rural health
 25 clinic (as defined in section

1 1861(aa)(2)), a Federally quali-
2 fied health center (as defined in
3 section 1861(aa)(4)), a hospital
4 (as defined in section 1861(e)), a
5 hospital-based or critical access
6 hospital-based renal dialysis cen-
7 ter (including satellites), a skilled
8 nursing facility (as defined in
9 section 1819(a)), a community
10 mental health center (as defined
11 in section 1861(ff)(3)(B)), or a
12 rural emergency hospital (as de-
13 fined in section 1861(kkk)(2)).

14 “(v) AUTHORITY.—For purposes of
15 this subparagraph, the Secretary may de-
16 termine whether it is clinically appropriate
17 to furnish a specified telehealth service via
18 a communications system that uses audio-
19 only technology and whether an in-person
20 initial visit (in addition to any requirement
21 with respect to the furnishing of an item
22 or service in person pursuant to clause
23 (iv)(I)) is required prior to the furnishing
24 of such service using such technology.

1 “(vi) CLARIFICATION REGARDING
 2 PAYMENT.—The amount of payment for a
 3 specified telehealth service that is fur-
 4 nished using audio-only technology shall be
 5 equal to the amount that would have been
 6 paid for such service under this subsection
 7 had such service been furnished via any
 8 other telecommunications system author-
 9 ized under this subsection.”.

10 **SEC. 6. SENSE OF CONGRESS REGARDING EXPANSION OF**
 11 **ELIGIBLE PRACTITIONERS THAT MAY FUR-**
 12 **NISH TELEHEALTH SERVICES.**

13 It is the sense of Congress that the expansion of eligi-
 14 ble practitioners that may furnish telehealth services (as
 15 defined in section 1834(m)(4)(F) of the Social Security
 16 Act (42 U.S.C. 1395m(m)(4)(F))) during the emergency
 17 period described in section 1135(g)(1)(B) of such Act (42
 18 U.S.C. 1320b–5(g)(1)(B)) should be extended on a perma-
 19 nent basis.

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