

117TH CONGRESS  
1ST SESSION

# H. R. 5425

To amend title XVIII of the Social Security Act to protect access to telehealth services under the Medicare program.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2021

Mr. O'HALLERAN (for himself, Mr. MCKINLEY, Mr. KIND, and Mr. SMITH of Nebraska) 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

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## A BILL

To amend title XVIII of the Social Security Act to protect access to telehealth services under the Medicare program.

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 “Protecting Rural Tele-  
5 health Access Act”.

1 **SEC. 2. ELIMINATION OF RESTRICTIONS RELATING TO**  
2 **TELEHEALTH SERVICES.**

3 (a) **ELIMINATION OF GEOGRAPHIC REQUIREMENTS**  
4 **FOR ORIGINATING SITES.**—Section 1834(m)(4)(C) of the  
5 Social Security Act (42 U.S.C. 1395m(m)(4)(C)) is  
6 amended—

7 (1) in clause (i), in the matter preceding sub-  
8 clause (I), by inserting “and clause (iii)” after “and  
9 (7)”;

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

12 “(iii) **ELIMINATION OF GEOGRAPHIC**  
13 **REQUIREMENTS FOR ORIGINATING**  
14 **SITES.**—The geographic requirements de-  
15 scribed in clause (i) shall not apply with  
16 respect to telehealth services furnished on  
17 or after January 1, 2021.”.

18 (b) **ELIMINATION OF RESTRICTIONS IN WHICH**  
19 **TELEHEALTH SERVICES MAY BE FURNISHED IN THE**  
20 **HOME.**—Section 1834(m)(4)(C)(ii)(X) of the Social Secu-  
21 rity Act (42 U.S.C. 1395m(m)(4)(C)(i)(X)) is amended to  
22 read as follows:.

23 “(X)(aa) For the period begin-  
24 ning on the date of the enactment of  
25 this subclause and ending on Decem-  
26 ber 31, 2020, the home of an indi-

1                   vidual but only for purposes of section  
2                   1881(b)(3)(B) or telehealth services  
3                   described in paragraph (7).

4                   “(bb) For the period beginning  
5                   on or after January 1, 2021, the  
6                   home of an individual.”.

7   **SEC. 3. TELEHEALTH FLEXIBILITIES FOR CRITICAL ACCESS**  
8                   **HOSPITALS.**

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

11                  (1) in the first sentence of paragraph (1), by  
12                  striking “paragraph (8)” and inserting “paragraphs  
13                  (8) and (9)”;

14                  (2) in paragraph (2)(A), by striking “paragraph  
15                  (8)” and inserting “paragraphs (8) and (9)”;

16                  (3) in paragraph (4)—

17                         (A) in subparagraph (A), by striking  
18                         “paragraph (8)” and inserting “paragraphs (8)  
19                         and (9)”;

20                         (B) in subparagraph (F)(i), by striking  
21                         “paragraph (8)” and inserting “paragraphs (8)  
22                         and (9)”;

23                  (4) by adding at the end the following new  
24                  paragraph:

1           “(9) TELEHEALTH FLEXIBILITIES FOR CRIT-  
2           ICAL ACCESS HOSPITALS.—

3           “(A) IN GENERAL.—On or after the date  
4           of the enactment of this paragraph—

5           “(i) the Secretary shall pay for tele-  
6           health services that are furnished via a  
7           telecommunications system by a critical ac-  
8           cess hospital, including any practitioner  
9           authorized to provide such services within  
10          the facility, that is a qualified provider (as  
11          defined in subparagraph (B)) to an eligible  
12          telehealth individual enrolled under this  
13          part notwithstanding that the critical ac-  
14          cess hospital providing the telehealth serv-  
15          ice is not at the same location as the bene-  
16          ficiary, if such services complement a plan  
17          of care that includes in-person care at  
18          some point, as may be appropriate;

19          “(ii) the amount of payment to a crit-  
20          ical access hospital that serves as a distant  
21          site for such a telehealth service shall be  
22          determined under subparagraph (C); and

23          “(iii) for purposes of this subsection—

24                  “(I) the term ‘distant site’ in-  
25                  cludes a critical access hospital that

1                   furnishes a telehealth service to an eli-  
2                   gible telehealth individual; and

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

14                  “(B) DEFINITION OF QUALIFIED PRO-  
15                  VIDER.—For purposes of this subsection, the  
16                  term ‘qualified provider’ means, with respect to  
17                  a telehealth service described in subparagraph  
18                  (A)(i) that is furnished to an eligible telehealth  
19                  individual, a critical access hospital that has an  
20                  established patient relationship with such indi-  
21                  vidual as defined by the State in which the indi-  
22                  vidual is located.

23                  “(C) PAYMENT.—The amount of payment  
24                  to a critical access hospital that serves as a dis-  
25                  tant site that furnishes a telehealth service to

1 an eligible telehealth individual under this para-  
2 graph shall be equal to 101 percent of the rea-  
3 sonable costs of the hospital in providing such  
4 services, unless the hospital makes an election  
5 under paragraph (2) of section 1834(g) to be  
6 paid for such services based on the methodology  
7 described in such paragraph. Telehealth services  
8 furnished by a critical access hospital shall be  
9 counted for purposes of determining the pro-  
10 vider productivity rate of the critical access hos-  
11 pital for purposes of payment under such sec-  
12 tion.

13 “(D) IMPLEMENTATION.—Notwithstanding  
14 any other provision of law, the Secretary may  
15 implement this paragraph through program in-  
16 struction, interim final rule, or otherwise.”.

17 **SEC. 4. EXTENDING MEDICARE TELEHEALTH FLEXIBILI-**  
18 **TIES FOR FEDERALLY QUALIFIED HEALTH**  
19 **CENTERS AND RURAL HEALTH CLINICS.**

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

22 (1) in the paragraph heading by striking “DUR-  
23 ING EMERGENCY PERIOD”;

1           (2) in subparagraph (A), in the matter pre-  
2           ceding clause (i), by inserting “and after such emer-  
3           gency period” after “1135(g)(1)(B)”;

4           (3) by striking subparagraph (B) and inserting  
5           the following:

6                   “(B) PAYMENT.—

7                           “(i) IN GENERAL.—A telehealth serv-  
8                           ice furnished by a Federally qualified  
9                           health center or a rural health clinic to an  
10                          eligible telehealth individual pursuant to  
11                          this paragraph or after the date of the en-  
12                          actment of this subparagraph shall be re-  
13                          imbursed under this title at a separate  
14                          telehealth payment rate as determined  
15                          under the methodology established by the  
16                          Secretary pursuant to clause (ii).

17                          “(ii) PAYMENT METHODOLOGY.—The  
18                          Secretary shall establish a methodology for  
19                          determining the appropriate payment rate  
20                          for telehealth services described in clause  
21                          (i). Such methodology shall consider—

22                                   “(I) the geography of Federally  
23                                   qualified health centers and rural  
24                                   health clinics;

1                   “(II) costs associated with the  
2                   delivery of such telehealth services as  
3                   allowable costs for the center or clinic;  
4                   and

5                   “(III) the full cost of providing  
6                   the services via telehealth.

7                   “(iii) IMPLEMENTATION.—

8                   “(I) CODING SYSTEM.—The Sec-  
9                   retary shall establish an effective cod-  
10                  ing system for telehealth services de-  
11                  scribed in clause (i) that is reflective  
12                  of the services provided at a center or  
13                  clinic.

14                  “(II) IMPLEMENTATION.—Not-  
15                  withstanding any other provision of  
16                  law, the Secretary may implement this  
17                  subparagraph through program in-  
18                  struction, interim final rule, or other-  
19                  wise.”; and

20                  (4) by adding at the end the following new sub-  
21                  paragraph:

22                  “(C) REQUIREMENT DURING ADDITIONAL  
23                  PERIOD.—

24                  “(i) IN GENERAL.—Beginning on the  
25                  first day after the end of the emergency

1 period described in section 1135(g)(1)(B),  
2 payment may only be made under this  
3 paragraph for a telehealth service de-  
4 scribed in subparagraph (A)(i) that is fur-  
5 nished to an eligible telehealth individual if  
6 such service is furnished by a qualified  
7 provider (as defined in clause (ii)).

8 “(ii) DEFINITION OF QUALIFIED PRO-  
9 VIDER.—For purposes of this subpara-  
10 graph, the term ‘qualified provider’ means,  
11 with respect to a telehealth service de-  
12 scribed in subparagraph (A)(i) that is fur-  
13 nished to an eligible telehealth individual, a  
14 Federally qualified health center or rural  
15 health clinic that has an established pa-  
16 tient relationship with such individual as  
17 defined by the State in which the indi-  
18 vidual is located.”.

19 **SEC. 5. ALLOWANCE OF CERTAIN TELEHEALTH SERVICES**  
20 **FURNISHED USING AUDIO-ONLY TECH-**  
21 **NOLOGY.**

22 Section 1834(m)(4) of the Social Security Act (42  
23 U.S.C. 1395m(m)(4)) of the Social Security Act (42  
24 U.S.C. 1395m(m)(4)) is amended by adding at the end  
25 the following new subparagraph:

1 “(G) TELECOMMUNICATIONS SYSTEM.—

2 “(i) IN GENERAL.—Notwithstanding  
3 paragraph (1) and section 410.78(a)(3) of  
4 title 42, Code of Federal Regulations (or  
5 any successor regulation), subject to clause  
6 (v), the term ‘telecommunications system’  
7 includes, in the case of the furnishing of a  
8 specified telehealth service (as defined in  
9 clause (ii)) a communications system that  
10 uses audio-only technology.

11 “(ii) SPECIFIED TELEHEALTH SERV-  
12 ICE.—In this subparagraph, the term  
13 ‘specified telehealth service’ means a tele-  
14 health service described in clause (iii) that  
15 is furnished by a qualified provider (as de-  
16 fined in clause (iv)).

17 “(iii) TELEHEALTH SERVICE DE-  
18 SCRIBED.—A telehealth service described  
19 in this clause is a telehealth service con-  
20 sisting of—

21 “(I) evaluation and management  
22 services;

23 “(II) behavioral health counseling  
24 and educational services; and

1                   “(III) other services determined  
2 appropriate by the Secretary.

3                   “(iv) QUALIFIED PROVIDER DE-  
4 FINED.—

5                   “(I) IN GENERAL.—For purposes  
6 of clause (ii), the term ‘qualified pro-  
7 vider’ means, with respect to a speci-  
8 fied telehealth service that is fur-  
9 nished to an eligible telehealth indi-  
10 vidual—

11                   “(aa) a physician or practi-  
12 tioner who has an established pa-  
13 tient relationship with such indi-  
14 vidual as defined by the State in  
15 which the individual is located; or

16                   “(bb) a critical access hos-  
17 pital (as defined in section  
18 1861(mm)(1)), a rural health  
19 clinic (as defined in section  
20 1861(aa)(2)), a Federally quali-  
21 fied health center (as defined in  
22 section 1861(aa)(4)), a hospital  
23 (as defined in section 1861(e)), a  
24 hospital-based or critical access  
25 hospital-based renal dialysis cen-

1 ter (including satellites), a skilled  
2 nursing facility (as defined in  
3 section 1819(a)), a community  
4 mental health center (as defined  
5 in section 1861(ff)(3)(B)), or a  
6 rural emergency hospital (as de-  
7 fined in section 1861(kkk)(2)).

8 “(v) AUTHORITY.—For purposes of  
9 this subparagraph, the Secretary may de-  
10 termine whether it is clinically appropriate  
11 to furnish a specified telehealth service via  
12 a communications system that uses audio-  
13 only technology and whether an in-person  
14 initial visit (in addition to any requirement  
15 with respect to the furnishing of an item  
16 or service in person pursuant to clause  
17 (iv)(I)) is required prior to the furnishing  
18 of such service using such technology.

19 “(vi) CLARIFICATION REGARDING  
20 PAYMENT.—The amount of payment for a  
21 specified telehealth service that is fur-  
22 nished using audio-only technology shall be  
23 equal to the amount that would have been  
24 paid for such service under this subsection  
25 had such service been furnished via any

1 other telecommunications system author-  
2 ized under this subsection.”.

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