117TH CONGRESS
2D SESSION

S. 5212

To amend titles XVIII and XIX of the Social Security Act and the Bipartisan Budget Act of 2018 to increase access to services provided by advanced practice registered nurses under the Medicare and Medicaid programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2022

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend titles XVIII and XIX of the Social Security Act and the Bipartisan Budget Act of 2018 to increase access to services provided by advanced practice registered nurses under the Medicare and Medicaid programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) IN GENERAL.—This Act may be cited as the ''Improving Care and Access to Nurses Act'' or the ''I CAN Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—REMOVAL OF BARRIERS TO PRACTICE ON NURSE PRACTITIONERS

SEC. 101. EXPANDING ACCESS TO CARDIAC REHABILITATION PROGRAMS AND PULMONARY REHABILITATION PROGRAMS UNDER MEDICARE PROGRAM.

(a) CARDIAC REHABILITATION PROGRAMS.—Section 1861(eee) of the Social Security Act (42 U.S.C. 1395x(eee)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(i), by striking ''a physician's office'' and inserting ''the office of a physician (as defined in subsection (r)(1)) or the office of a nurse practitioner, clinical nurse specialist, or physician assistant (as those terms are defined in subsection (aa)(5))''; and

(B) in subparagraph (C), by inserting ''(as defined in subsection (r)(1)), nurse practitioner, clinical nurse specialist, or physician assistant (as those terms are defined in subsection (aa)(5))'' after ''physician'';

(2) in paragraph (3)(A), by striking ''physician-prescribed exercise'' and inserting ''exercise prescribed by a physician (as defined in subsection

(r)(1)), nurse practitioner, clinical nurse specialist, or physician assistant (as those terms are defined in subsection (aa)(5))''; and

(3) in paragraph (5), in the matter preceding subparagraph (A), by inserting ''(as defined in subsection (r)(1)), nurse practitioner, clinical nurse specialist, or physician assistant (as those terms are defined in subsection (aa)(5)),'' after ''physician''.

(b) PULMONARY REHABILITATION PROGRAMS.—Section 1861(fff) of the Social Security Act (42 U.S.C. 1395x(fff)) is amended—

(1) in paragraph (2)(A), by striking ''physician-prescribed exercise'' and inserting ''exercise prescribed by a physician (as defined in subsection (r)(1)), nurse practitioner, clinical nurse specialist, or physician assistant (as those terms are defined in subsection (aa)(5))''; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by inserting after ''physician'' the following: ''(as defined in subsection (r)(1)), nurse practitioner, clinical nurse specialist, or physician assistant (as those terms are defined in subsection (aa)(5)),''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall apply to items and services furnished on or after the date that is 3 months after the date of enactment of this Act.

(2) EXPEDITING IMPLEMENTATION OF SUPERVISION AUTHORITY.—Section 51008(c) of the Bipartisan Budget Act of 2018 (Public Law 115–123; 42 U.S.C. 1395x note) is amended by striking ''January 1, 2024'' and inserting ''January 1, 2023''.

SEC. 102. PERMITTING NURSE PRACTITIONERS TO SATISFY MEDICARE DOCUMENTATION REQUIREMENT FOR COVERAGE OF CERTAIN SHOES FOR INDIVIDUALS WITH DIABETES.

(a) IN GENERAL.—Section 1861(s)(12) of the Social Security Act (42 U.S.C. 1395x(s)(12)) is amended—

(1) in subparagraph (A), by inserting '', nurse practitioner, or physician assistant'' after ''physician''; and

(2) in subparagraph (C), by inserting '', nurse practitioner, or physician assistant'' after ''physician'' each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2023.

SEC. 103. IMPROVEMENTS TO THE ASSIGNMENT OF BENEFICIARIES UNDER THE MEDICARE SHARED SAVINGS PROGRAM.

Section 1899(c)(1) of the Social Security Act (42 U.S.C. 1395jjj(c)(1)) is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(C) in the case of performance years beginning on or after January 1, 2023, primary care services provided under this title by an ACO professional described in subsection (h)(1)(B).''.

SEC. 104. EXPANDING THE AVAILABILITY OF MEDICAL NUTRITION THERAPY SERVICES UNDER THE MEDICARE PROGRAM.

Section 1861(vv)(1) of the Social Security Act (42 U.S.C. 1395x(vv)(1)) is amended by inserting '', a nurse practitioner, or a clinical nurse specialist (as such terms are defined in subsection (aa)(5))'' before the period at the end.

SEC. 105. PRESERVING ACCESS TO HOME INFUSION THERAPY UNDER THE MEDICARE PROGRAM.

(a) ALLOWING APPLICABLE PROVIDERS TO ESTABLISH HOME INFUSION THERAPY PLANS.—Section 1861(iii)(1)(B) of the Social Security Act (42 U.S.C. 1395x(iii)(1)(B)) is amended—

(1) by striking ''a physician (as defined in subsection (r)(1))'' and inserting ''an applicable provider (as defined in paragraph (3)(A))''; and

(2) by striking ''a physician (as so defined)'' and inserting ''an applicable provider (as so defined)''.

(b) CONFORMING AMENDMENT.—Section 1834(u)(6) of the Social Security Act (42 U.S.C. 1395m(u)(6)) is amended by striking ''physician'' and inserting ''applicable provider (as defined in section 1861(iii)(3)(A))''.

SEC. 106. INCREASING ACCESS TO HOSPICE CARE SERVICES UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1814(a)(7)(A) of the Social Security Act (42 U.S.C. 1395f(a)(7)(A)) is amended—

(1) in clause (i)(I), by striking ''a nurse practitioner or'';

(2) in clause (i)(II), by inserting ''or nurse practitioner'' after ''physician''; and

(3) in clause (ii), by striking ''or physician'' and inserting '', physician, or nurse practitioner''.

(b) HOSPICE CARE DEFINITION.—Section 1861(dd)(1)(C) of the Social Security Act (42 U.S.C. 1395x(dd)(1)(C)) is amended by inserting ''or nurse practitioner'' after ''physician''.

SEC. 107. STREAMLINING CARE DELIVERY IN SKILLED NURSING FACILITIES AND NURSING FACILITIES; AUTHORIZING MEDICARE AND MEDICAID INPATIENT HOSPITAL PATIENTS TO BE UNDER THE CARE OF A NURSE PRACTITIONER.

(a) MEDICARE.—

(1) CERTIFICATION OF POST-HOSPITAL EXTENDED CARE SERVICES.—Section 1814(a)(2) of the Social Security Act (42 U.S.C. 1395f(a)(2)) is amended, in the matter preceding subparagraph (A), by striking '', or a nurse practitioner,'' and inserting ''or a nurse practitioner (in accordance with State law), or''.

(2) CERTIFICATION AUTHORITY FOR NURSE PRACTITIONERS.—Section 1814(a)(3) of the Social Security Act (42 U.S.C. 1395f(a)(3)) is amended by inserting ''or nurse practitioner'' after ''physician''.

(3) SUPERVISION REQUIREMENT IN SKILLED NURSING FACILITY SERVICES.—Section 1819(b)(6)(A) of the Social Security Act (42 U.S.C. 1395i–3(b)(6)(A)) is amended—

(A) in the heading, by striking ''PHYSICIAN SUPERVISION'' and inserting ''SUPERVISION''; and

(B) by inserting ''or a nurse practitioner, in accordance with State law'' after ''physician''.

(4) ADMINISTRATION OF PART B.—Section 1842(b)(2)(C) of the Social Security Act (42 U.S.C. 1395u(b)(2)(C)) is amended, in the second sentence, by striking ''working in collaboration with that physician''.

(5) PROVISION OF MEDICAL AND OTHER HEALTH SERVICES.—Section 1861(s)(2)(K)(ii) of the Social Security Act (42 U.S.C. 1395x(s)(2)(K)(ii)) is amended by striking ''or clinical nurse specialist (as defined in subsection (aa)(5)) working in collaboration (as defined in subsection (aa)(6)) with a physician (as defined in subsection (r)(1))'' and inserting ''(as defined in subsection (aa)(5)(A)), or by a clinical nurse specialist (as defined in subsection (aa)(5)(B)) working in col-

laboration with a physician (as defined in subsection (r)(1)),''.

(6) PRIVILEGES FOR NURSE PRACTITIONERS.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(A) in subsection (e)(4), by inserting ''(or nurse practitioner, in accordance with State law)'' after ''physician'';

(B) in subsection (f)(1), by inserting ''or nurse practitioner'' after ''physician''; and

(C) in each of subparagraphs (B) and (F) of subsection (ee)(2), by inserting ''or nurse practitioner'' after ''physician''.

(b) MEDICAID.—

(1) CERTIFICATION AUTHORITY FOR NURSE PRACTITIONERS.—Section 1902(a)(44) of the Social Security Act (42 U.S.C. 1396a(a)(44)) is amended to read as follows:

''(44) in each case for which payment for inpatient hospital services, skilled nursing facility services, services in an intermediate care facility described in section 1905(d), or inpatient mental hospital services is made under the State plan—

''(A) a physician or nurse practitioner (or, in the case of skilled nursing facility services or

intermediate care facility services, a physician or nurse practitioner, or a clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and a physician or nurse practitioner, or a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician or nurse practitioner, or a clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1903(g)(6) (or, in the case of services that are services provided in an intermediate care facility, every year), and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

''(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician or nurse practitioner, or, in the case of skilled nursing facility services or intermediate care facility services, by a physician or nurse practitioner, or a clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;''.

(2) NURSING FACILITY SERVICES SUPERVISION AND CLINICAL RECORDS.—Section 1919(b)(6)(A) of the Social Security Act (42 U.S.C. 1396r(b)(6)(A)) is amended to read as follows:

''(A) require that the health care of every resident be provided under the supervision of a physician or nurse practitioner (or, at the option of a State, under the supervision of a clinical nurse specialist or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);''.

SEC. 108. IMPROVING ACCESS TO MEDICAID CLINIC SERVICES.

Section 1905(a)(9) of the Social Security Act (42 U.S.C. 1396d(a)(9)) is amended by adding ''or nurse

practitioner'' after ''physician'' in both places that it appears.

TITLE II—REMOVAL OF BARRIERS TO PRACTICE ON CERTIFIED REGISTERED NURSE ANESTHETISTS

SEC. 201. CLARIFYING THAT CERTIFIED REGISTERED NURSE ANESTHETISTS CAN BE REIMBURSED BY MEDICARE FOR EVALUATION AND MANAGEMENT SERVICES.

Section 1861(bb)(1) of the Social Security Act (42 U.S.C. 1395x(bb)(1)) is amended by inserting '', including pre-anesthesia evaluation and management services,'' after ''and related care''.

SEC. 202. REVISION OF CONDITIONS OF PAYMENT RELATING TO SERVICES ORDERED AND REFERRED BY CERTIFIED REGISTERED NURSE ANESTHETISTS.

Not later than 3 months after the date of enactment of this Act, the Secretary of Health and Human Services shall revise section 410.69 of title 42, Code of Federal Regulations, to clarify that, for purposes of payment under part B of title XVIII of the Social Security Act—

(1) certified registered nurse anesthetists are authorized to order, certify, and refer services to the

extent allowed under the law of the State in which the services are furnished; and

(2) payment shall be made under such part for such services so ordered, certified, or referred by certified registered nurse anesthetists.

SEC. 203. SPECIAL PAYMENT RULE FOR TEACHING STUDENT REGISTERED NURSE ANESTHETISTS.

Section 1848(a)(6) of the Social Security Act (42 U.S.C. 1395w–4(a)(6)) is amended, in the matter preceding subparagraph (A), by inserting ''or student registered nurse anesthetists'' after ''physician residents''.

SEC. 204. REMOVING UNNECESSARY AND COSTLY SUPERVISION OF CERTIFIED REGISTERED NURSE ANESTHETISTS.

Section 1861(bb)(2) of the Social Security Act (42 U.S.C. 1395x(bb)(2)) is amended—

(1) in the second sentence, by inserting '', but may not require that certified registered nurse anesthetists provide services under the supervision of a physician'' after ''certification of nurse anesthetists''; and

(2) in the third sentence, by inserting ''under the supervision of an anesthesiologist'' after ''an anesthesiologist assistant''.

SEC. 205. CRNA SERVICES AS A MEDICAID-REQUIRED BENEFIT.

(a) IN GENERAL.—Section 1905(a)(5) of the Social Security Act (42 U.S.C. 1396d(a)(5)) is amended—

(1) by striking ''and (B)'' and inserting ''(B)''; and

(2) by inserting before the semicolon at the end the following: '', and (C) services furnished by a certified registered nurse anesthetist (as defined in section 1861(bb)(2)), which such certified registered nurse anesthetist is authorized to perform under State law (or the State regulatory mechanism as provided by State law)''.

(b) PAYMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) in paragraph (86), by striking ''and'' at the end;

(2) in paragraph (87), by striking the period and inserting ''; and''; and

(3) by inserting after paragraph (87) the following new paragraph:

''(88) provide for payment for the services of a certified registered nurse anesthetist (as defined in section 1861(bb)(1)) in amounts no lower than the amounts, using the same methodology, used for payment for amounts under section 1833(a)(1)(H).''.

TITLE III—REMOVAL OF BARRIERS TO PRACTICE ON CERTIFIED NURSE-MIDWIVES

SEC. 301. IMPROVING ACCESS TO TRAINING IN MATERNITY CARE.

(a) MEDICARE PAYMENTS FOR SUPERVISION BY CERTIFIED NURSE-MIDWIVES.—Paragraph (1) of section 1861(gg) of the Social Security Act (42 U.S.C. 1395x(gg)) is amended to read as follows:

''(1) The term 'certified nurse-midwife services' means—

''(A) such services furnished by a certified nurse-midwife (as defined in paragraph (2)); and

''(B) such services (and such supplies and services furnished as an incident to the nurse-midwife's service) which—

''(i) the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician;

''(ii) are furnished under the supervision of a certified-nurse midwife by an

intern or resident-in-training (as described in subsection (b)(6));

''(iii) would otherwise be described in subparagraph (A) if furnished by a certified nurse-midwife; and

''(iv) would otherwise be covered if furnished under the supervision of a physician.''.

(b) CLARIFYING PERMISSIBILITY OF USING CERTAIN GRANTS FOR CLINICAL TRAINING BY CERTIFIED NURSE-MIDWIVES.—Section 811(a)(1) of the Public Health Service Act (42 U.S.C. 296j(a)(1)) is amended by inserting '', including clinical training,'' after ''projects''.

SEC. 302. IMPROVING MEDICARE PATIENT ACCESS TO HOME HEALTH SERVICES PROVIDED BY CERTIFIED NURSE-MIDWIVES.

(a) IN GENERAL.—Section 1835(a) of the Social Security Act (42 U.S.C. 1395n(a)) is amended—

(1) in paragraph (2)—

(A) by inserting ''or a certified nurse-midwife (as defined in section 1861(gg)),'' after ''or a physician assistant (as defined in section 1861(aa)(5)) who is working in accordance with State law,''; and

(B) in subparagraph (A)—

(i) in each of clauses (ii) and (iii), by striking ''or a physician assistant (as the case may be)'' and inserting ''a physician assistant, or a certified nurse-midwife (as the case may be)''; and

(ii) in clause (iv), by—

(I) inserting ''or by a certified nurse-midwife (as defined in section 1861(gg))'' after ''(but in no case later than the date that is 6 months after the date of the enactment of the CARES Act)''; and

(II) by striking ''(as defined in section 1861(gg))''; and

(2) in the matter following paragraph (2), by striking ''or physician assistant (as the case may be)'' and inserting ''physician assistant, or certified nurse-midwife (as the case may be)'' each place it appears.

(b) CONFORMING AMENDMENTS.—Section 1895 of the Social Security Act (42 U.S.C. 1395fff) is amended—

(1) in subsection (c)(1), by inserting ''a certified nurse-midwife (as defined in section 1861(gg)),'' after ''clinical nurse specialist (as those terms are defined in section 1861(aa)(5)),''; and

(2) in subsection (e)(1)(A), by striking ''a physician a nurse practitioner or clinical nurse specialist,'' and inserting ''a physician, a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife,''.

SEC. 303. IMPROVING ACCESS TO DMEPOS FOR MEDICARE BENEFICIARIES.

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

(1) in paragraph (1)(E)(ii) by striking ''or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5))'' and inserting '', a clinical nurse specialist (as those terms are defined in section 1861(aa)(5)), or a certified nurse-midwife (as defined in section 1861(gg))''; and

(2) in paragraph (11)(B)(ii)—

(A) by striking ''or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5))'' and inserting ''a clinical nurse specialist (as those terms are defined in section 1861(aa)(5)), or a certified nurse-midwife (as defined in section 1861(gg))''; and

(B) by striking ''or specialist'' and inserting ''specialist, or nurse-midwife''.

SEC. 304. TECHNICAL CHANGES TO QUALIFICATIONS AND CONDITIONS WITH RESPECT TO THE SERVICES OF CERTIFIED NURSE-MIDWIVES.

Section 1861(gg)(2) of the Social Security Act (42 U.S.C. 1395x(gg)(2)) is amended by striking '', or has been certified by an organization recognized by the Secretary'' and inserting ''and has been certified by the American Midwifery Certification Board (or a successor organization)''.

TITLE IV—IMPROVING FEDERAL HEALTH PROGRAMS FOR ALL ADVANCED PRACTICE REGISTERED NURSES

SEC. 401. REVISING THE LOCAL COVERAGE DETERMINATION PROCESS UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1862(l)(5) of the Social Security Act (42 U.S.C. 1395y(l)(5)) is amended—

(1) in subparagraph (D), by adding at the end the following new clauses:

''(vi) Identification of any medical or scientific experts whose advice was obtained by such contractor during the development of such determination, whether or not such contractor relied on such advice in developing such determination.

''(vii) A hyperlink to any written communication between such contractor and another entity that such contractor relied on when developing such determination.

''(viii) A hyperlink to any rule, guideline, protocol, or other criterion that such contractor relied on when developing such determination.''; and

(2) by adding at the end the following new subparagraphs:

''(E) PROHIBITION ON IMPOSITION OF PRACTITIONER QUALIFICATIONS.—The Secretary shall prohibit a Medicare administrative contractor that develops a local coverage determination from imposing such determination on any coverage limitation with respect to the qualifications of a physician (as defined in section 1861(r)) or a practitioner described in section 1842(b)(18)(C) who may furnish the item or service that is the subject of such determination.

''(F) CIVIL MONETARY PENALTY.—A Medicare administrative contractor that develops a local coverage determination that fails to make information described in subparagraph

(D) available as required by the Secretary under such subparagraph or comply with the prohibition under subparagraph (E) is subject to a civil monetary penalty of not more than $10,000 for each such failure. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).''.

(b) TIMING OF REVIEW.—Section 1869(f)(2) of the Social Security Act (42 U.S.C. 1395ff(f)(2)) is amended by adding at the end the following new subparagraph:

''(D) TIMING OF REVIEW.—An aggrieved party may file a complaint described in subparagraph (A) with respect to a local coverage determination on or after the date that such determination is posted, in accordance with section 1862(l)(5)(D), on the Internet website of the Medicare administrative contractor making such determination, whether or not such determination has taken effect.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to local coverage determinations made available on the Internet website of a Medicare ad-

ministrative contractor and on the Medicare Internet website on or after the date of the enactment of this Act.

SEC. 402. LOCUM TENENS.

(a) IN GENERAL.—Section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6)) is amended—

(1) by striking ''and (J)'' and inserting '', (J)''; and

(2) by inserting before the period at the end the following '', and (K) in the case of services furnished by a certified registered nurse anesthetist (as defined in section 1861(bb)(2)), nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa)(5)), or a certified nurse-midwife (as defined in section 1861(gg)(2)), subparagraph (D) of this sentence shall apply to such services and such anesthetist, practitioner, specialist, or nurse-midwife in the same manner as such subparagraph applies to physicians' services furnished by physicians''.

(b) IMPLEMENTATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall update all applicable regulations and subregulatory guidance necessary to carry out this section.

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