

116TH CONGRESS
2D SESSION

H. R. 8642

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

OCTOBER 20, 2020

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 2020”.

1 **SEC. 2. COVERAGE AND PAYMENT FOR CERTAIN TESTS**
2 **AND ASSISTIVE TELEHEALTH CONSULTA-**
3 **TIONS DURING THE COVID-19 EMERGENCY**
4 **PERIOD.**

5 (a) COVERAGE AND PAYMENT RULE.—

6 (1) IN GENERAL.—Section 1834(m) of the So-
7 cial Security Act (42 U.S.C. 1395m(m)) is amended
8 by adding at the end the following new paragraph:

9 “(9) COVERAGE AND PAYMENT FOR CERTAIN
10 TESTS AND ASSISTIVE TELEHEALTH CONSULTA-
11 TIONS DURING COVID–19 EMERGENCY PERIOD.—

12 “(A) IN GENERAL.—During the emergency
13 period described in section 1135(g)(1)(B), the
14 Secretary shall pay for a test described in sub-
15 paragraph (C) that is ordered and an assistive
16 telehealth consultation that is furnished via a
17 telecommunications system by a physician or
18 practitioner to an eligible telehealth individual
19 enrolled under this part notwithstanding that
20 the individual physician or practitioner ordering
21 the test did not furnish the test or that the in-
22 dividual physician or practitioner providing the
23 assistive telehealth consultation is not at the
24 same location as the beneficiary.

25 “(B) PAYMENT AMOUNT.—During the
26 emergency period described in section

1 1135(g)(1)(B), the Secretary shall pay to a
2 physician or practitioner located at a distant
3 site that—

4 “(i) orders a test described in sub-
5 paragraph (C) to an eligible telehealth in-
6 dividual an amount equal to the amount
7 that such physician or practitioner would
8 have been paid for a diagnostic laboratory
9 test under section 1833(h); and

10 “(ii) furnishes an assistive telehealth
11 consultation to an eligible telehealth indi-
12 vidual an amount equal to the amount that
13 a physician or practitioner would have been
14 paid for such telehealth service under para-
15 graph (2).

16 “(C) TESTS DESCRIBED.—For purposes of
17 subparagraphs (A) and (B), a test described in
18 this subparagraph is a medical device (as de-
19 fined in section 201(h) of the Federal Food,
20 Drug, and Cosmetic Act) or is a test approved
21 under an emergency use authorization under
22 section 564 of such Act and is either—

23 “(i) a diagnostic laboratory test for
24 the diagnosis of influenza or a similar res-
25 piratory condition that is required to ob-

tain 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.

1 “(iv) An affirmative or negative state-
2 ment of the existence of any chronic condi-
3 tion.

4 “(v) Any other information the Sec-
5 retary determines appropriate.

6 “(F) ASSISTIVE TELEHEALTH CONSULTA-
7 TION.—In this paragraph, the term ‘assistive
8 telehealth consultation’ means a telehealth serv-
9 ice (as defined in paragraph (4)(F)) that is—

10 “(i) an evaluation and management
11 service;

12 “(ii) an assessment of any evidence of
13 systems which would make a diagnostic
14 laboratory test necessary to be furnished in
15 the home of an eligible telehealth indi-
16 vidual;

17 “(iii) the ordering of a diagnostic lab-
18 oratory test;

19 “(iv) an assessment of an individual
20 succeeding the delivery of a diagnostic lab-
21 oratory test;

22 “(v) any assistance in the collection of
23 a sample necessary for a diagnostic labora-
24 tory test and securing the sample for ship-
25 ping;

1 “(vi) the referral of an eligible tele-
2 health individual to a physician or practi-
3 tioner for in-person treatment; or

4 “(vii) the review of a diagnostic lab-
5 oratory test by a physician or practi-
6 tioner.”.

7 (2) REPORT.—

8 (A) IN GENERAL.—During the period be-
9 ginning 20 days after the date of the enactment
10 of this Act and ending on the last day of the
11 emergency period, each physician and practi-
12 tioner, who furnishes a test or an assistive tele-
13 health consultation during such period, shall, on
14 a monthly basis during such period, submit to
15 the Administrator of the Centers for Medicare
16 & Medicaid Services and the appropriate State
17 health agency demographic data specified under
18 section 1834(m)(9)(E) of the Social Security
19 Act (42 U.S.C. 1395m(m)(9)(E)) with respect
20 to individuals to whom such test or consultation
21 was so furnished (in accordance with the
22 HIPAA privacy regulation).

23 (B) DEFINITIONS.—In this paragraph:

24 (i) ASSISTIVE TELEHEALTH CON-
25 SULTATION.—The term “assistive tele-

1 health consultation” has the meaning given
 2 such term in section 1834(m)(9)(E) of the
 3 Social Security Act (42 U.S.C.
 4 1395m(m)(9)(F)).

5 (ii) EMERGENCY PERIOD.—The term
 6 “emergency period” has the meaning as
 7 such term is described in section
 8 1135(g)(1)(B) of the Social Security Act
 9 (42 U.S.C. 1320b–5(g)(1)(B)).

10 (iii) HIPAA PRIVACY REGULATION.—
 11 The term “HIPAA privacy regulation” has
 12 the meaning given such term in section
 13 1180(b)(3) of the Social Security Act (42
 14 U.S.C. 1320d–9(b)(3)).

15 (iv) TEST.—The term “test” has the
 16 meaning as such term is described in sec-
 17 tion 1834(m)(9)(C) of the Social Security
 18 Act (42 U.S.C. 1395m(m)(9)(C)).

19 (b) NO PAYMENT FOR CERTAIN IN-PERSON TEST
 20 AFTER TELEHEALTH TEST DURING THE COVID–19
 21 EMERGENCY PERIOD.—

22 (1) IN GENERAL.—Section 1833(h) of the So-
 23 cial Security Act (42 U.S.C. 1395l(h)) is amended—

24 (A) in paragraph (1)(A), by striking “Sub-
 25 ject to section 1834(d)(1)” and inserting “Sub-

1 ject to section 1834(a)(1) and paragraph (10)”;
2 and

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

5 “(10) During the emergency period described in sec-
6 tion 1135(g)(1)(B), the Secretary may not make payment
7 for a test described in section 1834(m)(9)(C) that is fur-
8 nished in-person by a physician or practitioner to an indi-
9 vidual if a physician or practitioner has previously ordered
10 such a test via a telecommunications system pursuant to
11 section 1834(m)(9)(A), unless the physician or practi-
12 tioner determines such a test is medically necessary and
13 appropriate (as determined by the Secretary).”.

14 (2) REPORT.—Not later than 1 year after the
15 termination of the emergency period described in
16 section 1135(g)(1)(B) of the Social Security Act (42
17 U.S.C. 1320b–5(g)(1)(B)), the Inspector General of
18 the Department of Health and Human Services shall
19 review claims for payment for tests described in sec-
20 tion 1834(m)(9)(C) of such Act (42 U.S.C.
21 1395m(m)(9)(C)) furnished during such emergency
22 period and submit to Congress a report on any in-
23 stances of waste, fraud, or abuse identified through
24 such review.

1 (c) CONFORMING AMENDMENTS.—Section 1834(m)
2 of the Social Security Act (42 U.S.C.
3 1395m(m)(4)(C)(ii)(X)), as amended by subsection (a), is
4 further amended—

5 (1) in paragraph (1), by striking “Subject to
6 paragraph (8)” and inserting “Subject to para-
7 graphs (8) and (9)”;

8 (2) in paragraph (2), by striking “Subject to
9 paragraph (8)” and inserting “Subject to para-
10 graphs (8) and (9)”; and

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

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