

117TH CONGRESS
2D SESSION

H. R. 7573

To amend titles XI and XVIII of the Social Security Act to extend certain telehealth services covered by Medicare and to evaluate the impact of telehealth services on Medicare beneficiaries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2022

Mrs. AXNE (for herself and Mr. HUDSON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and the Judiciary, 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 titles XI and XVIII of the Social Security Act to extend certain telehealth services covered by Medicare and to evaluate the impact of telehealth services on Medicare beneficiaries, 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; TABLE OF CONTENTS.**

4 (a) IN GENERAL.—This Act may be cited as the
5 “Telehealth Extension and Evaluation Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Extension of telehealth services.
- Sec. 3. Temporary requirements for provision of high-cost durable medical equipment and laboratory tests.
- Sec. 4. Requirement to submit NPI number for telehealth billing.
- Sec. 5. Federally qualified health centers and rural health clinics.
- Sec. 6. Telehealth flexibilities for critical access hospitals.
- Sec. 7. Use of telehealth for the dispensing of controlled substances by means of the internet.
- Sec. 8. Study on the effects of changes to telehealth under the Medicare and Medicaid programs during the COVID–19 emergency.
- Sec. 9. Extension of authority for audio-only telehealth services under the Medicare program.

SEC. 2. EXTENSION OF TELEHEALTH SERVICES.

Section 1135(e) of the Social Security Act (42 U.S.C. 1320b–5(e)) is amended by adding at the end the following new paragraph:

“(3) TWO-YEAR EXTENSION OF TELEHEALTH SERVICES FOLLOWING THE COVID–19 EMERGENCY PERIOD.—Notwithstanding any other provision of this section, a waiver or modification of requirements pursuant to subsection (b)(8) shall terminate on the date that is 2 years after the last day of the emergency period described in subsection (g)(1)(B).”.

SEC. 3. TEMPORARY REQUIREMENTS FOR PROVISION OF HIGH-COST DURABLE MEDICAL EQUIPMENT AND LABORATORY TESTS.

(a) HIGH-COST DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(1)(E) of the Social Security Act (42

1 U.S.C. 1395m(a)(1)(E)) is amended by adding at the end
2 the following new clauses:

3 “(vi) STANDARDS FOR HIGH-COST DU-
4 RABLE MEDICAL EQUIPMENT.—

5 “(I) LIMITATION ON PAYMENT
6 FOR HIGH-COST DURABLE MEDICAL
7 EQUIPMENT.—During the 2-year pe-
8 riod beginning on the day after the
9 last day of the emergency period de-
10 scribed in section 1135(g)(1)(B), pay-
11 ment may not be made under this
12 subsection for high-cost durable med-
13 ical equipment ordered by a physician
14 or other practitioner described in
15 clause (ii) via telehealth for an indi-
16 vidual, unless such physician or prac-
17 titioner furnished to such individual a
18 service in person at least once during
19 the 12-month period prior to ordering
20 such high-cost durable medical equip-
21 ment.

22 “(II) HIGH-COST DURABLE MED-
23 ICAL EQUIPMENT DEFINED.—For
24 purposes of this clause, the term
25 ‘high-cost durable medical equipment’

1 means, with respect to a year, durable
2 medical equipment for which payment
3 may be made under paragraphs (2)
4 through (8), the price under the clin-
5 ical lab fee schedule which for such
6 year is in the highest quartile of na-
7 tional purchase prices of durable med-
8 ical equipment payable for such year.

9 “(vii) AUDIT OF PROVIDERS AND
10 PRACTITIONERS FURNISHING A HIGH VOL-
11 UME OF DURABLE MEDICAL EQUIPMENT
12 VIA TELEHEALTH.—

13 “(I) IDENTIFICATION OF PRO-
14 VIDERS.—During the 2-year period
15 beginning on the day after the last
16 day of the emergency period described
17 in section 1135(g)(1)(B), Medicare
18 administrative contractors shall con-
19 duct reviews, on a schedule deter-
20 mined by the Secretary, of claims for
21 durable medical equipment prescribed
22 by a physician or other practitioner
23 described in clause (ii) during the 12-
24 month period preceding such review to
25 identify physicians or other practi-

1 tioners with respect to whom at least
2 90 percent of all durable medical
3 equipment prescribed by such physi-
4 cian or practitioner during such pe-
5 riod was prescribed pursuant to a
6 telehealth visit.

7 “(II) AUDIT.—In the case of a
8 physician or practitioner identified
9 under subclause (I), with respect to a
10 12-month period described in such
11 subclause, the Medicare administra-
12 tive contractors shall conduct audits
13 of all claims for durable medical
14 equipment prescribed by such physi-
15 cians or practitioners to determine
16 whether such claims comply with the
17 requirements for coverage under this
18 title.”.

19 (b) HIGH-COST LABORATORY TESTS.—Section
20 1834A(b) of the Social Security Act (42 U.S.C. 1395m-
21 1(b)) is amended by adding at the end the following new
22 paragraphs:

23 “(6) REQUIREMENT FOR HIGH-COST LABORA-
24 TORY TESTS.—

“(A) LIMITATION ON PAYMENT FOR HIGH-COST LABORATORY TESTS.—During the 2-year period beginning on the day after the last day of the emergency period described in section 1135(g)(1)(B), payment may not be made under this subsection for a high-cost laboratory test ordered by a physician or practitioner via telehealth for an individual, unless such physician or practitioner furnished to such individual a service in person at least once during the 12-month period prior to ordering such high-cost laboratory test.

“(B) HIGH-COST LABORATORY TEST DEFINED.—For purposes of this paragraph, the term ‘high-cost laboratory test’ means, with respect to a year, a laboratory test for which payment may be made under this section, and the purchase price of which for such year is in the highest quartile of purchase prices of laboratory tests for such year.

“(7) AUDIT OF LABORATORY TESTING ORDERED PURSUANT TO TELEHEALTH VISIT.—

“(A) IDENTIFICATION OF PROVIDERS.—During the 2-year period beginning on the day after the last day of the emergency period de-

scribed in section 1135(g)(1)(B), Medicare administrative contractors shall conduct periodic reviews, on a schedule determined by the Secretary, of claims for laboratory tests prescribed by a physician or practitioner during the 12-month period preceding such review to identify physicians or other practitioners with respect to whom at least 90 percent of all laboratory tests prescribed by such physician or practitioner during such period were prescribed pursuant to a telehealth visit.

“(B) AUDIT.—In the case of a physician or practitioner identified under subparagraph (A), with respect to a 12-month period described in such subparagraph, the Medicare administrative contractors shall conduct audits of all claims for laboratory tests prescribed by such physicians or practitioners during such period to determine whether such claims comply with the requirements for coverage under this title.”.

**SEC. 4. REQUIREMENT TO SUBMIT NPI NUMBER FOR TELE-
HEALTH BILLING.**

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

1 (1) in the first sentence of paragraph (1), by
2 striking “paragraphs (8) and (9)” and inserting
3 “paragraphs (8), (9), and (10)”; and

4 (2) by adding at the end the following new
5 paragraph:

6 “(10) REQUIREMENT TO SUBMIT NPI NUMBER
7 FOR TELEHEALTH BILLING.—During the 2-year pe-
8 riod beginning on the day after the last day of the
9 emergency period described in section
10 1135(g)(1)(B), payment may not be made under
11 this subsection for telehealth services furnished by a
12 health care professional eligible to bill Medicare for
13 their professional services unless such health care
14 professional submits a claim for payment—

15 “(A) under the national provider identifica-
16 tion number assigned to such health care pro-
17 fessional;

18 “(B) in the case of services provided under
19 section 1833(a)(8), under the facility identifica-
20 tion number; or

21 “(C) in the case of occupational therapy
22 assistants or physical therapy assistants in pri-
23 vate practice, under the national provider iden-
24 tification of the supervising therapist.”.

1 **SEC. 5. FEDERALLY QUALIFIED HEALTH CENTERS AND**
2 **RURAL HEALTH CLINICS.**

3 Section 1834(m)(8) of the Social Security Act (42
4 U.S.C. 1395m(m)(8)) is amended—

5 (1) in subparagraph (A), in the matter pre-
6 ceding clause (i), by striking “the 151-day period”
7 and inserting “the 2-year period”; and

8 (2) by striking subparagraph (B) and inserting
9 the following:

10 “(B) PAYMENT.—

11 “(i) IN GENERAL.—A telehealth serv-
12 ice furnished by a Federally qualified
13 health center or a rural health clinic to an
14 individual pursuant to this paragraph on
15 or after the date of the enactment of this
16 subparagraph shall be deemed to be so fur-
17 nished to such individual as an outpatient
18 of such clinic or facility (as applicable) for
19 purposes of paragraph (1) or (3), respec-
20 tively, of section 1861(aa) and payable as
21 a Federally qualified health center service
22 or rural health clinic service (as applicable)
23 under the prospective payment system es-
24 tablished under section 1834(o) or under
25 section 1833(a)(3), respectively.

1 “(ii) TREATMENT OF COSTS FOR
 2 FQHC PPS CALCULATIONS AND RHC AIR
 3 CALCULATIONS.—Costs associated with the
 4 delivery of telehealth services by a Feder-
 5 ally qualified health center or rural health
 6 clinic serving as a distant site pursuant to
 7 this paragraph shall be considered allow-
 8 able costs for purposes of the prospective
 9 payment system established under section
 10 1834(o) and any payment methodologies
 11 developed under section 1833(a)(3), as ap-
 12 plicable.”.

13 **SEC. 6. TELEHEALTH FLEXIBILITIES FOR CRITICAL ACCESS**
 14 **HOSPITALS.**

15 Section 1834(m) of the Social Security Act (42
 16 U.S.C. 1395m(m)), as amended by section 4, is amend-
 17 ed—

18 (1) in the first sentence of paragraph (1), by
 19 striking “and (10)” and inserting “, (10), and
 20 (11)”;

21 (2) in paragraph (2)(A), by striking “paragraph
 22 (8)” and inserting “paragraphs (8) and (11)”;

23 (3) in paragraph (4)—

1 (A) in subparagraph (A), by striking
2 “paragraph (8)” and inserting “paragraphs (8)
3 and (11)”;

4 (B) in subparagraph (F)(i), by striking
5 “paragraph (8)” and inserting “paragraphs (8)
6 and (11)”;

7 (4) by adding at the end the following new
8 paragraph:

9 “(11) TELEHEALTH FLEXIBILITIES FOR CRIT-
10 ICAL ACCESS HOSPITALS.—

11 “(A) IN GENERAL.—During the period be-
12 ginning on the date of the enactment of this
13 paragraph and ending on the date that is 2
14 years after the end of the emergency period de-
15 scribed in section 1135(g)(1)(B), the following
16 shall apply:

17 “(i) The Secretary shall pay for tele-
18 health services that are furnished via a
19 telecommunications system by a critical ac-
20 cess hospital, including any practitioner
21 authorized to provide such services within
22 the facility, that is a qualified provider (as
23 defined in subparagraph (B)) to an eligible
24 telehealth individual enrolled under this
25 part notwithstanding that the critical ac-

1 cess hospital providing the telehealth serv-
2 ice is not at the same location as the bene-
3 ficiary, if such services complement a plan
4 of care that includes in-person care at
5 some point, as may be appropriate.

6 “(ii) The amount of payment to a
7 critical access hospital that serves as a dis-
8 tant site for such a telehealth service shall
9 be determined under subparagraph (B).

10 “(iii) For purposes of this sub-
11 section—

12 “(I) the term ‘distant site’ in-
13 cludes a critical access hospital that
14 furnishes a telehealth service to an eli-
15 gible telehealth individual;

16 “(II) the term ‘qualified provider’
17 means, with respect to a telehealth
18 service described in clause (i) that is
19 furnished to an eligible telehealth in-
20 dividual, a critical access hospital that
21 has an established patient relationship
22 with such individual as defined by the
23 State in which the individual is lo-
24 cated; and

1 “(III) the term ‘telehealth serv-
2 ices’ includes behavioral health serv-
3 ices and any other outpatient critical
4 access hospital service that is fur-
5 nished using telehealth to the extent
6 that payment codes corresponding to
7 services identified by the Secretary
8 under clause (i) or (ii) of paragraph
9 (4)(F) are listed on the corresponding
10 claim for such critical access hospital
11 service.

12 “(B) PAYMENT.—For purposes of sub-
13 paragraph (A)(ii), the amount of payment to a
14 critical access hospital that serves as a distant
15 site that furnishes a telehealth service to an eli-
16 gible telehealth individual under this paragraph
17 shall be equal to 101 percent of the reasonable
18 costs of the hospital in providing such services,
19 unless the hospital makes an election under
20 paragraph (2) of section 1834(g) to be paid for
21 such services based on the methodology de-
22 scribed in such paragraph. Telehealth services
23 furnished by a critical access hospital shall be
24 counted for purposes of determining the pro-
25 vider productivity rate of the critical access hos-

1 pital for purposes of payment under such sec-
2 tion.

3 “(C) IMPLEMENTATION.—Notwithstanding
4 any other provision of law, the Secretary may
5 implement this paragraph through program in-
6 struction, interim final rule, or otherwise.”.

7 **SEC. 7. USE OF TELEHEALTH FOR THE DISPENSING OF**
8 **CONTROLLED SUBSTANCES BY MEANS OF**
9 **THE INTERNET.**

10 Section 309(e)(2) of the Controlled Substances Act
11 (21 U.S.C. 829(e)(2)) is amended—

12 (1) in subparagraph (A)(i)—

13 (A) by striking “at least 1 in-person med-
14 ical evaluation” and inserting the following: “at
15 least—

16 “(I) 1 in-person medical evalua-
17 tion”; and

18 (B) by adding at the end the following:

19 “(II) during the period beginning
20 on the date of the enactment of this
21 subclause and ending on the date that
22 is 2 years after the end of the emer-
23 gency period described in section
24 1135(g)(1)(B) of the Social Security
25 Act (42 U.S.C. 1320b–5(g)(1)(B)),

1 for purposes of prescribing a con-
2 trolled substance in schedules II
3 through V, 1 telehealth evaluation;
4 or”; and

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

6 “(D)(i) The term ‘telehealth evaluation’
7 means a medical evaluation that is conducted in
8 accordance with applicable Federal and State
9 laws by a practitioner (other than a phar-
10 macist) who is at a location remote from the
11 patient and is communicating with the patient
12 using a telecommunications system referred to
13 in section 1834(m) of the Social Security Act
14 (42 U.S.C. 1395m(m)) that includes, at a min-
15 imum, audio and video equipment permitting
16 two-way, real-time interactive communication
17 between the patient and distant site practi-
18 tioner.

19 “(ii) Nothing in clause (i) shall be con-
20 strued to imply that 1 telehealth evaluation
21 demonstrates that a prescription has been
22 issued for a legitimate medical purpose within
23 the usual course of professional practice.

24 “(iii) A practitioner who prescribes the
25 drugs or combination of drugs that are covered

1 under section 303(g)(2)(C) using the authority
2 under subparagraph (A)(i)(II) of this para-
3 graph shall adhere to nationally recognized evi-
4 dence-based guidelines for the treatment of pa-
5 tients with opioid use disorders and a diversion
6 control plan, as those terms are defined in sec-
7 tion 8.2 of title 42, Code of Federal Regula-
8 tions, as in effect on the date of enactment of
9 this subparagraph.”.

10 **SEC. 8. STUDY ON THE EFFECTS OF CHANGES TO TELE-**
11 **HEALTH UNDER THE MEDICARE AND MED-**
12 **ICAID PROGRAMS DURING THE COVID-19**
13 **EMERGENCY.**

14 (a) IN GENERAL.—Not later than 1 year after the
15 date of the enactment of this Act, the Secretary of Health
16 and Human Services (in this section referred to as the
17 “Secretary”) shall conduct a study and submit to the
18 Committee on Energy and Commerce and the Committee
19 on Ways and Means of the House of Representatives and
20 the Committee on Finance of the Senate an interim report
21 on any changes made to the provision or availability of
22 telehealth services under part A or B of title XVIII of
23 the Social Security Act (including by reason of the amend-
24 ments made to the Controlled Substances Act under sec-
25 tion 7) since the start of the emergency period described

1 in section 1135(g)(1)(B) of the Social Security Act (42
2 U.S.C. 1320b–5(g)(1)(B)). Such report shall include the
3 following:

4 (1) A summary of utilization of all health care
5 services furnished under such part A or B during
6 such emergency period, including the number of tele-
7 health visits (broken down by service type, the num-
8 ber of such visits furnished via audio-visual tech-
9 nology, the number of such visits furnished via
10 audio-only technology, and the number of such visits
11 furnished by a Federally qualified health center,
12 rural health clinic, or community health center, re-
13 spectively, if practicable), in-person outpatient visits,
14 inpatient admissions, and emergency department vis-
15 its.

16 (2) A description of any changes in utilization
17 patterns for the care settings described in paragraph
18 (1) over the course of such emergency period com-
19 pared to such patterns prior to such emergency pe-
20 riod.

21 (3) An analysis of utilization of telehealth serv-
22 ices under such part A or B during such emergency
23 period, broken down by race and ethnicity, geo-
24 graphic region, and income level (as measured di-
25 rectly or indirectly, such as by patient’s zip code tab-

1 ulation area median income as publicly reported by
2 the United States Census Bureau), and of any
3 trends in such utilization during such emergency pe-
4 riod, so broken down. Such analysis may not include
5 any personally identifiable information or protected
6 health information.

7 (4) A description of expenditures and any sav-
8 ings under such part A or B attributable to use of
9 such telehealth services during such emergency pe-
10 riod.

11 (5) A description of any instances of fraud
12 identified by the Secretary, acting through the Office
13 of the Inspector General or other relevant agencies
14 and departments, with respect to such telehealth
15 services furnished under such part A or B during
16 such emergency period and a comparison of the
17 number of such instances with the number of in-
18 stances of fraud so identified with respect to in-per-
19 son services so furnished during such emergency pe-
20 riod.

21 (6) A description of any privacy concerns with
22 respect to the furnishing of such telehealth services
23 (such as cybersecurity or ransomware concerns), in-
24 cluding a description of any actions taken by the
25 Secretary, acting through the Health Sector Cyber-

1 security Coordination Center or other relevant agen-
2 cies and departments, during such emergency period
3 to assist health care providers secure telecommuni-
4 cations systems.

5 (7) Identification of common ICD–10 codes
6 billed via telehealth, comparing measures of quality
7 and outcomes between telehealth care and in-person
8 care for the same category of service.

9 (8) Recommendations regarding the perma-
10 nency of the waivers and authorities under the provi-
11 sions of, and amendments made by, this Act.

12 (b) CONSULTATION.—In conducting the study and
13 submitting the report under subsection (a), the Sec-
14 retary—

15 (1) shall consult with—

16 (A) the Medicaid and CHIP Payment and
17 Access Commission;

18 (B) the Medicare Payment Advisory Com-
19 mission;

20 (C) the Office of Inspector General of the
21 Department of Health and Human Services;
22 and

23 (D) other stakeholders determined appro-
24 priate by the Secretary, such as patients, tribal
25 communities, medical professionals, health fa-

1 cilities, State medical boards, State nursing
 2 boards, telehealth providers, health professional
 3 liability providers, public and private payers,
 4 and State leaders; and

5 (2) shall endeavor to include as many racially,
 6 ethnically, geographically, and professionally diverse
 7 perspectives as possible.

8 (c) FINAL REPORT.—Not later than 18 months after
 9 the end of the emergency period described in section
 10 1135(g)(1)(B) of the Social Security Act (42 U.S.C.
 11 1320b–5(g)(1)(B)), the Secretary shall—

12 (1) update and finalize the interim report under
 13 subsection (a); and

14 (2) submit such updated and finalized report to
 15 the committees specified in such subsection.

16 (d) GRANTS FOR MEDICAID REPORTS.—

17 (1) IN GENERAL.—Not later than January 1,
 18 2023, the Secretary shall award grants to States
 19 with a State plan (or waiver of such plan) in effect
 20 under title XIX of the Social Security Act (42
 21 U.S.C. 1396r) that submit an application under this
 22 subsection for purposes of enabling such States to
 23 study and submit reports to the Secretary on any
 24 changes made to the provision or availability of tele-

1 health services under such plans (or such waivers)
2 during such period.

3 (2) ELIGIBILITY.—To be eligible to receive a
4 grant under paragraph (1), a State shall—

5 (A) provide benefits for telehealth services
6 under the State plan (or waiver of such plan)
7 in effect under title XIX of the Social Security
8 Act (42 U.S.C. 1396r);

9 (B) be able to differentiate telehealth from
10 in-person visits within claims data submitted
11 under such plan (or such waiver) during such
12 period; and

13 (C) submit to the Secretary an application
14 at such time, in such manner, and containing
15 such information (including the amount of the
16 grant requested) as the Secretary may require.

17 (3) USE OF FUNDS.—A State shall use
18 amounts received under a grant under this sub-
19 section to conduct a study and report findings re-
20 garding the effects of changes to telehealth services
21 offered under the State plan (or waiver of such plan)
22 of such State under title XIX of the Social Security
23 Act (42 U.S.C. 1396 et seq.) during such period in
24 accordance with paragraph (4).

25 (4) REPORTS.—

1 (A) INTERIM REPORT.—Not later 1 year
2 after the date a State receives a grant under
3 this subsection, the State shall submit to the
4 Secretary an interim report that—

5 (i) details any changes made to the
6 provision or availability of telehealth bene-
7 fits (such as eligibility, coverage, or pay-
8 ment changes) under the State plan (or
9 waiver of such plan) of the State under
10 title XIX of the Social Security Act (42
11 U.S.C. 1396 et seq.) during the emergency
12 period described in paragraph (1); and

13 (ii) contains—

14 (I) a summary and description of
15 the type described in paragraphs (1)
16 and (2), respectively, of subsection
17 (a); and

18 (II) to the extent practicable, an
19 analysis of the type described in para-
20 graph (3) of subsection (a),
21 except that any reference in such sub-
22 section to “such part A or B” shall, for
23 purposes of subclauses (I) and (II), be
24 treated as a reference to such State plan
25 (or waiver).

1 (B) FINAL REPORT.—Not later than 3
2 years after the date a State receives a grant
3 under this subsection, the State shall update
4 and finalize the interim report and submit such
5 final report to the Secretary.

6 (C) REPORT BY SECRETARY.—Not later
7 than the earlier of the date that is 1 year after
8 the submission of all final reports under sub-
9 paragraph (B) and December 31, 2027, the
10 Secretary shall submit to Congress a report on
11 the grant program, including a summary of the
12 reports received from States under this para-
13 graph.

14 (5) MODIFICATION AUTHORITY.—The Secretary
15 may modify any deadline described in paragraph (4)
16 or any information required to be included in a re-
17 port made under this subsection to provide flexibility
18 for States to modify the scope of the study and
19 timeline for such reports.

20 (6) TECHNICAL ASSISTANCE.—The Secretary
21 shall provide such technical assistance as may be
22 necessary to a State receiving a grant under this
23 subsection in order to assist such State in con-
24 ducting studies and submitting reports under this
25 subsection.

1 (7) STATE.—For purposes of this subsection,
2 the term “State” means each of the several States,
3 the District of Columbia, and each territory of the
4 United States.

5 (e) AUTHORIZATION OF APPROPRIATIONS.—

6 (1) MEDICARE.—For the purpose of carrying
7 out subsections (a) through (c), there are authorized
8 to be appropriated such sums as may be necessary
9 for each of fiscal years 2022 through 2026.

10 (2) MEDICAID.—For the purpose of carrying
11 out subsection (d), there are authorized to be appro-
12 priated such sums as may be necessary for each of
13 fiscal years 2023 through 2027.

14 **SEC. 9. EXTENSION OF AUTHORITY FOR AUDIO-ONLY TELE-**
15 **HEALTH SERVICES UNDER THE MEDICARE**
16 **PROGRAM.**

17 Paragraph (9) of section 1834(m) of the Social Secu-
18 rity Act (42 U.S.C. 1395m(m)) is amended by striking
19 “151-day period” and inserting “2-year period”.

○