

117TH CONGRESS
1ST SESSION

S. 368

To amend title XVIII of the Social Security Act to make permanent certain telehealth flexibilities under the Medicare program related to the COVID–19 public health emergency.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2021

Mr. SCOTT of South Carolina (for himself, Mr. SCHATZ, Mr. WICKER, Mr. TESTER, Mrs. BLACKBURN, Mr. MARSHALL, and Mrs. SHAHEEN) 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 make permanent certain telehealth flexibilities under the Medicare program related to the COVID–19 public health emergency.

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 “Telehealth Moderniza-
5 tion Act”.

1 **SEC. 2. EXTENDING MEDICARE TELEHEALTH FLEXIBILI-**
 2 **TIES.**

3 (a) EXPANDING ACCESS TO TELEHEALTH SERV-
 4 ICES.—

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

9 “(iii) EXPANDING ACCESS TO TELE-
 10 HEALTH SERVICES.—With respect to tele-
 11 health services furnished beginning on the
 12 first day after the end of the emergency
 13 period described in section 1135(g)(1)(B)
 14 of this clause, the term ‘originating site’
 15 means any site at which the eligible tele-
 16 health individual is located at the time the
 17 service is furnished via a telecommuni-
 18 cations system, including the home of an
 19 individual.”.

20 (2) CONFORMING AMENDMENTS.—Such section
 21 is amended—

22 (A) in paragraph (2)(B)—

23 (i) in clause (i), in the matter pre-
 24 ceding subclause (I), by striking “clause
 25 (ii)” and inserting “clauses (ii) and (iii)”;
 26 and

1 (ii) by adding at the end the following
 2 new clause:

3 “(iii) NO FACILITY FEE FOR NEW
 4 SITES.—With respect to telehealth services
 5 furnished on or after the date of enact-
 6 ment of this clause, a facility fee shall only
 7 be paid under this subparagraph to an
 8 originating site that is described in para-
 9 graph (4)(C)(ii) (other than subclause (X)
 10 of such paragraph).”.

11 (B) in paragraph (4)(C)—

12 (i) in clause (i), in the matter pre-
 13 ceding subclause (I), by inserting “and
 14 clause (iii)” after “and (7)”; and

15 (ii) in clause (ii)(X), by inserting
 16 “prior to the first day after the end of the
 17 emergency period described in section
 18 1135(g)(1)(B)” before the period;

19 (C) in paragraph (5), by inserting “and
 20 prior to the first day after the end of the emer-
 21 gency period described in section
 22 1135(g)(1)(B)” after “January 1, 2019,”;

23 (D) in paragraph (6)(A), by inserting “and
 24 prior to the first day after the end of the emer-

1 gency period described in section
 2 1135(g)(1)(B),” after “January 1, 2019,”; and
 3 (E) in paragraph (7), by inserting “and
 4 prior to the first day after the end of the emer-
 5 gency period described in section
 6 1135(g)(1)(B),” after “July 1, 2019,”.

7 (b) EXPANDING PRACTITIONERS ELIGIBLE TO FUR-
 8 NISH TELEHEALTH SERVICES.—Section 1834(m) of the
 9 Social Security Act (42 U.S.C. 1395m(m)) is amended—

10 (1) in paragraph (1), by striking “(described in
 11 section 1842(b)(18)(C))” and inserting “(defined in
 12 paragraph (4)(E))”; and

13 (2) in paragraph (4)(E)—

14 (A) by striking “PRACTITIONER.—The
 15 term” and inserting “PRACTITIONER.—

16 “(A) IN GENERAL.—Subject to subpara-
 17 graph (B), the term”; and

18 (B) by adding at the end the following new
 19 subparagraph:

20 “(B) EXPANSION.—The Secretary, after
 21 consulting with stakeholders regarding services
 22 that are clinically appropriate, may expand the
 23 types of practitioners who may furnish tele-
 24 health services to include any health care pro-

1 fessional that is eligible to bill the program
2 under this title for their professional services.”.

3 (c) RETENTION OF ADDITIONAL SERVICES AND SUB-
4 REGULATORY PROCESS FOR MODIFICATIONS FOLLOWING
5 EMERGENCY PERIOD.—Section 1834(m)(4)(F) of the So-
6 cial Security Act (42 U.S.C. 1395m(m)(4)(F)) is amend-
7 ed—

8 (1) in clause (i), by inserting “and clause (iii)”
9 after “paragraph (8)”;

10 (2) in clause (ii), by striking “The Secretary”
11 and inserting “Subject to clause (iii), the Sec-
12 retary”; and

13 (3) by adding at the end the following new
14 clause:

15 “(iii) RETENTION OF ADDITIONAL
16 SERVICES AND SUBREGULATORY PROCESS
17 FOR MODIFICATIONS FOLLOWING EMER-
18 GENCY PERIOD.—With respect to tele-
19 health services furnished after the last day
20 of the emergency period described in sec-
21 tion 1135(g)(1)(B), the Secretary may—

22 “(I) retain as appropriate the ex-
23 panded list of telehealth services spec-
24 ified in clause (i) pursuant to the
25 waiver authority under section

1 1135(b)(8) during such emergency pe-
 2 riod; and

3 “(II) retain the subregulatory
 4 process used to modify the services in-
 5 cluded on the list of such telehealth
 6 services pursuant to clause (ii) during
 7 such emergency period.”.

8 (d) ENHANCING TELEHEALTH SERVICES FOR FED-
 9 ERALLY QUALIFIED HEALTH CENTERS AND RURAL
 10 HEALTH CLINICS.—Section 1834(m)(8) of the Social Se-
 11 curity Act (42 U.S.C. 1395m(m)(8)) is amended—

12 (1) in the paragraph heading by inserting “AND
 13 AFTER” after “DURING”;

14 (2) in subparagraph (A), in the matter pre-
 15 ceding clause (i), by inserting “and after” after
 16 “During”; and

17 (3) in the first sentence of subparagraph (B)(i),
 18 by inserting “and after” after “during”.

19 (e) USE OF TELEHEALTH, AS CLINICALLY APPRO-
 20 PRIATE, TO CONDUCT FACE-TO-FACE ENCOUNTER FOR
 21 HOSPICE CARE.—Section 1814(a)(7)(D)(i)(II) of the So-
 22 cial Security Act (42 U.S.C. 1395f(a)(7)(D)(i)(II)) is
 23 amended by inserting “and after such emergency period
 24 as clinically appropriate” after “1135(g)(1)(B)”.

1 (f) USE OF TELEHEALTH, AS CLINICALLY APPRO-
 2 PRIATE, TO CONDUCT FACE-TO-FACE CLINICAL ASSESS-
 3 MENTS FOR HOME DIALYSIS.—Clause (iii) of section
 4 1881(b)(3)(B) of the Social Security Act (42 U.S.C.
 5 1395rr(b)(3)(B)) is amended—

6 (1) by moving such clause 4 ems to the left;
 7 and

8 (2) by inserting “and after such emergency pe-
 9 riod as clinically appropriate” before the period.

10 (g) IMPLEMENTATION.—Notwithstanding any provi-
 11 sion of law, the Secretary may implement the provisions
 12 of, and amendments made by, this section by interim final
 13 rule, program instruction, or otherwise.

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