

117TH CONGRESS  
1ST SESSION

# H. R. 318

To amend title XVIII to provide coverage and payment for certain tests and assistive telehealth consultations during the COVID–19 emergency period, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2021

Mr. SCHWEIKERT (for himself, Mr. RUSH, and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII to provide coverage and payment for certain tests and assistive telehealth consultations during the COVID–19 emergency period, and for other purposes.

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 “Safe Testing at Resi-  
5 dence Telehealth Act of 2021”.

1 **SEC. 2. COVERAGE AND PAYMENT FOR CERTAIN TESTS**  
2 **AND ASSISTIVE TELEHEALTH CONSULTA-**  
3 **TIONS DURING THE COVID-19 EMERGENCY**  
4 **PERIOD.**

5 (a) COVERAGE AND PAYMENT RULE.—

6 (1) IN GENERAL.—Section 1834(m) of the So-  
7 cial Security Act (42 U.S.C. 1395m(m)) is amended  
8 by adding at the end of the following new para-  
9 graph:

10 “(9) COVERAGE AND PAYMENT FOR CERTAIN  
11 TESTS AND ASSISTIVE TELEHEALTH CONSULTA-  
12 TIONS DURING COVID–19 EMERGENCY PERIOD.—

13 “(A) IN GENERAL.—During the emergency  
14 period described in section 1135(g)(1)(B), the  
15 Secretary shall pay for a test described in sub-  
16 paragraph (C) that is ordered and an assistive  
17 telehealth consultation that is furnished via a  
18 telecommunications system by a physician or  
19 practitioner to an eligible telehealth individual  
20 enrolled under this part notwithstanding that  
21 the individual physician or practitioner ordering  
22 the test did not furnish the test or that the in-  
23 dividual physician or practitioner providing the  
24 assistive telehealth consultation is not at the  
25 same location as the beneficiary.

1           “(B) PAYMENT AMOUNT.—During the  
2 emergency period described in section  
3 1135(g)(1)(B), the Secretary shall pay to a  
4 physician or practitioner located at a distant  
5 site that—

6           “(i) orders a test described in sub-  
7 paragraph (C) to an eligible telehealth in-  
8 dividual an amount equal to the amount  
9 that such physician or practitioner would  
10 have been paid for a diagnostic laboratory  
11 test under section 1833(h); and

12           “(ii) furnishes an assistive telehealth  
13 consultation to an eligible telehealth indi-  
14 vidual an amount equal to the amount that  
15 a physician or practitioner would have been  
16 paid for such telehealth service under para-  
17 graph (2).

18           “(C) TESTS DESCRIBED.—For purposes of  
19 subparagraphs (A) and (B), a test described in  
20 this subparagraph is a medical device (as de-  
21 fined in section 201(h) of the Federal Food,  
22 Drug, and Cosmetic Act) or is a test approved  
23 under an emergency use authorization under  
24 section 564 of such Act and is either—

1           “(i) a diagnostic laboratory test for  
2           the diagnosis of influenza or a similar res-  
3           piratory condition that is required to ob-  
4           tain a final diagnosis of COVID–19 for an  
5           individual when such test is ordered by a  
6           physician or practitioner in conjunction  
7           with a COVID–19 diagnostic laboratory  
8           test for purposes of discounting a diagnosis  
9           of influenza or a related diagnosis for such  
10          individual; or

11          “(ii) a serology test for COVID–19.

12          “(D) OTHER MATTERS RELATING TO DOC-  
13          UMENTATION AND CLAIMS REVIEW.—The re-  
14          quirements of paragraphs (2) and (3) of section  
15          410.32(d) of title 42, Code of Federal Regula-  
16          tions (as in effect on the date of the enactment  
17          of this paragraph), relating to documentation  
18          and claims review, respectively, shall apply to a  
19          test described in subparagraph (C) and an as-  
20          sistive telehealth consultation.

21          “(E) DEMOGRAPHIC DATA.—To be eligible  
22          for reimbursement under this paragraph, each  
23          claim for reimbursement shall include, with re-  
24          spect to such an eligible telehealth individual,  
25          the following demographic data:

1 “(i) Age.

2 “(ii) Race and ethnicity.

3 “(iii) Gender.

4 “(iv) An affirmative or negative state-  
5 ment of the existence of any chronic condi-  
6 tion.

7 “(v) Any other information the Sec-  
8 retary determines appropriate.

9 “(F) ASSISTIVE TELEHEALTH CONSULTA-  
10 TION.—In this paragraph, the term ‘assistive  
11 telehealth consultation’ means a telehealth serv-  
12 ice (as defined in paragraph (4)(F)) that is—

13 “(i) an evaluation and management  
14 service;

15 “(ii) an assessment of any evidence of  
16 systems which would make a diagnostic  
17 laboratory test necessary to be furnished in  
18 the home of an eligible telehealth indi-  
19 vidual;

20 “(iii) the ordering of a diagnostic lab-  
21 oratory test;

22 “(iv) an assessment of an individual  
23 succeeding the delivery of a diagnostic lab-  
24 oratory test;

1           “(v) any assistance in the collection of  
2           a sample necessary for a diagnostic labora-  
3           tory test and securing the sample for ship-  
4           ping;

5           “(vi) the referral of an eligible tele-  
6           health individual to a physician or practi-  
7           tioner for in-person treatment; or

8           “(vii) the review of a diagnostic lab-  
9           oratory test by a physician or practi-  
10          tioner.”.

11          (2) REPORT.—

12           (A) IN GENERAL.—During the period be-  
13          ginning 20 days after the date of the enactment  
14          of this Act and ending on the last day of the  
15          emergency period, each physician and practi-  
16          tioner, who furnishes a test or an assistive tele-  
17          health consultation during such period, shall, on  
18          a monthly basis during such period, submit to  
19          the Administrator of the Centers for Medicare  
20          & Medicaid Services and the appropriate State  
21          health agency demographic data specified under  
22          section 1834(m)(9)(E) of the Social Security  
23          Act (42 U.S.C. 1395m(m)(9)(E)) with respect  
24          to individuals to whom such test or consultation

1 was so furnished (in accordance with the  
2 HIPAA privacy regulation).

3 (B) DEFINITIONS.—In this paragraph:

4 (i) ASSISTIVE TELEHEALTH CON-  
5 SULTATION.—The term “assistive tele-  
6 health consultation” has the meaning given  
7 such term in section 1834(m)(9)(E) of the  
8 Social Security Act (42 U.S.C.  
9 1395m(m)(9)(F)).

10 (ii) EMERGENCY PERIOD.—The term  
11 “emergency period” has the meaning as  
12 such term is described in section  
13 1135(g)(1)(B) of the Social Security Act  
14 (42 U.S.C. 1320b–5(g)(1)(B)).

15 (iii) HIPAA PRIVACY REGULATION.—  
16 The term “HIPAA privacy regulation” has  
17 the meaning given such term in section  
18 1180(b)(3) of the Social Security Act (42  
19 U.S.C. 1320d–9(b)(3)).

20 (iv) TEST.—The term “test” has the  
21 meaning as such term is described in sec-  
22 tion 1834(m)(9)(C) of the Social Security  
23 Act (42 U.S.C. 1395m(m)(9)(C)).

1 .(b) NO PAYMENT FOR CERTAIN IN-PERSON TEST  
2 AFTER TELEHEALTH TEST DURING THE COVID-19  
3 EMERGENCY PERIOD.—

4 (1) IN GENERAL.—Section 1833(h) of the So-  
5 cial Security Act (42 U.S.C. 1395l(h)) is amended—

6 (A) in paragraph (1)(A), by striking “Sub-  
7 ject to section 1834(d)(1)” and inserting “Sub-  
8 ject to section 1834(a)(1) and paragraph (10)”;  
9 and

10 (B) by adding at the end the following new  
11 paragraph:

12 “(10) During the emergency period described in sec-  
13 tion 1135(g)(1)(B), the Secretary may not make payment  
14 for a test described in section 1834(m)(9)(C) that is fur-  
15 nished in-person by a physician or practitioner to an indi-  
16 vidual if a physician or practitioner has previously ordered  
17 such a test via a telecommunications system pursuant to  
18 section 1834(m)(9)(A), unless the physician or practi-  
19 tioner determines such a test is medically necessary and  
20 appropriate (as determined by the Secretary).”.

21 (2) REPORT.—Not later than 1 year after the  
22 termination of the emergency period described in  
23 section 1135(g)(1)(B) of the Social Security Act (42  
24 U.S.C. 1320b-5(g)(1)(B)), the Inspector General of  
25 the Department of Health and Human Services shall



1 review claims for payment for tests described in sec-  
2 tion 1834(m)(9)(C) of such Act (42 U.S.C.  
3 1395m(m)(9)(C)) furnished during such emergency  
4 period and submit to Congress a report on any in-  
5 stances of waste, fraud, or abuse identified through  
6 such review.

7 (c) CONFORMING AMENDMENTS.—Section 1834(m)  
8 of the Social Security Act (42 U.S.C.  
9 1395m(m)(4)(C)(ii)(X)), as amended by subsection (a), is  
10 further amended—

11 (1) in paragraph (1), by striking “Subject to  
12 paragraph (8)” and inserting “Subject to para-  
13 graphs (8) and (9)”;

14 (2) in paragraph (2), by striking “Subject to  
15 paragraph (8)” and inserting “Subject to para-  
16 graphs (8) and (9)”; and

17 (3) in paragraph (4)(C)(ii)(X), by striking  
18 “telehealth services described in paragraph (7)” and  
19 inserting “telehealth services described in paragraph  
20 (7) or (9)”.

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