117TH CONGRESS
1ST SESSION

H. R. 366

To amend title XI of the Social Security Act to authorize the Secretary of Health and Human Services to waive or modify application of Medicare requirements with respect to telehealth services during any emergency period, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
JANUARY 19, 2021

Mr. THOMPSON of California (for himself, Ms. MATSUI, Mr. SCHWEIKERT, Mr. JOHNSON of Ohio, Mr. CURTIS, and Mr. WELCH) 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 XI of the Social Security Act to authorize the Secretary of Health and Human Services to waive or modify application of Medicare requirements with respect to telehealth services during any 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 “Protecting Access to
5 Post-COVID–19 Telehealth Act of 2021”.

SEC. 2. AUTHORIZATION FOR THE SECRETARY OF HEALTH

AND HUMAN SERVICES TO WAIVE OR MODIFY

APPLICATION OF MEDICARE REQUIREMENTS

WITH RESPECT TO TELEHEALTH SERVICES.

(a) Secretarial Authority to Temporarily

Waive or Modify Medicare Requirements With Re-

spect to Telehealth Services Furnished During

Any Emergency Period.—Section 1135 of the Social

Security Act (42 U.S.C. 1320b–5) is amended by adding

at the end the following new subsection:

“(h) Waiver or Modification of Certain Re-

quirements With Respect to Telehealth Serv-

ices.—

“(1) In general.—Notwithstanding any other

provision of this section, during the period described

paragraph (2), the Secretary may waive or modify

any requirement with respect to a telehealth service

payable under section 1834(m)(1) for such period.

“(2) Period described.—For purposes of

paragraph (1), the period described in this para-

graph is the period—

“(A) beginning on the first day of—

“(i) an emergency or disaster declared

by the President pursuant to the National

Emergencies Act or the Robert T. Stafford
Disaster Relief and Emergency Assistance Act; or

“(ii) a public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act; and

“(B) ending on the day that is 90 days after the last day of an emergency, disaster, or public health emergency described in subparagraph (A).”.

(b) Report.—

(1) Definitions.—In this subsection:

(A) COVID–19 public health emergency.—The term “COVID–19 public health emergency” means the outbreak and public health response pertaining to Coronavirus Disease 2019 (COVID–19), associated with the emergency declared by the Secretary on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), and any renewals thereof and any subsequent declarations by the Secretary related to COVID–19.

(B) Secretary.—The term “Secretary” means the Secretary of Health and Human Services.
(2) Data collection and reports on the use of telehealth during the COVID–19 public health emergency.—

(A) Data collection and analysis.—

(i) In general.—Beginning not later than 30 days after the date of enactment of this Act, the Secretary shall collect and analyze qualitative and quantitative data on the impact of telehealth services, virtual check-ins, digital health, and remote patient monitoring technologies on health care delivery permitted by the waiver or modification of certain requirements under titles XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and any regulations thereunder, pursuant to section 1135 of such Act (42 U.S.C. 1320b–5) during the COVID–19 public health emergency, which may include the collection of data regarding—

(I) health care utilization rates across the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for individuals confirmed or suspected to have
COVID–19 and individuals seeking care unrelated to COVID–19, including—

(aa) patient access to telehealth services in medically underserved communities; or

(bb) individuals receiving telehealth services through federally qualified health centers (as defined in section 1861(aa)(4) of the Social Security Act (42 U.S.C. 1395x(aa)(4)) or rural health clinics (as defined in section 1861(aa)(2) of such Act (42 U.S.C. 1395x(aa)(2))) serving as originating sites or distant sites, and any challenges for providers furnishing telehealth services in these communities;

(II) health care quality for individuals confirmed or suspected to have COVID–19 and individuals seeking care unrelated to COVID–19 as measured by—
(aa) quality of care metrics, such as hospital readmission rates, missed appointment rates, or wellness visits, and

(bb) engagement metrics, such as voluntary patient satisfaction surveys and voluntary provider satisfaction surveys;

(III) audio-only telehealth utilization rates when other video-based telehealth was not an option or any other telehealth services that were not provided in real-time (including text-messaging or through online chat platforms), the types of visits, and the types of providers treating individuals;

(IV) telehealth utilization rates used to treat individuals across State lines;

(V) the health outcomes of any individual who utilizes telehealth services to treat an underlying health condition such as diabetes, end-stage renal disease, chronic lung disease, obstructive pulmonary disease, coro-
nary artery disease, or cirrhosis and
the types of technology utilized to re-
receive care, including text-messaging,
online chat platforms, audio-only, or
video conferencing;

(VI) the health outcomes of any
individual who utilizes mental health
care and substance use disorder treat-
ment services, and the types of tech-
nology utilized to receive care, includ-
ing text-messaging, online chat plat-
forms, audio-only, or video confer-
cencing;

(VII) the impact of State and
Federal privacy and security protec-
tions on the delivery of care and pa-
tient safety, including the security of
the various technologies utilized to de-
deliver or receive telehealth care;

(VIII) how telehealth access dif-
fers by race, ethnicity, or income lev-
els;

(IX) the types of technologies
utilized to deliver or receive telehealth
care, including Zoom, Skype,
FaceTime, text messaging, online chat platforms, or other technologies, as observed by the Secretary, and utilization rates, disaggregated by type of technology (as applicable); (X) the investments necessary for providers to develop a platform to effectively provide telehealth services to their patients, including the costs of the necessary technology and the costs of training staff; and (XI) any additional information determined appropriate by the Secretary.

(ii) **Broadband availability data.**—Upon request by the Secretary, the Assistant Secretary of Commerce for Communications and Information and the Federal Communications Commission shall provide the Secretary any relevant data regarding the availability of broadband internet access service (as defined in section 801 of the Communications Act of 1934 (47 U.S.C. 641)) for the purposes of completing the report under clause (i).
(B) INTERIM REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives an interim report on the impact of telehealth based on the data collected and analyzed under subparagraph (A). For the purposes of the interim report, the Secretary may determine which data collected and analyzed under subparagraph (A) is most appropriate to complete such report.

(C) FINAL REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives a final report on the impact of telehealth based on the data collected and analyzed under subparagraph (A) that includes—
(i) conclusions regarding the impact of telehealth services on health care delivery during the COVID–19 public health emergency; and

(ii) an estimation for total Medicare spending on telehealth services, including total spending for each specific type of service for which Medicare reimbursed.

(D) STAKEHOLDER INPUT.—

(i) In general.—For purposes of subparagraph (A), (B), and (C), the Secretary shall seek input from the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission and nongovernmental stakeholders, including patient organizations, providers, and experts in telehealth.

(ii) Comment period.—For the purposes of this subsection, the Secretary shall establish a comment period not later than 14 days after the date of enactment of this Act.
SEC. 3. RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.

(a) EXPANSION OF DISTANT SITES.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)) is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking “or a practitioner (described in section 1842(b)(18)(C))” and inserting “, a practitioner (described in section 1842(b)(18)(C)), a federally qualified health center, or a rural health clinic”; and

(B) by striking “or practitioner” and inserting “, practitioner, federally qualified health center, or rural health clinic”;

(2) in paragraph (2)(A)—

(A) by inserting “or to a federally qualified health center or rural health clinic that serves as a distant site” after “a distant site”; and

(B) by striking “such physician or practitioner” and inserting “such physician, practitioner, federally qualified health center, or rural health clinic”; and

(3) in paragraph (4)—

(A) in subparagraph (A), by inserting “and includes a federally qualified health center or rural health clinic that furnishes a telehealth
service to an eligible individual” before the period at the end; and

(B) in subparagraph (F), by adding at the end the following new clause:

“(iii) INCLUSION OF RURAL HEALTH CLINIC SERVICES AND FEDERALLY QUALIFIED HEALTH CENTER SERVICES FURNISHED USING TELEHEALTH.—For purposes of this subparagraph, the term ‘telehealth services’ includes a rural health clinic service or Federally qualified health center service that is furnished using telehealth to the extent that payment codes corresponding to services identified by the Secretary under clause (i) or (ii) are listed on the corresponding claim for such rural health clinic service or Federally qualified health center service.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2022.

SEC. 4. ELIMINATION OF RESTRICTIONS RELATING TO TELEHEALTH SERVICES.

(a) ELIMINATION OF GEOGRAPHIC RESTRICTIONS OF ORIGINATING SITES.—Section 1834(m)(4)(C)(i) of the
1 Social Security Act (42 U.S.C. 1395m(m)(4)(C)(i)) is amended—

   (1) by striking “the service is furnished via a telecommunications system and only if such site is located—” and inserting “the service—”;

   (2) by redesignating subclauses (I) through (III) as items (aa) through (cc), respectively, and moving the margins two ems to the right; and

   (3) by inserting before item (aa), as redesignated by paragraph (2), the following new subclauses:

   “(I) is furnished via a telecommunications system; and

   “(II) for the period beginning on the date of the enactment of this subclause and ending on December 31, 2021, only if such site is located—”.

(b) Elimination of Restrictions in Which Telehealth Services May Be Furnished in the Home.—Section 1834(m)(4)(C)(ii)(X) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)(ii)(X) is amended to read as follows:

   “(X)(aa) For the period beginning on the date of the enactment of this subclause and ending on Decem-
Number 31, 2021, the home of an individual but only for purposes of section 1881(b)(3)(B) or telehealth services described in paragraph (7).

“(bb) For the period beginning on or after January 1, 2022, the home of an individual.”.

(c) INCLUSION OF ADDITIONAL ORIGINATING SITES AS DETERMINED BY THE SECRETARY.—Section 1834(m)(4)(C)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)(ii)) is amended by adding at the end the following new subclause:

“(XI) Any other location determined by the Secretary.”.