117TH CONGRESS
1ST SESSION

S. _____

To amend title XVIII of the Social Security Act to expand access to telehealth services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. SCHATZ (for himself, Mr. WICKER, Mr. CARDIN, Mr. THUNE, Mr. WARNER, Mrs. HYDE-SMITH, Mr. TESTER, Mr. PORTMAN, Mr. HEINRICH, Ms. MURKOWSKI, Mr. WHITEHOUSE, Mr. DAINES, Mr. MURPHY, Mr. SCOTT of South Carolina, Mr. KING, Mr. TILLIS, Mr. CARPER, Mr. CRAMER, Ms. SMITH, Mr. SASSE, Mr. VAN HOLLEN, Ms. COLLINS, Ms. HASSAN, Mr. BARRASSO, Mrs. SHAHEEN, Mr. BOOZMAN, Ms. KLOBUCHAR, Mrs. CAPITO, Mr. BLUMENTHAL, Mr. INHOFE, Mr. KAINE, Mr. COTTON, Mr. LEAHY, Ms. ERNST, Ms. SINEMA, Mr. MORAN, Mr. SANDERS, Mr. SULLIVAN, Mr. COONS, Mr. HOEVEN, Mr. WARNOCK, Mr. BLUNT, Mr. BENNET, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title XVIII of the Social Security Act to expand access to telehealth services, 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) SHORT TITLE.—This Act may be cited as the ''Creating Opportunities Now for Necessary and Effective

Care Technologies (CONNECT) for Health Act of 2021'' or the ''CONNECT for Health Act of 2021''.

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

SEC. 2. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—Congress finds the following:

(1) The use of technology in health care and coverage of telehealth services are rapidly evolving.

(2) Research has found that telehealth services can expand access to care, improve the quality of care, and reduce spending, and that patients receiv-

ing telehealth services are satisfied with their experiences.

(3) Health care workforce shortages are a significant problem in many areas and for many types of health care clinicians.

(4) Telehealth increases access to care in areas with workforce shortages and for individuals who live far away from health care facilities, have limited mobility or transportation, or have other barriers to accessing care.

(5) The use of health technologies can strengthen the expertise of the health care workforce, including by connecting clinicians to specialty consultations.

(6) Prior to the COVID–19 pandemic, the utilization of telehealth services in the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) was low, with only 0.25 percent of Medicare fee-for-service beneficiaries utilizing telehealth services in 2016.

(7) The COVID–19 pandemic demonstrated additional benefits of telehealth, including reducing infection risk of patients and health care professionals and conserving space in health care facilities, and the Centers for Disease Control and Prevention rec-

ommended that telehealth services should be optimized, when available and appropriate, during the pandemic.

(8) Long-term certainty about coverage of telehealth services under the Medicare program is necessary to fully realize the benefits of telehealth.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) health care providers can furnish safe, effective, and high-quality health care services through telehealth;

(2) the Secretary of Health and Human Services should promptly take all necessary measures to ensure that providers and beneficiaries can continue to furnish and utilize, respectively, telehealth services in the Medicare program during and after the conclusion of the COVID–19 pandemic, including modifying, as appropriate, the definition of ''interactive telecommunications system'' in regulations and program instruction under the Medicare program to ensure that providers can utilize all appropriate means and types of technology, including audio-visual, audio-only, and other types of technologies, to furnish telehealth services; and

(3) barriers to the use of telehealth should be removed.

TITLE I—REMOVING BARRIERS TO TELEHEALTH COVERAGE

SEC. 101. EXPANDING THE USE OF TELEHEALTH THROUGH THE WAIVER OF REQUIREMENTS.

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

(1) in paragraph (4)(C)(i), by striking ''and (7)'' and inserting ''(7), and (9)''; and

(2) by adding at the end the following:

''(9) AUTHORITY TO WAIVE REQUIREMENTS AND LIMITATIONS.—

''(A) IN GENERAL.—Notwithstanding the preceding provisions of this subsection, in the case of telehealth services furnished on or after January 1, 2022, the Secretary may waive any requirement described in subparagraph (B) that is applicable to payment for telehealth services under this subsection, but only if the Secretary determines that such waiver would not adversely impact quality of care.

''(B) REQUIREMENTS DESCRIBED.—For purposes of this paragraph, requirements appli-

cable to payment for telehealth services under this subsection are—

"(i) requirements relating to qualifications for an originating site under paragraph (4)(C)(ii);

"(ii) any geographic requirement under paragraph (4)(C)(i) (other than applicable State law requirements, including State licensure requirements);

"(iii) any limitation on the type of technology used to furnish telehealth services;

"(iv) any limitation on the types of practitioners who are eligible to furnish telehealth services (other than the requirement that the practitioner is enrolled under this title);

"(v) any limitation on specific services designated as telehealth services pursuant to this subsection (provided the Secretary determines that such services are clinically appropriate to furnish remotely); or

"(vi) any other limitation relating to the furnishing of telehealth services under this title identified by the Secretary.

"(C) WAIVER IMPLEMENTATION.—In implementing a waiver under this paragraph, the Secretary may establish parameters, as appropriate, for telehealth services under such waiver, including with respect to payment of a facility fee for originating sites and beneficiary and program integrity protections.

"(D) PUBLIC COMMENT.—The Secretary shall establish a process by which stakeholders may (on at least an annual basis) provide public comment on waivers under this paragraph.

"(E) PERIODIC REVIEW OF WAIVERS.—The Secretary shall periodically, but not more often than every 3 years, reassess each waiver under this paragraph to determine whether the waiver continues to meet the quality of care condition applicable under subparagraph (A). The Secretary shall terminate any waiver that does not continue to meet such condition.".

(b) POSTING OF INFORMATION.—Not later than 2 years after the date on which a waiver under section 1834(m)(9) of the Social Security Act, as added by subsection (a), first becomes effective, and at least every 2 years thereafter, the Secretary of Health and Human

Services shall post on the Internet website of the Centers for Medicare & Medicaid Services—

(1) the number of Medicare beneficiaries receiving telehealth services by reason of each waiver under such section;

(2) the impact of such waivers on expenditures and utilization under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

(3) other outcomes, as determined appropriate by the Secretary.

SEC. 102. REMOVING GEOGRAPHIC REQUIREMENTS FOR TELEHEALTH SERVICES.

Section 1834(m)(4)(C) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)), as amended by section 101, is amended—

(1) in clause (i), in the matter preceding subclause (I), by inserting ''and clause (iii)'' after ''and (9)''; and

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

''(iii) REMOVAL OF GEOGRAPHIC REQUIREMENTS.—The geographic requirements described in clause (i) shall not apply with respect to telehealth services

furnished on or after the date of the enactment of this clause.''.

SEC. 103. EXPANDING ORIGINATING SITES.

(a) EXPANDING THE HOME AS AN ORIGINATING SITE.—Section 1834(m)(4)(C)(ii)(X) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)(ii)(X)) is amended to read as follows:

''(X)(aa) Prior to the date of enactment of the CONNECT for Health Act of 2021, the home of an individual but only for purposes of section 1881(b)(3)(B) or telehealth services described in paragraph (7).

''(bb) On or after such date of enactment, the home of an individual.''.

(b) ALLOWING ADDITIONAL ORIGINATING SITES.—Section 1834(m)(4)(C)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)(ii)) is amended by adding at the end the following new subclause:

''(XII) Any other site determined appropriate by the Secretary at which an eligible telehealth individual is located at the time a telehealth service

is furnished via a telecommunications system.''.

(c) PARAMETERS FOR NEW ORIGINATING SITES.—Section 1834(m)(4)(C) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)), as amended by section 102, is amended by adding at the end the following new clause:

''(iv) REQUIREMENTS FOR NEW SITES.—

''(I) IN GENERAL.—The Secretary may establish requirements for the furnishing of telehealth services at sites described in clause (ii)(XII) to provide for beneficiary and program integrity protections.

''(II) CLARIFICATION.—Nothing in this clause shall be construed to preclude the Secretary from establishing requirements for other originating sites described in clause (ii)''.

(d) NO ORIGINATING SITE FACILITY FEE FOR NEW SITES.—Section 1834(m)(2)(B)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(2)(B)(ii)) is amended—

(1) in the heading, by striking ''IF ORIGINATING SITE IS THE HOME'' and inserting ''FOR CERTAIN SITES''; and

(2) by striking ''paragraph (4)(C)(ii)(X)'' and inserting ''subclause (X) or (XII) of paragraph (4)(C)''.

SEC. 104. USE OF TELEHEALTH IN EMERGENCY MEDICAL CARE.

(a) IN GENERAL.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), as amended by sections 101 and 102, is amended—

(1) in paragraph (4)(C)(i), by striking ''and (9)'' and inserting ''(9), and (10)''; and

(2) by adding at the end the following:

''(10) TREATMENT OF EMERGENCY MEDICAL CARE FURNISHED THROUGH TELEHEALTH.—The geographic requirements described in paragraph (4)(C)(i) (other than applicable State law requirements, including State licensure requirements) shall not apply with respect to telehealth services that are services for emergency medical care (as determined by the Secretary) furnished on or after January 1, 2022, to an eligible telehealth individual.''.

(b) ADDITIONAL SERVICES.—As part of the implementation of the amendments made by this section, the Secretary of Health and Human Services shall consider whether additional services should be added to the services specified in paragraph (4)(F)(i) of section 1834(m) of

such Act (42 U.S.C. 1395m)) for authorized payment under paragraph (1) of such section.

SEC. 105. IMPROVEMENTS TO THE PROCESS FOR ADDING TELEHEALTH SERVICES.

(a) REVIEW.—The Secretary shall undertake a review of the process established pursuant to section 1834(m)(4)(F)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(4)(F)(ii)), and based on the results of such review—

(1) implement revisions to the process so that the criteria to add services prioritizes, as appropriate, improved access to care through clinically appropriate telehealth services; and

(2) provide clarification on what requests to add telehealth services under such process should include.

(b) TEMPORARY COVERAGE OF CERTAIN TELEHEALTH SERVICES.—Section 1834(m)(4)(F) of the Social Security Act (42 U.S.C. 1395m(m)(4)(F)) is amended by adding at the end the following new clause:

"(iii) TEMPORARY COVERAGE OF CERTAIN TELEHEALTH SERVICES.—The Secretary may add services with a reasonable potential likelihood of clinical benefit and improved access to care when furnished via

a telecommunications system (as determined by the Secretary) on a temporary basis to those specified in clause (i) for authorized payment under paragraph (1).''.

SEC. 106. FEDERALLY QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.

Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), as amended by sections 101, 102, and 104, is amended—

(1) in paragraph (4)(C)(i), in the matter preceding subclause (I), by inserting '', (8)'' after ''(7)''; and

(2) in paragraph (8)—

(A) in the paragraph heading by inserting ''AND AFTER'' after ''DURING '';

(B) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting ''and after such emergency period'' after ''1135(g)(1)(B)'';

(ii) in clause (ii), by striking ''and'' at the end;

(iii) by redesignating clause (iii) as clause (iv); and

(iv) by inserting after clause (ii) the following new clause:

''(iii) the geographic requirements described in paragraph (4)(C)(i) shall not apply with respect to such a telehealth service; and'';

(C) by striking subparagraph (B) and inserting the following:

''(B) PAYMENT.—

''(i) IN GENERAL.—A telehealth service furnished by a Federally qualified health center or a rural health clinic to an individual pursuant to this paragraph on or after the date of the enactment of this subparagraph shall be deemed to be so furnished to such individual as an outpatient of such clinic or facility (as applicable) for purposes of paragraph (1) or (3), respectively, of section 1861(aa) and payable as a Federally qualified health center service or rural health clinic service (as applicable) under the prospective payment system established under section 1834(o) or under section 1833(a)(3), respectively.

''(ii) TREATMENT OF COSTS FOR FQHC PPS CALCULATIONS AND RHC AIR CALCULATIONS.—Costs associated with the

delivery of telehealth services by a Federally qualified health center or rural health clinic serving as a distant site pursuant to this paragraph shall be considered allowable costs for purposes of the prospective payment system established under section 1834(o) and any payment methodologies developed under section 1833(a)(3), as applicable.''.

SEC. 107. NATIVE AMERICAN HEALTH FACILITIES.

(a) IN GENERAL.—Section 1834(m)(4)(C) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)), as amended by sections 101, 102, and 103, is amended—

(1) in clause (i), by striking ''clause (iii)'' and inserting ''clauses (iii) and (v)''; and

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

''(v) NATIVE AMERICAN HEALTH FACILITIES.—With respect to telehealth services furnished on or after January 1, 2022, the originating site requirements described in clauses (i) and (ii) shall not apply with respect to a facility of the Indian Health Service, whether operated by such Service, or by an Indian tribe (as that term is de-

fined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) or a tribal organization (as that term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), or a facility of the Native Hawaiian health care systems authorized under the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11701 et seq.).''.

(b) NO ORIGINATING SITE FACILITY FEE FOR CERTAIN NATIVE AMERICAN FACILITIES.—Section 1834(m)(2)(B)(i) of the Social Security Act (42 U.S.C. 1395m(m)(2)(B)(i)) is amended, in the matter preceding subclause (I), by inserting ''(other than an originating site that is only described in clause (v) of paragraph (4)(C), and does not meet the requirement for an originating site under clauses (i) and (ii) of such paragraph)'' after ''the originating site''.

SEC. 108. WAIVER OF TELEHEALTH REQUIREMENTS DURING PUBLIC HEALTH EMERGENCIES.

Section 1135(g)(1) of the Social Security Act (42 U.S.C. 1320b–5(g)(1)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''; and

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

''(C) EXCEPTION FOR WAIVER OF TELEHEALTH REQUIREMENTS DURING PUBLIC HEALTH EMERGENCIES.—For purposes of subsection (b)(8), in addition to the emergency period described in subparagraph (B), an 'emergency area' is a geographical area in which, and an 'emergency period' is the period during which, there exists a public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act.''.

SEC. 109. USE OF TELEHEALTH IN RECERTIFICATION FOR HOSPICE CARE.

(a) IN GENERAL.—Section 1814(a)(7)(D)(i)(II) of the Social Security Act (42 U.S.C. 1395f(a)(7)(D)(i)(II)) is amended by inserting ''and after such emergency period'' after ''1135(g)(1)(B)''.

(b) GAO REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress

evaluating the impact of the amendment made by subsection (a) on—

(1) the number and percentage of beneficiaries recertified for the Medicare hospice benefit at 180 days and for subsequent benefit periods;

(2) the appropriateness for hospice care of the patients recertified through the use of telehealth; and

(3) any other factors determined appropriate by the Comptroller General.

TITLE II—PROGRAM INTEGRITY

SEC. 201. CLARIFICATION FOR FRAUD AND ABUSE LAWS REGARDING TECHNOLOGIES PROVIDED TO BENEFICIARIES.

Section 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a–7a(i)(6)) is amended—

(1) in subparagraph (I), by striking ''; or'' and inserting a semicolon;

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

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

''(K) the provision of technologies (as defined by the Secretary) on or after the date of the enactment of this subparagraph, by a pro-

vider of services or supplier (as such terms are defined for purposes of title XVIII) directly to an individual who is entitled to benefits under part A of title XVIII, enrolled under part B of such title, or both, for the purpose of furnishing telehealth services, remote patient monitoring services, or other services furnished through the use of technology (as defined by the Secretary), if—

''(i) the technologies are not offered as part of any advertisement or solicitation; and

''(ii) the provision of the technologies meets any other requirements set forth in regulations promulgated by the Secretary.''.

SEC. 202. ADDITIONAL RESOURCES FOR TELEHEALTH OVERSIGHT.

In addition to amounts otherwise available, there are authorized to be appropriated to the Inspector General of the Department of Health and Human Services for each of fiscal years 2022 through 2026, out of any money in the Treasury not otherwise appropriated, $3,000,000, to remain available until expended, for purposes of conducting audits, investigations, and other oversight and en-

forcement activities with respect to telehealth services, remote patient monitoring services, or other services furnished through the use of technology (as defined by the Secretary).

SEC. 203. PROVIDER AND BENEFICIARY EDUCATION ON TELEHEALTH.

(a) EDUCATIONAL RESOURCES AND TRAINING SESSIONS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall develop and make available to beneficiaries and health care professionals educational resources and training sessions on requirements relating to the furnishing of telehealth services under section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)) and topics including—

(A) requirements for payment for telehealth services;

(B) telehealth-specific health care privacy and security training;

(C) utilizing telehealth services to engage and support underserved, high-risk, and vulnerable patient populations; and

(D) other topics as determined appropriate by the Secretary.

(2) ACCOUNTING FOR AGE AND OTHER DIFFERENCES.—Such resources and training sessions must account for age and sociodemographic, geographic, cultural, cognitive, and linguistic differences in how individuals interact with technology.

(b) QUALITY IMPROVEMENT ORGANIZATIONS.—The Secretary shall consider including technical assistance, education, and training on telehealth services as a required activity of the quality improvement organizations described in section 1862(g) of the Social Security Act.

(c) FUNDING.—There are authorized to be appropriated such sums as necessary to carry out the activities described in sections (a) and (b).

TITLE III—DATA AND TESTING OF MODELS

SEC. 301. STUDY ON TELEHEALTH UTILIZATION DURING THE COVID–19 PANDEMIC.

(a) IN GENERAL.—The Secretary shall collect and analyze qualitative and quantitative data on the impact of telehealth services, virtual check-ins, remote patient monitoring services, and other services furnished through the use of technology permitted by the waiver or modification of certain requirements under title XVIII of the So-

cial Security Act (42 15 U.S.C. 1395 et seq.) and, as feasible, under title XIX of such Act (42 U.S.C. 1396 et seq.), and any regulations thereunder during the COVID–19 public health emergency, which may include the collection of data regarding—

(1) health care utilization rates under such title XVIII and, as feasible, under such title XIX, including utilization—

(A) in different types of areas;

(B) by race, ethnicity, or income levels; and

(C) of telehealth services furnished by different types of health care professionals.

(2) health care quality, such as measured by hospital readmission rates, missed appointment rates, patient and provider satisfaction, or other appropriate measures;

(3) health outcomes of individuals utilizing telehealth services;

(4) audio-only telehealth utilization rates when video-based telehealth was not an option, including the types of services and the types of providers treating individuals using audio-only telehealth;

(5) waivers of State licensure requirements;

(6) the types of technologies utilized to deliver or receive telehealth care and utilization rates, disaggregated by type of technology (as applicable);

(7) challenges for providers in furnishing telehealth services;

(8) the investments necessary for providers to effectively provide telehealth services to their patients, including the costs of necessary technology and of training staff; and

(9) any additional information determined appropriate by the Secretary.

(b) INTERIM REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives an interim report on the impact of telehealth based on the data collected and analyzed under subsection (a). For the purposes of the interim report, the Secretary may determine which data collected and analyzed under such subsection is most appropriate to complete such report.

(c) FINAL REPORT TO CONGRESS.—Not later than one year after the date of enactment of this Act, the Sec-

retary shall submit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a final report on the impact of telehealth based on the data collected and analyzed under subsection (a) that includes—

(1) conclusions regarding the impact of telehealth services on health care delivery during the COVID–19 public health emergency; and

(2) an estimation of total spending on telehealth services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and, as feasible, under title XIX of such Act (42 U.S.C. 1396 et seq.).

(d) STAKEHOLDER INPUT.—For purposes of subsections (a), (b), and (c), the Secretary shall seek input from the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission, and nongovernmental stakeholders, including patient organizations, providers, and experts in telehealth.

(e) FUNDING.—There are authorized to be appropriated such sums as necessary to carry out this section.

SEC. 302. ANALYSIS OF TELEHEALTH WAIVERS IN ALTERNATIVE PAYMENT MODELS.

The second sentence of section 1115A(g) of the Social Security Act (42 U.S.C. 1315a(g)) is amended by inserting ''an analysis of waivers (if applicable) under subsection (d)(1) related to telehealth and the impact on quality and spending under the applicable titles of such waivers,'' after ''subsection (c),''.

SEC. 303. MODEL TO ALLOW ADDITIONAL HEALTH PROFESSIONALS TO FURNISH TELEHEALTH SERVICES.

Section 1115A(b)(2)(B) of the Social Security Act (42 U.S.C. 1315a(b)(2)(B)) is amended by adding at the end the following new clause:

''(xxviii) Allowing health professionals, such as those described in section 1819(b)(5)(G) or section 1861(ll)(4)(B), who are enrolled under section 1866(j) and not otherwise eligible under section 1834(m) to furnish telehealth services to furnish such services.''.

SEC. 304. TESTING OF MODELS TO EXAMINE THE USE OF TELEHEALTH UNDER THE MEDICARE PROGRAM.

Section 1115A(b)(2) of the Social Security Act (42 U.S.C. 1315a(b)(2)) is amended by adding at the end the following new subparagraph:

''(D) TESTING MODELS TO EXAMINE USE OF TELEHEALTH UNDER MEDICARE.—The Secretary shall consider testing under this subsection models to examine the use of telehealth under title XVIII.''.