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.

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

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”.


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

(a) In general.—During the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to COVID-19, if a group health plan or group or individual health insurance coverage provides coverage of a mental health or substance use disorder service provided in-person, the group health plan or health insurance issuer offering such group or individual health insurance coverage—

(1) shall provide coverage of the service provided through telehealth at the same rate as the coverage for the same service provided in-person;

(2) shall ensure that providers not charge enrollees facility fees;

(3) may not impose additional barriers on obtaining such coverage for such services through telehealth, compared to coverage for such services provided in-person, such as a prior authorization requirement, a requirement that the enrollee have a pre-existing relationship with the provider, a requirement that a provider be present with the enrollee during the provision of services, or any other finan-
cial requirement, treatment limitation, or utilization
control policy or procedure;

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

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

(b) ENFORCEMENT.—The provisions of subsection
(a) shall be applied by the Secretary of Health and Human
Services, Secretary of Labor, and Secretary of the Treas-
ury to group health plans and health insurance issuers of-
fering group or individual health insurance coverage as if
included in the provisions of part A of title XXVII of the
Public Health Service Act, part 7 of the Employee Retire-
ment Income Security Act of 1974, and subchapter B of
chapter 100 of the Internal Revenue Code of 1986, as ap-
licable.
(c) IMPLEMENTATION.—The Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury may implement the provisions of this section through sub-regulatory guidance, program instruction, or otherwise.

(d) DEFINITIONS.—In this section—

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

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

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

(f) REPORT TO CONGRESS.—Not later than 180 days after the conclusion of the public health emergency de-
scribed in subsection (a), the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Education and Labor of the House of Representatives, and the Committee on Energy and Commerce of the House of Representatives on the impacts the requirement under subsection (a) has on the use of both telehealth services and health services provided in-person.