

116TH CONGRESS  
2D SESSION

# S. 4198

To require health plans to provide coverage for COVID–19 serology testing.

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IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Mr. SCOTT of Florida (for himself and Ms. MCSALLY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To require health plans to provide coverage for COVID–  
19 serology testing.

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 “Affordable Coronavirus  
5 Testing Act”.

6 **SEC. 2. COVERAGE OF CORONAVIRUS ANTIBODY TESTS.**

7 (a) COVERAGE.—

8 (1) IN GENERAL.—A group health plan and a  
9 health insurance issuer offering group or individual  
10 health insurance coverage (including a grandfathered

1 health plan (as defined in section 1251(e) of the Pa-  
2 tient Protection and Affordable Care Act) shall pro-  
3 vide coverage, and shall not impose any cost sharing  
4 (including deductibles, copayments, and coinsurance)  
5 requirements or prior authorization or other medical  
6 management requirements, for eligible COVID–19  
7 serology tests performed during any portion of the  
8 2020 or 2021 plans years.

9 (2) ELIGIBLE TEST.—For purpose of para-  
10 graph (1), an eligible COVID–19 serology test shall  
11 include the following:

12 (A) A test that has been approved, cleared,  
13 or authorized under section 510(k), 513, 515,  
14 or 564 of the Federal Food, Drug, and Cos-  
15 metic Act for the detection of the presence of  
16 SARS–CoV–2 antibodies.

17 (B) A serology test kit that is made avail-  
18 able within the 10-day grace period prior to an  
19 emergency use authorization submission and  
20 with respect to which such emergency use au-  
21 thorization submission is under consideration,  
22 except that this subparagraph shall not apply in  
23 the case of a serology test kit where the emer-  
24 gency use authorization submission request  
25 under section 564 of the Federal Food, Drug,

1 and Cosmetic Act has been denied or not sub-  
2 mitted within a reasonable timeframe.

3 (C) A serology laboratory developed test  
4 that the Food and Drug Administration permits  
5 for clinical use without an emergency use au-  
6 thorization submission.

7 (D) Any other test the Secretary deter-  
8 mines appropriate through guidance.

9 (b) ENFORCEMENT.—The provisions of this section  
10 shall be applied by the Secretary of Health and Human  
11 Services, Secretary of Labor, and Secretary of the Treas-  
12 ury to group health plans and health insurance issuers of-  
13 fering group or individual health insurance coverage as if  
14 included in the provisions of part A of title XXVII of the  
15 Public Health Service Act, part 7 of the Employee Retire-  
16 ment Income Security Act of 1974, and subchapter B of  
17 chapter 100 of the Internal Revenue Code of 1986, as ap-  
18 plicable.

19 (c) IMPLEMENTATION.—The Secretary of Health and  
20 Human Services, Secretary of Labor, and Secretary of the  
21 Treasury may implement the provisions of this section  
22 through sub-regulatory guidance, program instruction or  
23 otherwise.

24 (d) RULE OF CONSTRUCTION.—Nothing in this Act,  
25 or the amendments made by this Act, shall be construed

1 to limit the number of COVID–19 serology tests that will  
2 be covered with respect to an individual under this Act  
3 (or amendments).

4 (e) TERMS.—In this section:

5 (1) GENERAL TERMS.—The terms “group  
6 health plan”, “health insurance issuer”, “group  
7 health insurance coverage”, and “individual health  
8 insurance coverage” shall have the meanings given  
9 such terms in section 2791 of the Public Health  
10 Service Act (42 U.S.C. 300gg–91), section 733 of  
11 the Employee Retirement Income Security Act of  
12 1974 (29 U.S.C. 1191b), and section 9832 of the  
13 Internal Revenue Code of 1986, as applicable.

14 (2) MEDICAL MANAGEMENT.—The term “med-  
15 ical management” includes requirements relating to  
16 clinical criteria for coverage, frequency limitations,  
17 and similar restrictions as determined by the Sec-  
18 retary of Health and Human Services, Secretary of  
19 Labor, and Secretary of the Treasury.

20 (f) CONFORMING AMENDMENT.—Section 6001(d) of  
21 the Families First Coronavirus Response Act (42 U.S.C.  
22 1320b–5 note) is amended—

23 (1) by striking “The terms” and inserting the  
24 following:

25 “(1) IN GENERAL.—The terms”; and

1 (2) by adding at the end the following:

2 “(2) **MEDICAL MANAGEMENT.**—The term ‘med-  
3 ical management’ includes requirements relating to  
4 clinical criteria for coverage, frequency limitations,  
5 and similar restrictions as determined by the Sec-  
6 retary of Health and Human Services, Secretary of  
7 Labor, and Secretary of the Treasury.”.

8 **SEC. 3. COVERAGE OF CORONAVIRUS ANTIBODY TESTS AT**  
9 **NO COST SHARING UNDER MEDICARE.**

10 (a) **IN GENERAL.**—Section 1833(cc)(1)(A)(iii) of the  
11 Social Security Act (42 U.S.C. 1395l(cc)(1)(A)(iii) is  
12 amended by inserting the following before the semicolon:  
13 “or a COVID–19 serology test described in section  
14 1852(a)(1)(B)(VII)”.

15 (b) **COVERAGE UNDER MEDICARE ADVANTAGE.**—  
16 Section 1852(a)(1)(B) of the Social Security Act (42  
17 U.S.C. 1395w–22(a)(1)(B)) is amended—

18 (1) in clause (iv)—

19 (A) by redesignating subclause (VII) as  
20 subclause (VIII); and

21 (B) by inserting after subclause (VI) the  
22 following new clause:

23 “(VII) A COVID–19 serology  
24 test administered during any portion  
25 of the 2-year period beginning on Jan-

1 uary 1, 2020, that begins on or after  
 2 the date of enactment of this sub-  
 3 clause, and the administration of such  
 4 test.”;

5 (2) in clause (v), by striking “and (VI)” and in-  
 6 serting “(VI), and (VII)”;

7 (3) in clause (vi), by inserting “, or in the case  
 8 of a product or service described in subclause (VII)  
 9 of such clause that is administered or furnished dur-  
 10 ing any portion of the period described in such sub-  
 11 clause” after “this clause”.

12 **SEC. 4. COVERAGE OF CORONAVIRUS ANTIBODY TESTS**  
 13 **UNDER MEDICAID AND CHIP.**

14 (a) MEDICAID.—

15 (1) IN GENERAL.—Section 1905(a)(3) of the  
 16 Social Security Act (42 U.S.C. 1396d(a)(3)) is  
 17 amended—

18 (A) in subparagraph (A), by striking “;  
 19 and” and inserting a semicolon;

20 (B) in subparagraph (B), by inserting  
 21 “and” after the semicolon; and

22 (C) by adding at the end the following new  
 23 subparagraph:

24 “(C) COVID–19 serology tests administered  
 25 during any portion of the 2-year period beginning on

1 January 1, 2020, that begins on or after the date  
2 of enactment of this subparagraph, and the adminis-  
3 tration of such tests;”.

4 (2) NO COST SHARING.—

5 (A) IN GENERAL.—Subsections (a)(2) and  
6 (b)(2) of section 1916 of the Social Security  
7 Act (42 U.S.C. 1396o) are each amended—

8 (i) in subparagraph (F), by striking  
9 “or” at the end;

10 (ii) by redesignating subparagraph  
11 (G) as subparagraph (H); and

12 (iii) by inserting after subparagraph  
13 (F) the following new subparagraph:

14 “(G) any COVID–19 serology test de-  
15 scribed in section 1905(a)(3)(C) that is per-  
16 formed during any portion of the 2-year period  
17 described in such section beginning on or after  
18 the date of enactment of this subparagraph  
19 (and the administration of such test), or”.

20 (B) APPLICATION TO ALTERNATIVE COST  
21 SHARING.—Section 1916A(b)(3)(B) of the So-  
22 cial Security Act (42 U.S.C. 1396o–1(b)(3)(B))  
23 is amended by adding at the end the following  
24 new clause:

1           “(xii) Any COVID–19 serology test  
2           described in section 1905(a)(3)(C) that is  
3           administered during any portion of the 2-  
4           year period described in such section be-  
5           ginning on or after the date of enactment  
6           of this clause (and the administration of  
7           such test).”.

8           (C) CLARIFICATION.—The amendments  
9           made in this paragraph shall apply with respect  
10          to a State plan of a territory in the same man-  
11          ner as a State plan of one of the 50 States.

12       (b) CHIP.—

13           (1) IN GENERAL.—Section 2103(c) of the So-  
14          cial Security Act (42 U.S.C. 1397cc(e)) is amended  
15          by adding at the end the following paragraph:

16           “(11) COVID–19 SEROLOGY TESTING.—The  
17          child health assistance provided to a targeted low-in-  
18          come child shall include coverage of any COVID–19  
19          serology test described in section 1905(a)(3)(C) that  
20          is administered during any portion of the 2-year pe-  
21          riod described in such section beginning on or after  
22          the date of the enactment of this subparagraph (and  
23          the administration of such test).”.

24           (2) PROHIBITION OF COST SHARING.—Section  
25          2103(e)(2) of the Social Security Act (42 U.S.C.

1 1397cc(e)(2)) is amended by inserting “COVID–19  
2 serology tests described in subsection (c)(11) (and  
3 administration of such tests),” after “products),”.

4 **SEC. 5. COVERAGE OF CORONAVIRUS ANTIBODY TESTS**  
5 **UNDER THE TRICARE PROGRAM.**

6 (a) IN GENERAL.—The Secretary of Defense shall  
7 provide coverage under the TRICARE program, and shall  
8 not impose any cost sharing (including deductibles, copay-  
9 ments, and coinsurance) requirements or prior authoriza-  
10 tion or other medical management requirements, for  
11 COVID–19 serology tests performed for covered bene-  
12 ficiaries during calendar year 2020 or 2021.

13 (b) DEFINITIONS.—In this section, the terms  
14 “TRICARE program” and “covered beneficiary” have the  
15 meanings given those terms in section 1072 of title 10,  
16 United States Code.

17 **SEC. 6. COVERAGE OF CORONAVIRUS ANTIBODY TESTS**  
18 **FROM DEPARTMENT OF VETERANS AFFAIRS.**

19 (a) IN GENERAL.—The Secretary of Veterans Affairs  
20 shall furnish a COVID–19 serology test to any enrolled  
21 veteran, upon request by the veteran, during calendar  
22 years 2020 and 2021 and shall not impose any cost shar-  
23 ing (including deductibles, copayments, and coinsurance)  
24 requirements or prior authorization or other medical man-

1 agement requirements for the receipt of such a test by  
 2 an enrolled veteran during such period.

3 (b) **ENROLLED VETERAN DEFINED.**—In this section,  
 4 the term “enrolled veteran” means a veteran enrolled in  
 5 the system of annual patient enrollment of the Depart-  
 6 ment of Veterans Affairs established and operated under  
 7 section 1705(a) of title 38, United States Code.

8 **SEC. 7. COVERAGE OF CORONAVIRUS ANTIBODY TESTS**  
 9 **UNDER FEHBP.**

10 Section 8902 of title 5, United States Code, is  
 11 amended by adding at the end the following:

12 “(p) A contract for a plan under this chapter shall—

13 “(1) require the carrier to provide coverage  
 14 for—

15 “(A) a COVID–19 serology test adminis-  
 16 tered on any date during the period beginning  
 17 on the date of enactment of this subsection and  
 18 ending on December 31, 2021; and

19 “(B) the administration of a test described  
 20 in subparagraph (A); and

21 “(2) prohibit the carrier from imposing any cost  
 22 sharing requirement (including a deductible, copay-  
 23 ment, or coinsurance requirement), or prior author-  
 24 ization or other medical management requirement,

1 with respect to a test described in paragraph  
2 (1)(A).”.

3 **SEC. 8. REIMBURSEMENT FOR UNINSURED PATIENT**  
4 **COSTS.**

5 The Secretary of Health and Human Services shall  
6 utilize amounts in the Public Health and Social Services  
7 Emergency Fund (as established in the Coronavirus Aid,  
8 Relief, and Economic Security Act (Public Law 116–136))  
9 to reimburse health care providers for the costs of pro-  
10 viding health care services for the diagnosis and treatment  
11 of COVID–19 for individuals who are not covered under  
12 a group health plan or other health insurance coverage.

13 **SEC. 9. ELECTRONIC REPORTING STANDARDS.**

14 (a) COMMITTEE.—

15 (1) IN GENERAL.—Not later than 30 days after  
16 the date of enactment of this Act, the Secretary of  
17 Health and Human Services shall convene a com-  
18 mittee to make recommendations to the Secretary on  
19 the expedited adoption of private sector standards  
20 (as defined in section 1171(7) of the Social Security  
21 Act (42 U.S.C. 1320d(7))) and the platform de-  
22 scribed in subsection (b).

23 (2) MEMBERSHIP.—The committee under para-  
24 graph (1) shall include representatives of—

1 (A) the Centers for Disease Control and  
2 Prevention;

3 (B) the Office of Civil Rights of the De-  
4 partment of Health and Human Services;

5 (C) the Office of the National Coordinator  
6 for Health Information Technology;

7 (D) the Department of Defense;

8 (E) the Department of Veterans Affairs;

9 (F) the Centers for Medicare & Medicaid  
10 Services; and

11 (G) standards development organizations  
12 defined under section 1171(8) of the Social Se-  
13 curity Act (42 U.S.C. 1320d(8)), including the  
14 National Council for Prescription Drug Pro-  
15 grams and Health Level 7.

16 (b) STANDARDS AND PLATFORM.—Not later than 60  
17 days after the date of the convening of the committee in  
18 subsection (a)(1), the committee shall recommend stand-  
19 ards, implementation guidelines, and the attributes of a  
20 health data platform that facilitates the real-time sharing  
21 of information for both public health and clinical health  
22 that allows for—

23 (1) interoperable electronic reporting standards  
24 for the sharing of electronic patient data, including

1 case reports, laboratory results, serology, immu-  
2 nology, and hospital capacity data;

3 (2) standardized electronic information report-  
4 ing for the automated e-reporting of COVID–19 or  
5 future epidemic surveillance results from health care  
6 providers, laboratories, and other sources to the  
7 Centers for Disease Control and Prevention and  
8 State and local departments of health;

9 (3) standardized immunization data that is  
10 shared with immunization registries, medication his-  
11 tory, and serology available at the point of care for  
12 clinicians; and

13 (4) a common platform for automated queries  
14 and responses from hospitals, physicians, and other  
15 prescribers and pharmacies to—

16 (A) collect, maintain, and provide to pre-  
17 scribers and dispensers, in real-time and within  
18 ordinary clinical workflow, information on pa-  
19 tient prescription and dispensing history, rel-  
20 evant clinical diagnoses, laboratory test results,  
21 vaccinations through pharmaceutical claims,  
22 and electronic prescribing data transactions to  
23 treat patients; and

24 (B) allow for the relevant information to  
25 be reported to public health officials for the

1           purposes of infectious disease surveillance, iden-  
2           tification, and containment consistent with any  
3           electronic case reporting system.

4           Such recommendations shall be prioritized in order  
5           of impact on improvements to public and clinical  
6           health.

7           (c) ADOPTION OF STANDARDS.—Not later than 90  
8           days after receipt of the recommendations under sub-  
9           section (b), and in consultation with American National  
10          Standards Institute Accredited Standards Development  
11          Organizations, the Secretary of Health and Human Serv-  
12          ices shall adopt priority standards and implementation  
13          specifications recommended by the committee under sub-  
14          section (a) on an expedited basis without regard to the  
15          process described in section 1174 of the Social Security  
16          Act (with respect to limits on the timeframe for adoption  
17          of the standards) (42 U.S.C. 1320d–3).

18          (d) ADOPTION OF PLATFORM.—Not later than 90  
19          days after receipt of the recommendations under sub-  
20          section (b) on a common platform as described in sub-  
21          section (b)(4), the Secretary of Health and Human Serv-  
22          ices shall enter into a contract with a private sector entity  
23          to establish such platform, which shall be available for use  
24          within 180 days of the date of such contract.

1       (e) REPORT.—Not later than 30 days after the date  
2 on which the committee established under subsection (a)  
3 makes recommendations for standards and the platform  
4 under subsection (b), the committee shall submit to the  
5 appropriate committees of Congress a report on such  
6 standards and platform, including any legislative changes  
7 that would be necessary to implement such standards and  
8 platform.

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