

117TH CONGRESS
2D SESSION

S. 3593

To amend titles XI and XVIII of the Social Security Act to extend certain telehealth services covered by Medicare and to evaluate the impact of telehealth services on Medicare beneficiaries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, FEBRUARY 3), 2022

Ms. CORTEZ MASTO (for herself and Mr. YOUNG) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend titles XI and XVIII of the Social Security Act to extend certain telehealth services covered by Medicare and to evaluate the impact of telehealth services on Medicare beneficiaries, 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) IN GENERAL.—This Act may be cited as the
5 “Telehealth Extension and Evaluation Act”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Extension of telehealth services.

- Sec. 3. Temporary requirements for provision of high-cost durable medical equipment and laboratory tests.
- Sec. 4. Requirement to submit NPI number for telehealth billing.
- Sec. 5. Federally qualified health centers and rural health clinics.
- Sec. 6. Telehealth flexibilities for critical access hospitals.
- Sec. 7. Use of telehealth for the dispensing of controlled substances by means of the internet.
- Sec. 8. Study on the effects of changes to telehealth under the Medicare and Medicaid programs during the COVID-19 emergency.

1 SEC. 2. EXTENSION OF TELEHEALTH SERVICES.

2 Section 1135(e) of the Social Security Act (42 U.S.C.
3 1320b-5(e)) is amended by adding at the end the fol-
4 lowing new paragraph:

5 “(3) TWO-YEAR EXTENSION OF TELEHEALTH
6 SERVICES FOLLOWING THE COVID-19 EMERGENCY
7 PERIOD.—Notwithstanding any other provision of
8 this section, a waiver or modification of require-
9 ments pursuant to subsection (b)(8) shall terminate
10 on the date that is 2 years after the last day of the
11 emergency period described in subsection
12 (g)(1)(B).”.

13 SEC. 3. TEMPORARY REQUIREMENTS FOR PROVISION OF
14 HIGH-COST DURABLE MEDICAL EQUIPMENT
15 AND LABORATORY TESTS.

16 (a) HIGH-COST DURABLE MEDICAL EQUIPMENT.—
17 Section 1834(a)(1)(E) of the Social Security Act (42
18 U.S.C. 1395m(a)(1)(E)) is amended by adding at the end
19 the following new clauses:

20 “(vi) STANDARDS FOR HIGH-COST DU-
21 RABLE MEDICAL EQUIPMENT.—

1 “(I) LIMITATION ON PAYMENT
2 FOR HIGH-COST DURABLE MEDICAL
3 EQUIPMENT.—During the 2-year pe-
4 riod beginning on the day after the
5 last day of the emergency period de-
6 scribed in section 1135(g)(1)(B), pay-
7 ment may not be made under this
8 subsection for high-cost durable med-
9 ical equipment ordered by a physician
10 or other practitioner described in
11 clause (ii) via telehealth for an indi-
12 vidual, unless such physician or prac-
13 titioner furnished to such individual a
14 service in person at least once during
15 the 12-month period prior to ordering
16 such high-cost durable medical equip-
17 ment.

18 “(II) HIGH-COST DURABLE MED-
19 ICAL EQUIPMENT DEFINED.—For
20 purposes of this clause, the term
21 ‘high-cost durable medical equipment’
22 means, with respect to a year, durable
23 medical equipment for which payment
24 may be made under paragraphs (2)
25 through (8), the price under the clin-

1 ical lab fee schedule which for such
 2 year is in the highest quartile of na-
 3 tional purchase prices of durable med-
 4 ical equipment payable for such year.

5 “(vii) AUDIT OF PROVIDERS AND
 6 PRACTITIONERS FURNISHING A HIGH VOL-
 7 UME OF DURABLE MEDICAL EQUIPMENT
 8 VIA TELEHEALTH.—

9 “(I) IDENTIFICATION OF PRO-
 10 VIDERS.—During the 2-year period
 11 beginning on the day after the last
 12 day of the emergency period described
 13 in section 1135(g)(1)(B), Medicare
 14 administrative contractors shall con-
 15 duct reviews, on a schedule deter-
 16 mined by the Secretary, of claims for
 17 durable medical equipment prescribed
 18 by a physician or other practitioner
 19 described in clause (ii) during the 12-
 20 month period preceding such review to
 21 identify physicians or other practi-
 22 tioners with respect to whom at least
 23 90 percent of all durable medical
 24 equipment prescribed by such physi-
 25 cian or practitioner during such pe-

riod was prescribed pursuant to a
telehealth visit.

“(II) AUDIT.—In the case of a
physician or practitioner identified
under subclause (I), with respect to a
12-month period described in such
subclause, the Medicare administra-
tive contractors shall conduct audits
of all claims for durable medical
equipment prescribed by such physi-
cians or practitioners to determine
whether such claims comply with the
requirements for coverage under this
title.”.

(b) HIGH-COST LABORATORY TESTS.—Section
1834A(b) of the Social Security Act (42 U.S.C. 1395m-
1(b)) is amended by adding at the end the following new
paragraphs:

“(6) REQUIREMENT FOR HIGH-COST LABORA-
TORY TESTS.—

“(A) LIMITATION ON PAYMENT FOR HIGH-
COST LABORATORY TESTS.—During the 2-year
period beginning on the day after the last day
of the emergency period described in section
1135(g)(1)(B), payment may not be made

under this subsection for a high-cost laboratory test ordered by a physician or practitioner via telehealth for an individual, unless such physician or practitioner furnished to such individual a service in person at least once during the 12-month period prior to ordering such high-cost laboratory test.

“(B) HIGH-COST LABORATORY TEST DEFINED.—For purposes of this paragraph, the term ‘high-cost laboratory test’ means, with respect to a year, a laboratory test for which payment may be made under this section, and the purchase price of which for such year is in the highest quartile of purchase prices of laboratory tests for such year.

“(7) AUDIT OF LABORATORY TESTING ORDERED PURSUANT TO TELEHEALTH VISIT.—

“(A) IDENTIFICATION OF PROVIDERS.—During the 2-year period beginning on the day after the last day of the emergency period described in section 1135(g)(1)(B), Medicare administrative contractors shall conduct periodic reviews, on a schedule determined by the Secretary, of claims for laboratory tests prescribed by a physician or practitioner during the 12-

month period preceding such review to identify physicians or other practitioners with respect to whom at least 90 percent of all laboratory tests prescribed by such physician or practitioner during such period were prescribed pursuant to a telehealth visit.

“(B) AUDIT.—In the case of a physician or practitioner identified under subparagraph (A), with respect to a 12-month period described in such subparagraph, the Medicare administrative contractors shall conduct audits of all claims for laboratory tests prescribed by such physicians or practitioners during such period to determine whether such claims comply with the requirements for coverage under this title.”.

**SEC. 4. REQUIREMENT TO SUBMIT NPI NUMBER FOR TELE-
HEALTH BILLING.**

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

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

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

1 “(9) REQUIREMENT TO SUBMIT NPI NUMBER
 2 FOR TELEHEALTH BILLING.—During the 2-year pe-
 3 riod beginning on the day after the last day of the
 4 emergency period described in section
 5 1135(g)(1)(B), payment may not be made under
 6 this subsection for telehealth services furnished by a
 7 physician or practitioner unless such physician or
 8 practitioner submits a claim for payment under the
 9 national provider identification number assigned to
 10 such physician or practitioner.”.

11 **SEC. 5. FEDERALLY QUALIFIED HEALTH CENTERS AND**
 12 **RURAL HEALTH CLINICS.**

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

15 (1) in the paragraph heading by inserting “AND
 16 THE 2-YEAR PERIOD AFTER SUCH EMERGENCY PE-
 17 RIOD” after “PERIOD”;

18 (2) in subparagraph (A), in the matter pre-
 19 ceding clause (i), by inserting “and the 2-year period
 20 immediately following such emergency period” after
 21 “1135(g)(1)(B)”; and

22 (3) by striking subparagraph (B) and inserting
 23 the following:

24 “(B) PAYMENT.—

1 “(i) IN GENERAL.—A telehealth serv-
2 ice furnished by a Federally qualified
3 health center or a rural health clinic to an
4 individual pursuant to this paragraph on
5 or after the date of the enactment of this
6 subparagraph shall be deemed to be so fur-
7 nished to such individual as an outpatient
8 of such clinic or facility (as applicable) for
9 purposes of paragraph (1) or (3), respec-
10 tively, of section 1861(aa) and payable as
11 a Federally qualified health center service
12 or rural health clinic service (as applicable)
13 under the prospective payment system es-
14 tablished under section 1834(o) or under
15 section 1833(a)(3), respectively.

16 “(ii) TREATMENT OF COSTS FOR
17 FQHC PPS CALCULATIONS AND RHC AIR
18 CALCULATIONS.—Costs associated with the
19 delivery of telehealth services by a Feder-
20 ally qualified health center or rural health
21 clinic serving as a distant site pursuant to
22 this paragraph shall be considered allow-
23 able costs for purposes of the prospective
24 payment system established under section
25 1834(o) and any payment methodologies

1 developed under section 1833(a)(3), as ap-
 2 plicable.”.

3 **SEC. 6. TELEHEALTH FLEXIBILITIES FOR CRITICAL ACCESS**
 4 **HOSPITALS.**

5 Section 1834(m) of the Social Security Act (42
 6 U.S.C. 1395m(m)), as amended by section 4, is amend-
 7 ed—

8 (1) in the first sentence of paragraph (1), by
 9 striking “and (9)” and inserting “, (9) and (10)”;

10 (2) in paragraph (2)(A), by striking “paragraph
 11 (8)” and inserting “paragraphs (8) and (10)”;

12 (3) in paragraph (4)—

13 (A) in subparagraph (A), by striking
 14 “paragraph (8)” and inserting “paragraphs (8)
 15 and (10)”;

16 (B) in subparagraph (F)(i), by striking
 17 “paragraph (8)” and inserting “paragraphs (8)
 18 and (10)”;

19 (4) by adding at the end the following new
 20 paragraph:

21 “(10) TELEHEALTH FLEXIBILITIES FOR CRIT-
 22 ICAL ACCESS HOSPITALS.—

23 “(A) IN GENERAL.—During the period be-
 24 ginning on the date of the enactment of this
 25 paragraph and ending on the date that is 2

1 years after the end of the emergency period de-
2 scribed in section 1135(g)(1)(B), the following
3 shall apply:

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

18 “(ii) The amount of payment to a
19 critical access hospital that serves as a dis-
20 tant site for such a telehealth service shall
21 be determined under subparagraph (B).

22 “(iii) For purposes of this sub-
23 section—

24 “(I) the term ‘distant site’ in-
25 cludes a critical access hospital that

1 furnishes a telehealth service to an eli-
2 gible telehealth individual;

3 “(II) the term ‘qualified provider’
4 means, with respect to a telehealth
5 service described in clause (i) that is
6 furnished to an eligible telehealth in-
7 dividual, a critical access hospital that
8 has an established patient relationship
9 with such individual as defined by the
10 State in which the individual is lo-
11 cated; and

12 “(III) the term ‘telehealth serv-
13 ices’ includes behavioral health serv-
14 ices and any other outpatient critical
15 access hospital service that is fur-
16 nished using telehealth to the extent
17 that payment codes corresponding to
18 services identified by the Secretary
19 under clause (i) or (ii) of paragraph
20 (4)(F) are listed on the corresponding
21 claim for such critical access hospital
22 service.

23 “(B) PAYMENT.—For purposes of sub-
24 paragraph (A)(ii), the amount of payment to a
25 critical access hospital that serves as a distant

1 site that furnishes a telehealth service to an eli-
 2 gible telehealth individual under this paragraph
 3 shall be equal to 101 percent of the reasonable
 4 costs of the hospital in providing such services,
 5 unless the hospital makes an election under
 6 paragraph (2) of section 1834(g) to be paid for
 7 such services based on the methodology de-
 8 scribed in such paragraph. Telehealth services
 9 furnished by a critical access hospital shall be
 10 counted for purposes of determining the pro-
 11 vider productivity rate of the critical access hos-
 12 pital for purposes of payment under such sec-
 13 tion.

14 “(C) IMPLEMENTATION.—Notwithstanding
 15 any other provision of law, the Secretary may
 16 implement this paragraph through program in-
 17 struction, interim final rule, or otherwise.”.

18 **SEC. 7. USE OF TELEHEALTH FOR THE DISPENSING OF**
 19 **CONTROLLED SUBSTANCES BY MEANS OF**
 20 **THE INTERNET.**

21 Section 309(e)(2) of the Controlled Substances Act
 22 (21 U.S.C. 829(e)(2)) is amended—

23 (1) in subparagraph (A)(i)—

1 (A) by striking “at least 1 in-person med-
2 ical evaluation” and inserting the following: “at
3 least—

4 “(I) 1 in-person medical evalua-
5 tion”; and

6 (B) by adding at the end the following:

7 “(II) during the period beginning
8 on the date of the enactment of this
9 subclause and ending on the date that
10 is 2 years after the end of the emer-
11 gency period described in section
12 1135(g)(1)(B) of the Social Security
13 Act (42 U.S.C. 1320b–5(g)(1)(B)),
14 for purposes of prescribing a con-
15 trolled substance in schedules II
16 through V, 1 telehealth evaluation;
17 or”; and

18 (2) by adding at the end the following:

19 “(D)(i) The term ‘telehealth evaluation’
20 means a medical evaluation that is conducted in
21 accordance with applicable Federal and State
22 laws by a practitioner (other than a phar-
23 macist) who is at a location remote from the
24 patient and is communicating with the patient
25 using a telecommunications system referred to

1 in section 1834(m) of the Social Security Act
2 (42 U.S.C. 1395m(m)) that includes, at a min-
3 imum, audio and video equipment permitting
4 two-way, real-time interactive communication
5 between the patient and distant site practi-
6 tioner.

7 “(ii) Nothing in clause (i) shall be con-
8 strued to imply that 1 telehealth evaluation
9 demonstrates that a prescription has been
10 issued for a legitimate medical purpose within
11 the usual course of professional practice.

12 “(iii) A practitioner who prescribes the
13 drugs or combination of drugs that are covered
14 under section 303(g)(2)(C) using the authority
15 under subparagraph (A)(i)(II) of this para-
16 graph shall adhere to nationally recognized evi-
17 dence-based guidelines for the treatment of pa-
18 tients with opioid use disorders and a diversion
19 control plan, as those terms are defined in sec-
20 tion 8.2 of title 42, Code of Federal Regula-
21 tions, as in effect on the date of enactment of
22 this subparagraph.”.

1 **SEC. 8. STUDY ON THE EFFECTS OF CHANGES TO TELE-**
2 **HEALTH UNDER THE MEDICARE AND MED-**
3 **ICAID PROGRAMS DURING THE COVID-19**
4 **EMERGENCY.**

5 (a) IN GENERAL.—Not later than 1 year after the
6 date of the enactment of this Act, the Secretary of Health
7 and Human Services (in this section referred to as the
8 “Secretary”) shall conduct a study and submit to the
9 Committee on Energy and Commerce and the Committee
10 on Ways and Means of the House of Representatives and
11 the Committee on Finance of the Senate an interim report
12 on any changes made to the provision or availability of
13 telehealth services under part A or B of title XVIII of
14 the Social Security Act (including by reason of the amend-
15 ments made to the Controlled Substances Act under sec-
16 tion 7) since the start of the emergency period described
17 in section 1135(g)(1)(B) of the Social Security Act (42
18 U.S.C. 1320b–5(g)(1)(B)). Such report shall include the
19 following:

20 (1) A summary of utilization of all health care
21 services furnished under such part A or B during
22 such emergency period, including the number of tele-
23 health visits (broken down by service type, the num-
24 ber of such visits furnished via audio-visual tech-
25 nology, the number of such visits furnished via
26 audio-only technology, and the number of such visits

1 furnished by a Federally qualified health center,
2 rural health clinic, or community health center, re-
3 spectively, if practicable), in-person outpatient visits,
4 inpatient admissions, and emergency department vis-
5 its.

6 (2) A description of any changes in utilization
7 patterns for the care settings described in paragraph
8 (1) over the course of such emergency period com-
9 pared to such patterns prior to such emergency pe-
10 riod.

11 (3) An analysis of utilization of telehealth serv-
12 ices under such part A or B during such emergency
13 period, broken down by race and ethnicity, geo-
14 graphic region, and income level (as measured di-
15 rectly or indirectly, such as by patient's zip code tab-
16 ulation area median income as publicly reported by
17 the United States Census Bureau), and of any
18 trends in such utilization during such emergency pe-
19 riod, so broken down. Such analysis may not include
20 any personally identifiable information or protected
21 health information.

22 (4) A description of expenditures and any sav-
23 ings under such part A or B attributable to use of
24 such telehealth services during such emergency pe-
25 riod.

1 (5) A description of any instances of fraud
2 identified by the Secretary, acting through the Office
3 of the Inspector General or other relevant agencies
4 and departments, with respect to such telehealth
5 services furnished under such part A or B during
6 such emergency period and a comparison of the
7 number of such instances with the number of in-
8 stances of fraud so identified with respect to in-per-
9 son services so furnished during such emergency pe-
10 riod.

11 (6) A description of any privacy concerns with
12 respect to the furnishing of such telehealth services
13 (such as cybersecurity or ransomware concerns), in-
14 cluding a description of any actions taken by the
15 Secretary, acting through the Health Sector Cyber-
16 security Coordination Center or other relevant agen-
17 cies and departments, during such emergency period
18 to assist health care providers secure telecommuni-
19 cations systems.

20 (7) Identification of common ICD–10 codes
21 billed via telehealth, comparing measures of quality
22 and outcomes between telehealth care and in-person
23 care for the same category of service.

1 (8) Recommendations regarding the perma-
2 nency of the waivers and authorities under the provi-
3 sions of, and amendments made by, this Act.

4 (b) CONSULTATION.—In conducting the study and
5 submitting the report under subsection (a), the Sec-
6 retary—

7 (1) shall consult with—

8 (A) the Medicaid and CHIP Payment and
9 Access Commission;

10 (B) the Medicare Payment Advisory Com-
11 mission;

12 (C) the Office of Inspector General of the
13 Department of Health and Human Services;
14 and

15 (D) other stakeholders determined appro-
16 priate by the Secretary, such as patients, tribal
17 communities, medical professionals, health fa-
18 cilities, State medical boards, State nursing
19 boards, telehealth providers, health professional
20 liability providers, public and private payers,
21 and State leaders; and

22 (2) shall endeavor to include as many racially,
23 ethnically, geographically, and professionally diverse
24 perspectives as possible.

1 (c) FINAL REPORT.—Not later than 18 months after
 2 the end of the emergency period described in section
 3 1135(g)(1)(B) of the Social Security Act (42 U.S.C.
 4 1320b–5(g)(1)(B)), the Secretary shall—

5 (1) update and finalize the interim report under
 6 subsection (a); and

7 (2) submit such updated and finalized report to
 8 the committees specified in such subsection.

9 (d) GRANTS FOR MEDICAID REPORTS.—

10 (1) IN GENERAL.—Not later than January 1,
 11 2023, the Secretary shall award grants to States
 12 with a State plan (or waiver of such plan) in effect
 13 under title XIX of the Social Security Act (42
 14 U.S.C. 1396r) that submit an application under this
 15 subsection for purposes of enabling such States to
 16 study and submit reports to the Secretary on any
 17 changes made to the provision or availability of tele-
 18 health services under such plans (or such waivers)
 19 during such period.

20 (2) ELIGIBILITY.—To be eligible to receive a
 21 grant under paragraph (1), a State shall—

22 (A) provide benefits for telehealth services
 23 under the State plan (or waiver of such plan)
 24 in effect under title XIX of the Social Security
 25 Act (42 U.S.C. 1396r);

1 (B) be able to differentiate telehealth from
2 in-person visits within claims data submitted
3 under such plan (or such waiver) during such
4 period; and

5 (C) submit to the Secretary an application
6 at such time, in such manner, and containing
7 such information (including the amount of the
8 grant requested) as the Secretary may require.

9 (3) USE OF FUNDS.—A State shall use
10 amounts received under a grant under this sub-
11 section to conduct a study and report findings re-
12 garding the effects of changes to telehealth services
13 offered under the State plan (or waiver of such plan)
14 of such State under title XIX of the Social Security
15 Act (42 U.S.C. 1396 et seq.) during such period in
16 accordance with paragraph (4).

17 (4) REPORTS.—

18 (A) INTERIM REPORT.—Not later 1 year
19 after the date a State receives a grant under
20 this subsection, the State shall submit to the
21 Secretary an interim report that—

22 (i) details any changes made to the
23 provision or availability of telehealth bene-
24 fits (such as eligibility, coverage, or pay-
25 ment changes) under the State plan (or

1 waiver of such plan) of the State under
2 title XIX of the Social Security Act (42
3 U.S.C. 1396 et seq.) during the emergency
4 period described in paragraph (1); and

5 (ii) contains—

6 (I) a summary and description of
7 the type described in paragraphs (1)
8 and (2), respectively, of subsection
9 (a); and

10 (II) to the extent practicable, an
11 analysis of the type described in para-
12 graph (3) of subsection (a),
13 except that any reference in such sub-
14 section to “such part A or B” shall, for
15 purposes of subclauses (I) and (II), be
16 treated as a reference to such State plan
17 (or waiver).

18 (B) FINAL REPORT.—Not later than 3
19 years after the date a State receives a grant
20 under this subsection, the State shall update
21 and finalize the interim report and submit such
22 final report to the Secretary.

23 (C) REPORT BY SECRETARY.—Not later
24 than the earlier of the date that is 1 year after
25 the submission of all final reports under sub-

1 paragraph (B) and December 31, 2027, the
2 Secretary shall submit to Congress a report on
3 the grant program, including a summary of the
4 reports received from States under this para-
5 graph.

6 (5) MODIFICATION AUTHORITY.—The Secretary
7 may modify any deadline described in paragraph (4)
8 or any information required to be included in a re-
9 port made under this subsection to provide flexibility
10 for States to modify the scope of the study and
11 timeline for such reports.

12 (6) TECHNICAL ASSISTANCE.—The Secretary
13 shall provide such technical assistance as may be
14 necessary to a State receiving a grant under this
15 subsection in order to assist such State in con-
16 ducting studies and submitting reports under this
17 subsection.

18 (7) STATE.—For purposes of this subsection,
19 the term “State” means each of the several States,
20 the District of Columbia, and each territory of the
21 United States.

22 (e) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) MEDICARE.—For the purpose of carrying
24 out subsections (a) through (c), there are authorized

1 to be appropriated such sums as may be necessary
2 for each of fiscal years 2022 through 2026.

3 (2) MEDICAID.—For the purpose of carrying
4 out subsection (d), there are authorized to be appro-
5 priated such sums as may be necessary for each of
6 fiscal years 2023 through 2027.

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