116TH CONGRESS
2D SESSION

H. R. _____

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

Mr. SCHWEIKERT introduced the following bill; which was referred to the Committee on ____________________

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 Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

This Act may be cited as the “Safe Testing at Residence Telehealth Act of 2020”.
SEC. 2. COVERAGE AND PAYMENT FOR CERTAIN TESTS AND ASSISTIVE TELEHEALTH CONSULTATIONS DURING THE COVID–19 EMERGENCY PERIOD.

(a) COVERAGE AND PAYMENT RULE.—

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

“(9) COVERAGE AND PAYMENT FOR CERTAIN TESTS AND ASSISTIVE TELEHEALTH CONSULTATIONS DURING COVID–19 EMERGENCY PERIOD.—

“(A) IN GENERAL.—During the emergency period described in section 1135(g)(1)(B), the Secretary shall pay for a test described in subparagraph (C) that is ordered and an assistive telehealth consultation that is furnished via a telecommunications system by a physician or practitioner to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner ordering the test did not furnish the test or that the individual physician or practitioner providing the assistive telehealth consultation is not at the same location as the beneficiary.
“(B) PAYMENT AMOUNT.—During the emergency period described in section 1135(g)(1)(B), the Secretary shall pay to a physician or practitioner located at a distant site that—

“(i) orders a test described in subparagraph (C) to an eligible telehealth individual an amount equal to the amount that such physician or practitioner would have been paid for a diagnostic laboratory test under section 1833(h); and

“(ii) furnishes an assistive telehealth consultation to an eligible telehealth individual an amount equal to the amount that a physician or practitioner would have been paid for such telehealth service under paragraph (2).

“(C) TESTS DESCRIBED.—For purposes of subparagraphs (A) and (B), a test described in this subparagraph is a medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) or is a test approved under an emergency use authorization under section 564 of such Act and is either—
“(i) a diagnostic laboratory test for
the diagnosis of influenza or a similar res-
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 DOC-
UMENTATION AND CLAIMS REVIEW.—The re-
quirements of paragraphs (2) and (3) of section
410.32(d) of title 42, Code of Federal Regula-
tions (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 as-
sistive telehealth consultation.

“(E) DEMOGRAPHIC DATA.—To be eligible
for reimbursement under this paragraph, each
claim for reimbursement shall include, with re-
spect to such an eligible telehealth individual,
the following demographic data:
“(i) Age.

“(ii) Race and ethnicity.

“(iii) Gender.

“(iv) An affirmative or negative statement of the existence of any chronic condition.

“(v) Any other information the Secretary determines appropriate.

“(F) ASSISTIVE TELEHEALTH CONSULTATION.—In this paragraph, the term ‘assistive telehealth consultation’ means a telehealth service (as defined in paragraph (4)(F)) that is—

“(i) an evaluation and management service;

“(ii) an assessment of any evidence of systems which would make a diagnostic laboratory test necessary to be furnished in the home of an eligible telehealth individual;

“(iii) the ordering of a diagnostic laboratory test;

“(iv) an assessment of an individual succeeding the delivery of a diagnostic laboratory test;
“(v) any assistance in the collection of
a sample necessary for a diagnostic labora-
tory test and securing the sample for ship-
ning;
“(vi) the referral of an eligible tele-
health individual to a physician or practi-
tioner for in-person treatment; or
“(vii) the review of a diagnostic lab-
oratory test by a physician or practi-
tioner.”.

(2) REPORT.—

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

(B) DEFINITIONS.—In this paragraph:

   (i) ASSISTIVE TELEHEALTH CONSULTATION.—The term “assistive tele-
   health consultation” has the meaning given such term in section 1834(m)(9)(E) of the Social Security Act (42 U.S.C. 1395m(m)(9)(F)).

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

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

   (iv) TEST.—The term “test” has the meaning as such term is described in section 1834(m)(9)(C) of the Social Security Act (42 U.S.C. 1395m(m)(9)(C)).
(b) No Payment for Certain In-Person Test After Telehealth Test During the COVID–19 Emergency Period.—

(1) In general.—Section 1833(h) of the Social Security Act (42 U.S.C. 1395l(h)) is amended—

(A) in paragraph (1)(A), by striking “Subject to section 1834(d)(1)” and inserting “Subject to section 1834(a)(1) and paragraph (10)”;

and

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

“(10) During the emergency period described in section 1135(g)(1)(B), the Secretary may not make payment for a test described in section 1834(m)(9)(C) that is furnished in-person by a physician or practitioner to an individual if a physician or practitioner has previously ordered such a test via a telecommunications system pursuant to section 1834(m)(9)(A), unless the physician or practitioner determines such a test is medically necessary and appropriate (as determined by the Secretary).”.

(2) Report.—Not later than 1 year after the termination of the emergency period described in section 1135(g)(1)(B) of the Social Security Act (42 U.S.C. 1320b–5(g)(1)(B)), the Inspector General of the Department of Health and Human Services shall
review claims for payment for tests described in section 1834(m)(9)(C) of such Act (42 U.S.C. 1395m(m)(9)(C)) furnished during such emergency period and submit to Congress a report on any instances of waste, fraud, or abuse identified through such review.

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

(1) in paragraph (1), by striking “Subject to paragraph (8)” and inserting “Subject to paragraphs (8) and (9)”;

(2) in paragraph (2), by striking “Subject to paragraph (8)” and inserting “Subject to paragraphs (8) and (9)”;

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