

116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3792

To require parity in the coverage of mental health and substance use disorder services provided to enrollees in private insurance plans, whether such services are provided in-person or through telehealth.

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## IN THE SENATE OF THE UNITED STATES

MAY 21, 2020

Ms. SMITH (for herself and Ms. MURKOWSKI) 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 require parity in the coverage of mental health and substance use disorder services provided to enrollees in private insurance plans, whether such services are provided in-person or through telehealth.

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 “Tele-Mental Health  
5       Improvement Act”.

1 **SEC. 2. COVERAGE OF TELEHEALTH MENTAL HEALTH AND**  
2 **SUBSTANCE USE DISORDER SERVICES.**

3 (a) IN GENERAL.—During the public health emer-  
4 gency declared by the Secretary of Health and Human  
5 Services under section 319 of the Public Health Service  
6 Act (42 U.S.C. 247d) on January 31, 2020, with respect  
7 to COVID-19, if a group health plan or group or indi-  
8 vidual health insurance coverage provides coverage of a  
9 mental health or substance use disorder service provided  
10 in-person, the group health plan or health insurance issuer  
11 offering such group or individual health insurance cov-  
12 erage—

13 (1) shall provide coverage of the service pro-  
14 vided through telehealth at the same rate as the cov-  
15 erage for the same service provided in-person;

16 (2) shall ensure that providers not charge en-  
17 rollees facility fees;

18 (3) may not impose additional barriers on ob-  
19 taining such coverage for such services through tele-  
20 health, compared to coverage for such services pro-  
21 vided in-person, such as a prior authorization re-  
22 quirements, a requirement that the enrollee have a  
23 pre-existing relationship with the provider, a require-  
24 ment that a provider be present with the enrollee  
25 during the provision of services, or any other finan-

1 cial requirement, treatment limitation, or utilization  
2 control policy or procedure;

3 (4) shall provide notice to enrollees, informing  
4 such enrollees of how to access in-network telehealth  
5 mental health and substance use disorder services  
6 and the scope of their coverage; and

7 (5) shall work with providers to ensure that  
8 telehealth services are provided to enrollees in com-  
9 pliance with, as applicable, the privacy regulations  
10 promulgated pursuant to section 264(c) of the  
11 Health Insurance Portability and Accountability Act  
12 of 1996 (42 U.S.C. 1320d–2) or privacy guidelines  
13 promulgated and implemented by the Secretary of  
14 Health and Human Services during a public health  
15 emergency.

16 (b) ENFORCEMENT.—The provisions of subsection  
17 (a) shall be applied by the Secretary of Health and Human  
18 Services, Secretary of Labor, and Secretary of the Treas-  
19 ury to group health plans and health insurance issuers of-  
20 fering group or individual health insurance coverage as if  
21 included in the provisions of part A of title XXVII of the  
22 Public Health Service Act, part 7 of the Employee Retire-  
23 ment Income Security Act of 1974, and subchapter B of  
24 chapter 100 of the Internal Revenue Code of 1986, as ap-  
25 plicable.

1 (c) IMPLEMENTATION.—The Secretary of Health and  
2 Human Services, Secretary of Labor, and Secretary of the  
3 Treasury may implement the provisions of this section  
4 through sub-regulatory guidance, program instruction, or  
5 otherwise.

6 (d) DEFINITIONS.—In this section—

7 (1) the terms “group health plan”, “health in-  
8 surance issuer”, and “health insurance coverage”  
9 have the meanings given such terms in section 2791  
10 of the Public Health Service Act (42 U.S.C. 300gg–  
11 91), section 733 of the Employee Retirement Income  
12 Security Act of 1974 (29 U.S.C. 1191b), and section  
13 9832 of the Internal Revenue Code of 1986, as ap-  
14 plicable; and

15 (2) the term “telehealth services” has the  
16 meaning given such term in section 330I(a) of the  
17 Public Health Service Act (42 U.S.C. 254e–14(a)),  
18 and includes 2-way video communication, audio-only  
19 communication, and written information shared by  
20 phone or email.

21 (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
22 tion shall prevent the application of any State law that  
23 is not inconsistent with this section.

24 (f) REPORT TO CONGRESS.—Not later than 180 days  
25 after the conclusion of the public health emergency de-

1 scribed in subsection (a), the Secretary of Health and  
2 Human Services shall submit to the Committee on Health,  
3 Education, Labor, and Pensions of the Senate, the Com-  
4 mittee on Education and Labor of the House of Rep-  
5 resentatives, and the Committee on Energy and Commerce  
6 of the House of Representatives on the impacts the re-  
7 quirement under subsection (a) has on the use of both  
8 telehealth services and health services provided in-person.

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