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S. 2741

To amend title XVIII of the Social Security Act to expand access to telehealth services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2019

Mr. SCHATZ (for himself, Mr. WICKER, Mr. CARDIN, Mr. THUNE, Mr. WARNER, and Mrs. HYDE-SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend title XVIII of the Social Security Act to expand access to telehealth services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2019'' or the ''CONNECT for Health Act of 2019''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and sense of Congress.

Sec. 3. Expanding the use of telehealth through the waiver of certain requirements.
Sec. 4. Expanding the use of telehealth for mental health services.
Sec. 5. Use of telehealth in emergency medical care.
Sec. 6. Improvements to the process for adding telehealth services.
Sec. 7. Rural health clinics and federally qualified health centers.
Sec. 8. Native American health facilities.
Sec. 9. Waiver of telehealth restrictions during national emergencies.
Sec. 10. Use of telehealth in recertification for hospice care.
Sec. 11. Clarification for fraud and abuse laws regarding technologies provided to beneficiaries.
Sec. 12. Study and report on increasing access to telehealth services in the home.
Sec. 13. Analysis of telehealth waivers in alternative payment models.
Sec. 14. Model to allow additional health professionals to furnish telehealth services.
Sec. 15. Testing of models to examine the use of telehealth under the Medicare program.

SEC. 2. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—Congress finds the following:

(1) The use of technology in health care and coverage of telehealth services are rapidly evolving.

(2) Research has found that telehealth services can expand access to care, improve the quality of care, and reduce spending, and that patients receiving telehealth services are satisfied with their experiences.

(3) Health care workforce shortages are a significant problem in many areas and for many types of health care clinicians.

(4) Telehealth increases access to care in areas with workforce shortages and for individuals who live far away from health care facilities, have limited mobility or transportation, or have other barriers to accessing care.

(5) The use of health technologies can strengthen the expertise of the health care workforce, including by connecting clinicians to specialty consultations.

(6) Utilization of telehealth services in Medicare remains low, with only 0.25 percent of Medicare fee-for-service beneficiaries utilizing telehealth services in 2016.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) health care providers can furnish safe, effective, and high-quality health care services through telehealth; and

(2) barriers to the use of telehealth should be removed.

SEC. 3. EXPANDING THE USE OF TELEHEALTH THROUGH THE WAIVER OF CERTAIN REQUIREMENTS.

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

(1) in paragraph (4)(C)(i), by striking ''and (7)'' and inserting ''(7), and (8)''; and

(2) by adding at the end the following:

''(8) AUTHORITY TO WAIVE REQUIREMENTS AND LIMITATIONS IF CERTAIN CONDITIONS MET.—

"(A) IN GENERAL.—Notwithstanding the preceding provisions of this subsection, in the case of telehealth services furnished on or after January 1, 2021, the Secretary may waive any restriction applicable to payment for telehealth services under this subsection that is described in subparagraph (B), but only if the Secretary determines that such waiver would not deny or limit the coverage or provision of benefits under this title, and—

"(i) the Secretary determines that the waiver is expected to reduce spending under this title without reducing the quality of care or improve the quality of patient care without increasing spending; or

"(ii) the waiver would apply to telehealth services furnished in originating sites located in a high-need health professional shortage area (as designated pursuant to section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A))).

"(B) RESTRICTIONS DESCRIBED.—For purposes of this paragraph, restrictions applica-

ble to payment for telehealth services under paragraph (1) are—

"(i) requirements relating to qualifications for an originating site under paragraph (4)(C)(ii);

"(ii) any geographic limitations under paragraph (4)(C)(i) (other than applicable State law requirements, including State licensure requirements);

"(iii) any limitation on the type of technology used to furnish telehealth services;

"(iv) any limitation on the type of provider of services or supplier who may furnish telehealth services (other than the requirement that the provider of services or supplier is enrolled under this title);

"(v) any limitation on specific services designated as telehealth services pursuant to this subsection (provided the Secretary determines that such services are clinically appropriate to furnish remotely); or

"(vi) any other limitation relating to the furnishing of telehealth services under this title identified by the Secretary.

"(C) PUBLIC COMMENT.—The Secretary shall establish a process by which stakeholders may (on at least an annual basis) provide public comment for waivers under this paragraph.

"(D) PERIODIC REVIEW OF WAIVERS.—The Secretary shall periodically, but not more often than every 3 years, reassess each waiver under this paragraph to determine whether the waiver continues to meet the conditions applicable under subparagraph (A).".

(b) POSTING OF INFORMATION.—Not later than 2 years after the date on which a waiver under section 1834(m)(8) of the Social Security Act, as added by subsection (a), first becomes effective, and at least biennially thereafter, the Secretary of Health and Human Services shall post on the internet website of the Centers for Medicare & Medicaid Services—

(1) the number of Medicare beneficiaries receiving telehealth services by reason of each waiver under such section;

(2) the impact of such waivers on expenditures and utilization under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

(3) other outcomes, as determined appropriate by the Secretary.

SEC. 4. EXPANDING THE USE OF TELEHEALTH FOR MENTAL HEALTH SERVICES.

(a) IN GENERAL.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), as amended by section 3, is amended—

(1) in paragraph (4)(C)(i), by striking ''and (8)'' and inserting ''(8), and (9)''; and

(2) by adding at the end the following:

''(9) TREATMENT OF MENTAL HEALTH SERVICES FURNISHED THROUGH TELEHEALTH.—The geographic requirements described in paragraph (4)(C)(i) (other than applicable State law requirements, including State licensure requirements) shall not apply with respect to telehealth services that are mental health services (as determined by the Secretary) furnished on or after January 1, 2021, to an eligible telehealth individual at an originating site described in paragraph (4)(C)(ii) (other than an originating site described in subclause (IX) of such paragraph).''.

(b) INCLUSION OF THE HOME AS AN ORIGINATING SITE.—Section 1834(m)(4)(C)(ii)(X) of such Act (42 U.S.C. 1395m(m)(4)(C)(ii)(X)) is amended by striking ''paragraph (7)'' and inserting ''paragraphs (7) and (9)''.

(c) ADDITIONAL SERVICES.—As part of the implementation of the amendments made by this section, the

Secretary of Health and Human Services shall consider whether additional services should be added to the services specified in paragraph (4)(F)(i) of section 1834(m) of such Act (42 U.S.C. 1395m) for authorized payment under paragraph (1) of such section.

SEC. 5. USE OF TELEHEALTH IN EMERGENCY MEDICAL CARE.

(a) IN GENERAL.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), as amended by sections 3 and 4, is amended—

(1) in paragraph (4)(C)(i), by striking ''and (9)'' and inserting ''(9), and (10)''; and

(2) by adding at the end the following:

''(10) TREATMENT OF EMERGENCY MEDICAL CARE FURNISHED THROUGH TELEHEALTH.—The geographic requirements described in paragraph (4)(C)(i) (other than applicable State law requirements, including State licensure requirements) shall not apply with respect to telehealth services that are services for emergency medical care (as determined by the Secretary) furnished on or after January 1, 2021, to an eligible telehealth individual at an originating site described in subclause (II), (V), or (VII) of paragraph (4)(C)(ii).''.

(b) ADDITIONAL SERVICES.—As part of the implementation of the amendments made by this section, the Secretary of Health and Human Services shall consider whether additional services should be added to the services specified in paragraph (4)(F)(i) of section 1834(m) of such Act (42 U.S.C. 1395m) for authorized payment under paragraph (1) of such section.

SEC. 6. IMPROVEMENTS TO THE PROCESS FOR ADDING TELEHEALTH SERVICES.

The Secretary shall undertake a review of the process established pursuant to section 1834(m)(4)(F)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(4)(F)(ii)), and based on the results of such review—

(1) implement revisions to the process so that the criteria to add services prioritizes, as appropriate, improved access to care through telehealth services; and

(2) provide clarification on what requests to add telehealth services under such process should include.

SEC. 7. RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.

(a) EXPANSION OF ORIGINATING SITES.—Section 1834(m)(4)(C) of the Social Security Act (42 U.S.C.

1395m(m)(4)(C)), as amended by sections 3, 4, and 5, is amended—

(1) in clause (i), by striking ''and (10)'' and inserting ''and (10), and subject to clause (iii),''; and

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

''(iii) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.—The term 'originating site' shall also include any Federally qualified health center and any rural health clinic (as such terms are defined in section 1861(aa)) at which the eligible telehealth individual is located at the time the service is furnished via a telecommunications system, whether or not the individual is located in an area described in clause (i), insofar as such sites are not otherwise included in the definition of originating site under such clause, subject to applicable State law requirements, including State licensure requirements.''.

(b) EXPANSION OF DISTANT SITES.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)) is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking ''or a practitioner (described in section 1842(b)(18)(C))'' and inserting '', a practitioner (described in section 1842(b)(18)(C)), a Federally qualified health center, or a rural health clinic''; and

(B) by striking ''or practitioner'' and inserting '', practitioner, Federally qualified health center, or rural health clinic''; and

(2) in paragraph (2)(A)—

(A) by inserting ''or to a Federally qualified health center or rural health clinic that serves as a distant site'' after ''a distant site''; and

(B) by striking ''such physician or practitioner'' and inserting ''such physician, practitioner, Federally qualified health center, or rural health clinic''; and

(3) in paragraph (4)—

(A) in subparagraph (A), by inserting ''and includes a Federally qualified health center or rural health clinic that furnishes a telehealth service to an eligible individual'' before the period at the end; and

(B) in subparagraph (F), by adding at the end the following new clause:

''(iii) INCLUSION OF RURAL HEALTH CLINIC SERVICES AND FEDERALLY QUALIFIED HEALTH CENTER SERVICES FURNISHED USING TELEHEALTH.—For purposes of this subparagraph, the term 'telehealth services' includes a rural health clinic service or Federally qualified health center service that is furnished using telehealth to the extent that payment codes corresponding to services identified by the Secretary under clause (i) or (ii) are listed on the corresponding claim for such rural health clinic service or Federally qualified health center service.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2021.

SEC. 8. NATIVE AMERICAN HEALTH FACILITIES.

(a) IN GENERAL.—Section 1834(m)(4)(C) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)), as amended by sections 3, 4, 5, and 7, is amended—

(1) in clause (i), by striking ''clause (iii)'' and inserting ''clauses (iii) and (iv)''; and

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

"(iv) NATIVE AMERICAN HEALTH FACILITIES.—The originating site requirements described in clauses (i) and (ii) shall not apply with respect to a facility of the Indian Health Service, whether operated by such Service, or by an Indian tribe (as that term is defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) or a tribal organization (as that term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), or a facility of the Native Hawaiian health care systems authorized under the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11701 et seq.).".

(b) NO ORIGINATING SITE FACILITY FEE FOR NEW SITES.—Section 1834(m)(2)(B)(i) of the Social Security Act (42 U.S.C. 1395m(m)(2)(B)(i)) is amended, in the matter preceding subclause (I), by inserting "(other than an originating site that is only described in clause (iv) of paragraph (4)(C), and does not meet the requirement for

an originating site under clause (i) of such paragraph)'' after ''the originating site''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2021.

SEC. 9. WAIVER OF TELEHEALTH RESTRICTIONS DURING NATIONAL EMERGENCIES.

Section 1135(b) of the Social Security Act (42 U.S.C. 1320b–5(b)) is amended—

(1) in paragraph (6), by striking ''and'' after the semicolon;

(2) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(8) requirements for payment for telehealth services under section 1834(m).''.

SEC. 10. USE OF TELEHEALTH IN RECERTIFICATION FOR HOSPICE CARE.

(a) IN GENERAL.—Section 1814(a)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395f(a)(7)(D)(i)) is amended by inserting ''(including through use of telehealth, notwithstanding the requirements in section 1834(m)(4)(C))'' after ''face-to-face encounter''.

(b) GAO REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General

of the United States shall submit a report to Congress evaluating the impact of the amendment made by subsection (a) on—

(1) the number and percentage of beneficiaries recertified for the Medicare hospice benefit at 180 days and for subsequent benefit periods;

(2) the appropriateness for hospice care of the patients recertified through the use of telehealth; and

(3) any other factors determined appropriate by the Comptroller General.

SEC. 11. CLARIFICATION FOR FRAUD AND ABUSE LAWS REGARDING TECHNOLOGIES PROVIDED TO BENEFICIARIES.

Section 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a–7a(i)(6)) is amended—

(1) in subparagraph (I), by striking ''; or'' and inserting a semicolon;

(2) in subparagraph (J), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following new subparagraph:

''(K) the provision of technologies (as defined by the Secretary) on or after the date of the enactment of this subparagraph, by a pro-

vider of services or supplier (as such terms are defined for purposes of title XVIII) directly to an individual who is entitled to benefits under part A of title XVIII, enrolled under part B of such title, or both, for the purpose of furnishing telehealth services, remote patient monitoring services, or other services furnished through the use of technology (as defined by the Secretary), if—

''(i) the technologies are not offered as part of any advertisement or solicitation; and

''(ii) the provision of the technologies meets any other requirements set forth in regulations promulgated by the Secretary.''.

SEC. 12. STUDY AND REPORT ON INCREASING ACCESS TO TELEHEALTH SERVICES IN THE HOME.

(a) MEDPAC STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the ''Commission'') shall conduct a study on increasing access under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to telehealth services in the home. Such study shall include an analysis of the following:

(1) How different payers allow the home to be an originating site for telehealth services.

(2) Particular types of telehealth services or subgroups of beneficiaries with respect to which allowing the home to be an originating site under the Medicare program would be suitable.

(b) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Commission shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Commission determines appropriate.

SEC. 13. ANALYSIS OF TELEHEALTH WAIVERS IN ALTERNATIVE PAYMENT MODELS.

The second sentence of section 1115A(g) of the Social Security Act (42 U.S.C. 1315a(g)) is amended by inserting ''an analysis of waivers under section (d)(1) related to telehealth and the impact on quality and spending under the applicable titles of such waivers,'' after ''subsection (c),''.

SEC. 14. MODEL TO ALLOW ADDITIONAL HEALTH PROFESSIONALS TO FURNISH TELEHEALTH SERVICES.

Section 1115A(b)(2)(B) of the Social Security Act (42 U.S.C. 1315a(b)(2)(B)) is amended by adding at the end the following new clause:

''(xxviii) Allowing health professionals, such as those described in section 1819(b)(5)(G) or section 1861(ll)(4)(B), who are not otherwise eligible under section 1834(m) to furnish telehealth services to furnish such services.''.

SEC. 15. TESTING OF MODELS TO EXAMINE THE USE OF TELEHEALTH UNDER THE MEDICARE PROGRAM.

Section 1115A(b)(2) of the Social Security Act (42 U.S.C. 1315a(b)(2)) is amended by adding at the end the following new subparagraph:

''(D) TESTING MODELS TO EXAMINE USE OF TELEHEALTH UNDER MEDICARE.—The Secretary shall consider testing under this subsection models to examine the use of telehealth under title XVIII.''.

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