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.

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

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”.

SEC. 2. COVERAGE AND PAYMENT FOR CERTAIN TESTS
AND ASSISTIVE TELEHEALTH CONSULTATIONS DURING THE COVID–19 EMERGENCY PERIOD.

(a) Coverage and Payment Rule.—

(1) In general.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)) is amended by adding at the end of the following new paragraph:

“(9) Coverage and payment for certain tests and assistive telehealth consultations during COVID–19 emergency period.—

“(A) In general.—During the emergency period described in section 1135(g)(1)(B), the Secretary shall pay for a test described in subparagraph (C) that is ordered and an assistive telehealth consultation that is furnished via a telecommunications system by a physician or practitioner to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner ordering the test did not furnish the test or that the individual physician or practitioner providing the assistive telehealth consultation is not at the same location as the beneficiary.
“(B) PAYMENT AMOUNT.—During the emergency period described in section 1135(g)(1)(B), the Secretary shall pay to a physician or practitioner located at a distant site that—

“(i) orders a test described in subparagraph (C) to an eligible telehealth individual an amount equal to the amount that such physician or practitioner would have been paid for a diagnostic laboratory test under section 1833(h); and

“(ii) furnishes an assistive telehealth consultation to an eligible telehealth individual an amount equal to the amount that a physician or practitioner would have been paid for such telehealth service under paragraph (2).

“(C) TESTS DESCRIBED.—For purposes of subparagraphs (A) and (B), a test described in this subparagraph is a medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) or is a test approved under an emergency use authorization under section 564 of such Act and is either—
“(i) a diagnostic laboratory test for the diagnosis of influenza or a similar respiratory condition that is required to obtain a final diagnosis of COVID–19 for an individual when such test is ordered by a physician or practitioner in conjunction with a COVID–19 diagnostic laboratory test for purposes of discounting a diagnosis of influenza or a related diagnosis for such individual; or

“(ii) a serology test for COVID–19.

“(D) Other Matters Relating to Documentation and Claims Review.—The requirements of paragraphs (2) and (3) of section 410.32(d) of title 42, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph), relating to documentation and claims review, respectively, shall apply to a test described in subparagraph (C) and an assistive telehealth consultation.

“(E) Demographic Data.—To be eligible for reimbursement under this paragraph, each claim for reimbursement shall include, with respect to such an eligible telehealth individual, the following demographic data:
“(i) Age.
“(ii) Race and ethnicity.
“(iii) Gender.
“(iv) An affirmative or negative statement of the existence of any chronic condition.
“(v) Any other information the Secretary determines appropriate.

“(F) ASSISTIVE TELEHEALTH CONSULTATION.—In this paragraph, the term ‘assistive telehealth consultation’ means a telehealth service (as defined in paragraph (4)(F)) that is—
“(i) an evaluation and management service;
“(ii) an assessment of any evidence of systems which would make a diagnostic laboratory test necessary to be furnished in the home of an eligible telehealth individual;
“(iii) the ordering of a diagnostic laboratory test;
“(iv) an assessment of an individual succeeding the delivery of a diagnostic laboratory test;
“(v) any assistance in the collection of a sample necessary for a diagnostic laboratory test and securing the sample for shipping;

“(vi) the referral of an eligible telehealth individual to a physician or practitioner for in-person treatment; or

“(vii) the review of a diagnostic laboratory test by a physician or practitioner.”.

(2) Report.—

(A) In general.—During the period beginning 20 days after the date of the enactment of this Act and ending on the last day of the emergency period, each physician and practitioner, who furnishes a test or an assistive telehealth consultation during such period, shall, on a monthly basis during such period, submit to the Administrator of the Centers for Medicare & Medicaid Services and the appropriate State health agency demographic data specified under section 1834(m)(9)(E) of the Social Security Act (42 U.S.C. 1395m(m)(9)(E)) with respect to individuals to whom such test or consultation
was so furnished (in accordance with the HIPAA privacy regulation).

(B) Definitions.—In this paragraph:

(i) Assistive Telehealth Consultation.—The term “assistive telehealth consultation” has the meaning given such term in section 1834(m)(9)(E) of the Social Security Act (42 U.S.C. 1395m(m)(9)(F)).

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

(iii) HIPAA Privacy Regulation.—The term “HIPAA privacy regulation” has the meaning given such term in section 1180(b)(3) of the Social Security Act (42 U.S.C. 1320d–9(b)(3)).

(iv) Test.—The term “test” has the meaning as such term is described in section 1834(m)(9)(C) of the Social Security Act (42 U.S.C. 1395m(m)(9)(C)).
(b) No Payment for Certain In-Person Test After Telehealth Test During the COVID–19 Emergency Period.—

(1) In General.—Section 1833(h) of the Social Security Act (42 U.S.C. 1395l(h)) is amended—

(A) in paragraph (1)(A), by striking “Subject to section 1834(d)(1)” and inserting “Subject to section 1834(a)(1) and paragraph (10)”;

and

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

“(10) During the emergency period described in section 1135(g)(1)(B), the Secretary may not make payment for a test described in section 1834(m)(9)(C) that is furnished in-person by a physician or practitioner to an individual if a physician or practitioner has previously ordered such a test via a telecommunications system pursuant to section 1834(m)(9)(A), unless the physician or practitioner determines such a test is medically necessary and appropriate (as determined by the Secretary).”.

(2) Report.—Not later than 1 year after the termination of the emergency period described in section 1135(g)(1)(B) of the Social Security Act (42 U.S.C. 1320b–5(g)(1)(B)), the Inspector General of the Department of Health and Human Services shall
review claims for payment for tests described in section 1834(m)(9)(C) of such Act (42 U.S.C. 1395m(m)(9)(C)) furnished during such emergency period and submit to Congress a report on any instances of waste, fraud, or abuse identified through such review.

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

(1) in paragraph (1), by striking “Subject to paragraph (8)” and inserting “Subject to paragraphs (8) and (9)”; 

(2) in paragraph (2), by striking “Subject to paragraph (8)” and inserting “Subject to paragraphs (8) and (9)”; and 

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

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