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(Original Signature of Member)

117TH CONGRESS
1ST 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 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 2021”.

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 of the following new para-
9 graph:

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

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

1 “(B) PAYMENT AMOUNT.—During the
2 emergency period described in section
3 1135(g)(1)(B), the Secretary shall pay to a
4 physician or practitioner located at a distant
5 site that—

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

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

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

1 “(i) a diagnostic laboratory test for
2 the diagnosis of influenza or a similar res-
3 piratory condition that is required to ob-
4 tain a final diagnosis of COVID–19 for an
5 individual when such test is ordered by a
6 physician or practitioner in conjunction
7 with a COVID–19 diagnostic laboratory
8 test for purposes of discounting a diagnosis
9 of influenza or a related diagnosis for such
10 individual; or

11 “(ii) a serology test for COVID–19.

12 “(D) OTHER MATTERS RELATING TO DOC-
13 UMENTATION AND CLAIMS REVIEW.—The re-
14 quirements of paragraphs (2) and (3) of section
15 410.32(d) of title 42, Code of Federal Regula-
16 tions (as in effect on the date of the enactment
17 of this paragraph), relating to documentation
18 and claims review, respectively, shall apply to a
19 test described in subparagraph (C) and an as-
20 sistive telehealth consultation.

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

1 “(i) Age.

2 “(ii) Race and ethnicity.

3 “(iii) Gender.

4 “(iv) An affirmative or negative state-
5 ment of the existence of any chronic condi-
6 tion.

7 “(v) Any other information the Sec-
8 retary determines appropriate.

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

13 “(i) an evaluation and management
14 service;

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

20 “(iii) the ordering of a diagnostic lab-
21 oratory test;

22 “(iv) an assessment of an individual
23 succeeding the delivery of a diagnostic lab-
24 oratory test;

1 “(v) any assistance in the collection of
2 a sample necessary for a diagnostic labora-
3 tory test and securing the sample for ship-
4 ping;

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

8 “(vii) the review of a diagnostic lab-
9 oratory test by a physician or practi-
10 tioner.”.

11 (2) REPORT.—

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

1 was so furnished (in accordance with the
2 HIPAA privacy regulation).

3 (B) DEFINITIONS.—In this paragraph:

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

10 (ii) EMERGENCY PERIOD.—The term
11 “emergency period” has the meaning as
12 such term is described in section
13 1135(g)(1)(B) of the Social Security Act
14 (42 U.S.C. 1320b–5(g)(1)(B)).

15 (iii) HIPAA PRIVACY REGULATION.—
16 The term “HIPAA privacy regulation” has
17 the meaning given such term in section
18 1180(b)(3) of the Social Security Act (42
19 U.S.C. 1320d–9(b)(3)).

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

1 .(b) NO PAYMENT FOR CERTAIN IN-PERSON TEST
2 AFTER TELEHEALTH TEST DURING THE COVID-19
3 EMERGENCY PERIOD.—

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

6 (A) in paragraph (1)(A), by striking “Sub-
7 ject to section 1834(d)(1)” and inserting “Sub-
8 ject to section 1834(a)(1) and paragraph (10)”;
9 and

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

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

21 (2) REPORT.—Not later than 1 year after the
22 termination of the emergency period described in
23 section 1135(g)(1)(B) of the Social Security Act (42
24 U.S.C. 1320b-5(g)(1)(B)), the Inspector General of
25 the Department of Health and Human Services shall

1 review claims for payment for tests described in sec-
2 tion 1834(m)(9)(C) of such Act (42 U.S.C.
3 1395m(m)(9)(C)) furnished during such emergency
4 period and submit to Congress a report on any in-
5 stances of waste, fraud, or abuse identified through
6 such review.

7 (c) CONFORMING AMENDMENTS.—Section 1834(m)
8 of the Social Security Act (42 U.S.C.
9 1395m(m)(4)(C)(ii)(X)), as amended by subsection (a), is
10 further amended—

11 (1) in paragraph (1), by striking “Subject to
12 paragraph (8)” and inserting “Subject to para-
13 graphs (8) and (9)”;

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

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