II

117TH CONGRESS
1ST SESSION

S. 644

To amend title XVIII of the Social Security Act to restore State authority to waive for certain facilities the 35-mile rule for designating critical access hospitals under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2021

Mr. DURBIN (for himself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend title XVIII of the Social Security Act to restore State authority to waive for certain facilities the 35-mile rule for designating critical access hospitals under the Medicare program, 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.

This Act may be cited as the ''Rural Hospital Closure Relief Act of 2021''.

SEC. 2. RESTORING STATE AUTHORITY TO WAIVE THE 35-MILE RULE FOR CERTAIN MEDICARE CRITICAL ACCESS HOSPITAL DESIGNATIONS.

(a) IN GENERAL.—Section 1820 of the Social Security Act (42 U.S.C. 1395i–4) is amended—

(1) in subsection (c)(2)—

(A) in subparagraph (B)(i)—

(i) in subclause (I), by striking at the end ''or'';

(ii) in subclause (II), by inserting at the end ''or''; and

(iii) by adding at the end the following new subclause:

''(III) subject to subparagraph (G), is a hospital described in subparagraph (F) and is certified on or after the date of the enactment of the Rural Hospital Closure Relief Act of 2021 by the State as being a necessary provider of health care services to residents in the area;''; and

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

''(F) HOSPITAL DESCRIBED.—For purposes of subparagraph (B)(i)(III), a hospital

described in this subparagraph is a hospital that—

''(i) is a sole community hospital (as defined in section 1886(d)(5)(D)(iii)), a medicare dependent, small rural hospital (as defined in section 1886(d)(5)(G)(iv)), a low-volume hospital that in 2021 receives a payment adjustment under section 1886(d)(12), a subsection (d) hospital (as defined in section 1886(d)(1)(B)) that has fewer than 50 beds, or, subject to the limitation under subparagraph (G)(i)(I), is a facility described in subparagraph (G)(ii);

''(ii) is located in a rural area, as defined in section 1886(d)(2)(D);

''(iii)(I) is located—

''(aa) in a county that has a percentage of individuals with income that is below 150 percent of the poverty line that is higher than the national or statewide average in 2020; or

''(bb) in a health professional shortage area (as defined in section

332(a)(1)(A) of the Public Health Service Act); or

''(II) has a percentage of inpatient days of individuals entitled to benefits under part A of this title, enrolled under part B of this title, or enrolled under a State plan under title XIX that is higher than the national or statewide average in 2019 or 2020;

''(iv) subject to subparagraph (G)(ii)(II), has attested to the Secretary two consecutive years of negative operating margins preceding the date of certification described in subparagraph (B)(i)(III); and

''(v) submits to the Secretary—

''(I) at such time and in such manner as the Secretary may require, an attestation outlining the good governance qualifications and strategic plan for multi-year financial solvency of the hospital; and

''(II) not later than 120 days after the date on which the Secretary issues final regulations pursuant to section 2(b) of the Rural Hospital

Closure Relief Act of 2021, an application for certification of the facility as a critical access hospital.

"(G) LIMITATION ON CERTAIN DESIGNATIONS.—

"(i) IN GENERAL.—The Secretary may not under subsection (e) certify pursuant to a certification by a State under subparagraph (B)(i)(III)—

"(I) more than a total of 175 facilities as critical access hospitals, of which not more than 20 percent may be facilities described in clause (ii); and

"(II) within any one State, more than 10 facilities as critical access hospitals.

"(ii) FACILITY DESCRIBED.—

"(I) IN GENERAL.—A facility described in this clause is a facility that as of the date of enactment of this subparagraph met the criteria for designation as a critical access hospital under subparagraph (B)(i)(I).

''(II) NONAPPLICATION OF CERTAIN CRITERIA.—For purposes of subparagraph (B)(i)(III), the criteria described in subparagraph (F)(iv) shall not apply with respect to the designation of a facility described in subclause (I).''; and

(2) in subsection (e), by inserting '', subject to subsection (c)(2)(G),'' after ''The Secretary shall''.

(b) REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue final regulations to carry out this section.

(c) CLARIFICATION REGARDING FACILITIES THAT MEET DISTANCE OR OTHER CERTIFICATION CRITERIA.—Nothing in this section shall affect the application of criteria for designation as a critical access hospital described in subclause (I) or (II) section 1820(c)(2)(B)(i) of the Social Security Act (42 U.S.C. 1395i–4(c)(2)(B)(i)).

SEC. 3. CMI TESTING OF NEW RURAL HOSPITAL DELIVERY AND PAYMENT MODEL.

Section 1115A of the Social Security Act (42 U.S.C. 1315a) is amended—

(1) in subsection (b)(2)(A), by adding at the end the following new sentence: ''The models se-

lected under this subparagraph shall include the testing of a new rural hospital delivery and payment model (or models), as described in subsection (h).''; and

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

''(h) TESTING OF NEW RURAL HOSPITAL DELIVERY AND PAYMENT MODEL.—

''(1) IN GENERAL.—

''(A) TESTING.—The Secretary shall test the implementation of a new rural hospital delivery and payment model (or models) that the Secretary determines would promote financially sustainable ways to ensure patient access to care in rural communities, which may include models under which such hospitals furnish outpatient emergency care services 24 hours a day, 7 days a week for which payment is made under title XVIII based on the amount determined under the prospective payment system for hospital outpatient department services under section 1833(t), plus a fixed rate for the cost of furnishing the emergency services.

''(B) PROMULGATION OF REGULATIONS.—Not later than 3 years after the date of the en-

actment of this subsection, the Secretary shall promulgate regulations to test a new rural hospital delivery and payment model (or models) described in subparagraph (A), unless Congress enacts legislation that establishes such a payment model (or models) prior to the promulgation of regulations pursuant to this subparagraph.

''(2) TRANSITION.—Effective beginning on the date on which the testing of a new rural hospital delivery and payment model (or models) described in paragraph (1)(A) is implemented under this subsection or such a payment model (or models) is established through the enactment of legislation described in paragraph (1)(B), the Secretary shall provide a process under which—

''(A) all critical access hospitals may transition to such new model or models under this subsection; and

''(B) any facility that was designated as a critical access hospital pursuant to a certification by a State under section 1820(c)(2)(B)(i)(III) may revert to the prospective payment model (or models) under which

the facility received payment under title XVIII prior to being so designated.''.

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