

116TH CONGRESS  
2D SESSION

# S. 3790

To provide reimbursements for certain costs of health care items and services, including prescription drugs, furnished during the public health emergency declared with respect to COVID–19.

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## IN THE SENATE OF THE UNITED STATES

MAY 20, 2020

Mrs. GILLIBRAND (for Mr. SANDERS (for himself, Mrs. GILLIBRAND, Mr. MARKEY, Ms. WARREN, Mr. BOOKER, Mr. MERKLEY, and Ms. HARRIS)) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide reimbursements for certain costs of health care items and services, including prescription drugs, furnished during the public health emergency declared with respect to COVID–19.

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 “Health Care Emer-  
5       gency Guarantee Act”.

1 **SEC. 2. REIMBURSEMENTS FOR CERTAIN COSTS OF**  
2 **HEALTH CARE ITEMS AND SERVICES INCLUD-**  
3 **ING PRESCRIPTION DRUGS FURNISHED DUR-**  
4 **ING PUBLIC HEALTH EMERGENCY.**

5 (a) IN GENERAL.—During the period beginning on  
6 the date of enactment of this Act and ending on the date  
7 the Secretary certifies to Congress that a vaccine approved  
8 by the Food and Drug Administration for COVID–19 is  
9 widely available to the public, the Secretary shall make  
10 payments to qualified providers with respect to applicable  
11 health care items and services as defined in subsection (b)  
12 that are furnished to an applicable individual an amount  
13 equal to—

14 (1) in the case of any portion of such period in  
15 which an applicable individual is enrolled in a public  
16 or private health insurance plan, the amount of any  
17 cost-sharing, including any deductibles, copayments,  
18 coinsurance or similar charges, that would otherwise  
19 be applicable under such plan, including with respect  
20 to prescription drug coverage under the plan;

21 (2) in the case of any portion of such period in  
22 which an applicable individual is uninsured, an  
23 amount equal to the amount that would be paid to  
24 the qualified provider for the same or equivalent  
25 items or services, including with respect to any inpa-  
26 tient or physician-administered drugs (and excluding

1 outpatient prescription drugs or biologicals with re-  
2 spect to which coverage is provided under subsection  
3 (e)), under the Medicare program under title XVIII  
4 of the Social Security Act (42 U.S.C. 1395 et seq.).

5 (b) APPLICABLE HEALTH CARE ITEMS AND SERV-  
6 ICES; APPLICABLE INDIVIDUAL DEFINED.—In this sec-  
7 tion:

8 (1) APPLICABLE HEALTH CARE ITEMS AND  
9 SERVICES.—The term “applicable health care items  
10 and services” means, with respect to an applicable  
11 individual, any health care items and services that  
12 are medically necessary or appropriate for the main-  
13 tenance of health or for the diagnosis, treatment, or  
14 rehabilitation of a health condition of the applicable  
15 individual, including—

16 (A) any testing services and treatments for  
17 COVID–19 or related complications, including  
18 vaccines, diagnostic tests, drugs and biologicals,  
19 and therapies; and

20 (B) in the case of an applicable individual  
21 who is enrolled in a public or private health in-  
22 surance plan, any health care items and serv-  
23 ices covered by such plan as of March 1, 2020,  
24 or in the case of an applicable individual who  
25 enrolls in such plan after the date, any health

1 care items and services covered by such plan as  
2 of the date of such enrollment.

3 (2) APPLICABLE INDIVIDUAL.—The term “ap-  
4 plicable individual” means an individual who is a  
5 resident of the United States.

6 (c) REQUIREMENTS.—

7 (1) NO EFFECT ON APPLICABLE COST-SHARING  
8 REQUIREMENTS.—Nothing in this section shall af-  
9 fect the application of any requirements applicable  
10 under Federal or State law with respect to coverage  
11 of health care items and services without any cost-  
12 sharing.

13 (2) MAINTENANCE OF EFFORT.—

14 (A) IN GENERAL.—During the period de-  
15 scribed in subsection (a), a public or private  
16 health plan shall not increase cost-sharing, de-  
17 crease benefits, or otherwise make coverage less  
18 generous than the benefits offered on the date  
19 of enactment of this Act.

20 (B) NEW ITEMS AND SERVICES.—During  
21 such period, a public or private health plan  
22 shall provide coverage of new items and serv-  
23 ices, including those related to COVID–19, as  
24 appropriate, at a minimum, at a level consistent

1 with the prior coverage practices and  
2 formularies of the plan.

3 (3) LIMITATION ON OUT-OF-POCKET EX-  
4 PENSES.—During such period, in order to be eligible  
5 to receive payments under this section, a qualified  
6 provider shall agree not to impose on an applicable  
7 individual any charge for applicable health care  
8 items and services furnished to the applicable indi-  
9 vidual.

10 (4) PERMISSIBLE BILLING OF PLANS; LIMITA-  
11 TION ON BALANCE BILLING.—During such period, in  
12 order to be eligible to receive payments under this  
13 section, a qualified provider shall agree, with respect  
14 to applicable health care items and services fur-  
15 nished to an applicable individual when such indi-  
16 vidual is enrolled in a public or private health insur-  
17 ance plan—

18 (A) not to impose any charge on the plan  
19 for such items and services beyond the amount  
20 otherwise payable by the plan; and

21 (B) not to bill the applicable individual for  
22 any amounts in excess of the amount described  
23 in subparagraph (A).

24 (5) MEDICAL DEBT COLLECTION.—A qualified  
25 provider shall agree—

1 (A) to immediately halt all medical debt  
2 collection, including collection activities carried  
3 out by third parties, during such period and  
4 shall not collect medical debt or have third par-  
5 ties collect medical debt for applicable health  
6 care items and services furnished during such  
7 period; and

8 (B) to refrain from pursuing medical debt  
9 collection, including collection activities carried  
10 out by third parties, after such period with re-  
11 spect to items and services related to the diag-  
12 nosis or treatment of COVID–19 (regardless of  
13 whether such services were furnished before,  
14 during, or after such period) and shall not col-  
15 lect medical debt or have third parties collect  
16 medical debt for such items or services after  
17 such period.

18 (6) SUBMISSION OF BILLS AND DOCUMENTA-  
19 TION.—A qualified provider shall agree to submit  
20 bills and any required supporting documentation re-  
21 lating to the provision of applicable health care  
22 items and services within 30 days after the date of  
23 providing such services, in such manner as the Sec-  
24 retary determines appropriate.

1 (d) WAIVER OF LATE ENROLLMENT PENALTIES  
2 UNDER MEDICARE.—During the period described in sub-  
3 section (a), no increase in the monthly premium of an indi-  
4 vidual pursuant to section 1818(c), 1839(b), or 1860D-  
5 13 of the Social Security Act (42 U.S.C. 1395i-2(c),  
6 1395r(b), 1395w-113) shall be effected in the case of any  
7 individual who enrolls for benefits under title XVIII of  
8 such Act with respect to any period prior to the date of  
9 such enrollment.

10 (e) COVERAGE WITH RESPECT TO OUTPATIENT PRE-  
11 SCRIPTION DRUGS.—

12 (1) IN GENERAL.—During the period described  
13 in subsection (a), with respect to outpatient pre-  
14 scription drugs or biologicals described in subsection  
15 (b)(1)(A) that are dispensed to uninsured individ-  
16 uals, the Secretary shall establish procedures under  
17 which—

18 (A) such drugs or biologicals are dispensed  
19 at no cost to such individuals;

20 (B) pharmacies that dispense such drugs  
21 or biologicals—

22 (i) are reimbursed by the Secretary  
23 for such drugs or biologicals dispensed to  
24 such individuals at an amount equal to the  
25 price paid by the Secretary of Veterans Af-

1           fairs to procure the drug or biological  
2           under the laws administered by the Sec-  
3           retary of Veterans Affairs; and

4                   (ii) agree not to charge such individ-  
5           uals for any difference between the amount  
6           reimbursed under clause (i) and the cost to  
7           the pharmacy for the drug; and

8           (C) manufacturers of such drugs or  
9           biologicals reimburse pharmacies for any dif-  
10          ference described in subparagraph (B)(ii) with  
11          respect to drugs or biologicals of the manufac-  
12          turer that are dispensed to such individuals.

13          (2) CONDITION OF COVERAGE UNDER MEDI-  
14          CARE.—During the period described in subsection  
15          (a), no coverage may be provided under part B or  
16          D of title XVIII of the Social Security Act (42  
17          U.S.C. 1395j et seq., 1395w–101 et seq.) with re-  
18          spect to a drug or biological of a manufacturer if the  
19          manufacturer does not enter into an agreement with  
20          the Secretary to carry out the requirements applica-  
21          ble with respect to such manufacturers under this  
22          subsection.

23          (3) REQUIREMENT FOR PARTICIPATING PHAR-  
24          MACIES.—During the period described in subsection  
25          (a), a prescription drug plan under part D of title



1 XVIII of the Social Security Act (42 U.S.C. 1395w–  
2 101 et seq.) may not contract with a pharmacy if  
3 the pharmacy does not enter into an agreement with  
4 the Secretary to carry out the requirements applica-  
5 ble with respect to pharmacies under this subsection.

6 (f) OTHER DEFINITIONS.—

7 (1) PUBLIC OR PRIVATE HEALTH INSURANCE  
8 PLAN.—

9 (A) IN GENERAL.—The term “public or  
10 private health insurance plan” means any of  
11 the following:

12 (i) A group health plan, or group  
13 health insurance coverage, as such terms  
14 are defined in section 2791 of the Public  
15 Health Service Act (42 U.S.C. 300gg–91).

16 (ii) A qualified health plan, as defined  
17 in section 1301 of the Patient Protection  
18 and Affordable Care Act (42 U.S.C.  
19 18021).

20 (iii) Subject to subparagraph (B), any  
21 health insurance coverage (other than a  
22 plan described in clause (ii)) offered in the  
23 individual market, as such terms are de-  
24 fined in section 2791 of the Public Health

1 Service Act, including any short-term limited duration insurance.

2  
3 (iv) A health plan offered under chapter 89 of title 5, United States Code.

4  
5 (v) A Federal health care program (as defined under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f)), including—

6  
7  
8  
9 (I) health benefits furnished under the TRICARE program (as defined in section 1072 of title 10, United States Code);

10  
11  
12  
13 (II) health benefits furnished to veterans under the laws administered by the Secretary of Veterans Affairs; and

14  
15  
16  
17 (III) health benefits furnished to Indians (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) receiving health services through the Indian Health Service, including through an Urban Indian Organization, regardless of whether such benefits are for items or services that have been authorized

1 under the purchased/referred care sys-  
2 tem funded by the Indian Health  
3 Service or are covered as a health  
4 service of the Indian Health Service.

5 (B) LIMITATION ON INDIVIDUAL HEALTH  
6 INSURANCE COVERAGE.—The term “public or  
7 private health insurance coverage” includes the  
8 health insurance coverage described in clause  
9 (iii) of subparagraph (A) only with respect to  
10 an individual who is enrolled in such coverage  
11 on March 1, 2020.

12 (2) QUALIFIED PROVIDER.—The term “quali-  
13 fied provider” means a health care provider who is  
14 a participating provider under the Medicare program  
15 under title XVIII of the Social Security Act (42  
16 U.S.C. 1395 et seq.). Such term includes a health  
17 care provider who is not a participating provider  
18 under such program if the health care provider  
19 would meet the criteria for such participation and,  
20 if the State requires the health care provider to be  
21 licensed by the State, is licensed by the State in  
22 which the items or services are furnished.

23 (3) SECRETARY.—The term “Secretary” means  
24 the Secretary of Health and Human Services.

25 (g) IMPLEMENTATION.—

1           (1) IN GENERAL.—The Secretary, in coordina-  
2           tion with the Secretary of the Treasury, the Com-  
3           missioner of Social Security, and the Secretary of  
4           Labor, shall implement the provisions of this section  
5           not later than the date that is 7 days after the date  
6           of the enactment of this Act.

7           (2) ENSURING TIMELY PAYMENT.—The Sec-  
8           retary shall establish a process and issue such guid-  
9           ance as is necessary to ensure a qualified provider  
10          receives payments under this section in a timely  
11          manner.

12          (3) ENSURING COLLECTION OF DATA ON DIS-  
13          PARITIES.—The Secretary shall implement this sec-  
14          tion in a manner and issue such guidance as is nec-  
15          essary to allow for the ongoing, accurate, and timely  
16          collection and analysis of data on disparities in ac-  
17          cordance with subsection (h).

18          (h) COLLECTION OF DATA ON DISPARITIES.—

19               (1) IN GENERAL.—During the period described  
20               in subsection (a), the Secretary shall collect data on  
21               disparities across race, ethnicity, primary language,  
22               gender, sexual orientation, disability status, age, ge-  
23               ographic area, insurance status, and socioeconomic  
24               status—

1 (A) in health outcomes and access to  
2 health care related to the COVID–19 outbreak,  
3 including data on COVID–19 cases, treatment,  
4 and deaths; and

5 (B) in patient access to applicable health  
6 care items and services under this section.

7 (2) PUBLIC AVAILABILITY.—The Secretary  
8 shall—

9 (A) make data collected under this sub-  
10 section publicly available on the internet website  
11 of the Department of Health and Human Serv-  
12 ices as soon as is practicable, but not later than  
13 30 days after the date of enactment of this Act,  
14 in a manner that allows researchers, scholars,  
15 health care providers, and others to access and  
16 analyze such data, without compromising pa-  
17 tient privacy; and

18 (B) update such data on a weekly basis  
19 thereafter for the duration of the period de-  
20 scribed in subsection (a).

21 (i) WEEKLY REPORTS TO CONGRESS.—

22 (1) IN GENERAL.—On a weekly basis during  
23 the period described in subsection (a), the Secretary  
24 shall report to Congress on—

1 (A) the implementation of this section, in-  
2 cluding information on the amount, type, and  
3 geographic distribution of payments to qualified  
4 providers under this section; and

5 (B) any disparities in health and access to  
6 health care related to the COVID–19 outbreak  
7 or patient access to applicable health care items  
8 and services under this section, as identified  
9 through the collection and analysis of data col-  
10 lected under subsection (h).

11 (2) PUBLIC AVAILABILITY.—The Secretary  
12 shall make each report submitted under paragraph  
13 (1) publicly available on the internet website of the  
14 Department of Health and Human Services.

15 (j) FUNDING.—There are authorized to be appro-  
16 priated such sums as are necessary to carry out this sec-  
17 tion.

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