

117TH CONGRESS
1ST SESSION

H. R. 366

To amend title XI of the Social Security Act to authorize the Secretary of Health and Human Services to waive or modify application of Medicare requirements with respect to telehealth services during any emergency period, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 2021

Mr. THOMPSON of California (for himself, Ms. MATSUI, Mr. SCHWEIKERT, Mr. JOHNSON of Ohio, Mr. CURTIS, and Mr. WELCH) 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

A BILL

To amend title XI of the Social Security Act to authorize the Secretary of Health and Human Services to waive or modify application of Medicare requirements with respect to telehealth services during any 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 “Protecting Access to
5 Post-COVID–19 Telehealth Act of 2021”.

1 **SEC. 2. AUTHORIZATION FOR THE SECRETARY OF HEALTH**
2 **AND HUMAN SERVICES TO WAIVE OR MODIFY**
3 **APPLICATION OF MEDICARE REQUIREMENTS**
4 **WITH RESPECT TO TELEHEALTH SERVICES.**

5 (a) SECRETARIAL AUTHORITY TO TEMPORARILY
6 WAIVE OR MODIFY MEDICARE REQUIREMENTS WITH RE-
7 SPECT TO TELEHEALTH SERVICES FURNISHED DURING
8 ANY EMERGENCY PERIOD.—Section 1135 of the Social
9 Security Act (42 U.S.C. 1320b–5) is amended by adding
10 at the end the following new subsection:

11 “(h) WAIVER OR MODIFICATION OF CERTAIN RE-
12 QUIREMENTS WITH RESPECT TO TELEHEALTH SERV-
13 ICES.—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of this section, during the period described
16 paragraph (2), the Secretary may waive or modify
17 any requirement with respect to a telehealth service
18 payable under section 1834(m)(1) for such period.

19 “(2) PERIOD DESCRIBED.—For purposes of
20 paragraph (1), the period described in this para-
21 graph is the period—

22 “(A) beginning on the first day of—

23 “(i) an emergency or disaster declared
24 by the President pursuant to the National
25 Emergencies Act or the Robert T. Stafford

1 Disaster Relief and Emergency Assistance
2 Act; or

3 “(ii) a public health emergency de-
4 clared by the Secretary pursuant to section
5 319 of the Public Health Service Act; and

6 “(B) ending on the day that is 90 days
7 after the last day of an emergency, disaster, or
8 public health emergency described in subpara-
9 graph (A).”.

10 (b) REPORT.—

11 (1) DEFINITIONS.—In this subsection:

12 (A) COVID–19 PUBLIC HEALTH EMER-
13 GENCY.—The term “COVID–19 public health
14 emergency” means the outbreak and public
15 health response pertaining to Coronavirus Dis-
16 ease 2019 (COVID–19), associated with the
17 emergency declared by the Secretary on Janu-
18 ary 31, 2020, under section 319 of the Public
19 Health Service Act (42 U.S.C. 247d), and any
20 renewals thereof and any subsequent declara-
21 tions by the Secretary related to COVID–19.

22 (B) SECRETARY.—The term “Secretary”
23 means the Secretary of Health and Human
24 Services.

1 (2) DATA COLLECTION AND REPORTS ON THE
2 USE OF TELEHEALTH DURING THE COVID–19 PUB-
3 LIC HEALTH EMERGENCY.—

4 (A) DATA COLLECTION AND ANALYSIS.—

5 (i) IN GENERAL.—Beginning not later
6 than 30 days after the date of enactment
7 of this Act, the Secretary shall collect and
8 analyze qualitative and quantitative data
9 on the impact of telehealth services, virtual
10 check-ins, digital health, and remote pa-
11 tient monitoring technologies on health
12 care delivery permitted by the waiver or
13 modification of certain requirements under
14 titles XVIII of the Social Security Act (42
15 U.S.C. 1395 et seq.), and any regulations
16 thereunder, pursuant to section 1135 of
17 such Act (42 U.S.C. 1320b–5) during the
18 COVID–19 public health emergency, which
19 may include the collection of data regard-
20 ing—

21 (I) health care utilization rates
22 across the Medicare program under
23 title XVIII of the Social Security Act
24 (42 U.S.C. 1395 et seq.) for individ-
25 uals confirmed or suspected to have

1 COVID–19 and individuals seeking
2 care unrelated to COVID–19, includ-
3 ing—

4 (aa) patient access to tele-
5 health services in medically un-
6 derserved communities; or

7 (bb) individuals receiving
8 telehealth services through feder-
9 ally qualified health centers (as
10 defined in section 1861(aa)(4) of
11 the Social Security Act (42
12 U.S.C. 1395x(aa)(4)) or rural
13 health clinics (as defined in sec-
14 tion 1861(aa)(2) of such Act (42
15 U.S.C. 1395x(aa)(2))) serving as
16 originating sites or distant sites,
17 and any challenges for providers
18 furnishing telehealth services in
19 these communities;

20 (II) health care quality for indi-
21 viduals confirmed or suspected to have
22 COVID–19 and individuals seeking
23 care unrelated to COVID–19 as meas-
24 ured by—

1 (aa) quality of care metrics,
2 such as hospital readmission
3 rates, missed appointment rates,
4 or wellness visits, and

5 (bb) engagement metrics,
6 such as voluntary patient satis-
7 faction surveys and voluntary
8 provider satisfaction surveys;

9 (III) audio-only telehealth utiliza-
10 tion rates when other video-based tele-
11 health was not an option or any other
12 telehealth services that were not pro-
13 vided in real-time (including text-mes-
14 saging or through online chat plat-
15 forms), the types of visits, and the
16 types of providers treating individuals;

17 (IV) telehealth utilization rates
18 used to treat individuals across State
19 lines;

20 (V) the health outcomes of any
21 individual who utilizes telehealth serv-
22 ices to treat an underlying health con-
23 dition such as diabetes, end-stage
24 renal disease, chronic lung disease,
25 obstructive pulmonary disease, coro-

1 nary artery disease, or cirrhosis and
2 the types of technology utilized to re-
3 ceive care, including text-messaging,
4 online chat platforms, audio-only, or
5 video conferencing;

6 (VI) the health outcomes of any
7 individual who utilizes mental health
8 care and substance use disorder treat-
9 ment services, and the types of tech-
10 nology utilized to receive care, includ-
11 ing text-messaging, online chat plat-
12 forms, audio-only, or video confer-
13 encing;

14 (VII) the impact of State and
15 Federal privacy and security protec-
16 tions on the delivery of care and pa-
17 tient safety, including the security of
18 the various technologies utilized to de-
19 liver or receive telehealth care;

20 (VIII) how telehealth access dif-
21 fers by race, ethnicity, or income lev-
22 els;

23 (IX) the types of technologies
24 utilized to deliver or receive telehealth
25 care, including Zoom, Skype,

1 FaceTime, text messaging, online chat
2 platforms, or other technologies, as
3 observed by the Secretary, and utiliza-
4 tion rates, disaggregated by type of
5 technology (as applicable);

6 (X) the investments necessary for
7 providers to develop a platform to ef-
8 fectively provide telehealth services to
9 their patients, including the costs of
10 the necessary technology and the costs
11 of training staff; and

12 (XI) any additional information
13 determined appropriate by the Sec-
14 retary.

15 (ii) BROADBAND AVAILABILITY
16 DATA.—Upon request by the Secretary, the
17 Assistant Secretary of Commerce for Com-
18 munications and Information and the Fed-
19 eral Communications Commission shall
20 provide the Secretary any relevant data re-
21 garding the availability of broadband inter-
22 net access service (as defined in section
23 801 of the Communications Act of 1934
24 (47 U.S.C. 641)) for the purposes of com-
25 pleting the report under clause (i).

1 (B) INTERIM REPORT TO CONGRESS.—Not
2 later than 90 days after the date of enactment
3 of this Act, the Secretary shall submit to the
4 Committees on Finance and Health, Education,
5 Labor, and Pensions of the Senate and the
6 Committees on Ways and Means and Energy
7 and Commerce of the House of Representatives
8 an interim report on the impact of telehealth
9 based on the data collected and analyzed under
10 subparagraph (A). For the purposes of the in-
11 terim report, the Secretary may determine
12 which data collected and analyzed under sub-
13 paragraph (A) is most appropriate to complete
14 such report.

15 (C) FINAL REPORT TO CONGRESS.—Not
16 later than 180 days after the date of enactment
17 of this Act, the Secretary shall submit to the
18 Committees on Finance and Health, Education,
19 Labor, and Pensions of the Senate and the
20 Committees on Ways and Means and Energy
21 and Commerce of the House of Representatives
22 a final report on the impact of telehealth based
23 on the data collected and analyzed under sub-
24 paragraph (A) that includes—

1 (i) conclusions regarding the impact
2 of telehealth services on health care deliv-
3 ery during the COVID–19 public health
4 emergency; and

5 (ii) an estimation for total Medicare
6 spending on telehealth services, including
7 total spending for each specific type of
8 service for which Medicare reimbursed.

9 (D) STAKEHOLDER INPUT.—

10 (i) IN GENERAL.—For purposes of
11 subparagraph (A), (B), and (C), the Sec-
12 retary shall seek input from the Medicare
13 Payment Advisory Commission, the Med-
14 icaid and CHIP Payment and Access Com-
15 mission and nongovernmental stakeholders,
16 including patient organizations, providers,
17 and experts in telehealth.

18 (ii) COMMENT PERIOD.—For the pur-
19 poses of this subsection, the Secretary
20 shall establish a comment period not later
21 than 14 days after the date of enactment
22 of this Act.

1 **SEC. 3. RURAL HEALTH CLINICS AND FEDERALLY QUALI-**
2 **FIED HEALTH CENTERS.**

3 (a) EXPANSION OF DISTANT SITES.—Section
4 1834(m) of the Social Security Act (42 U.S.C. 1395m(m))
5 is amended—

6 (1) in the first sentence of paragraph (1)—

7 (A) by striking “or a practitioner (de-
8 scribed in section 1842(b)(18)(C))” and insert-
9 ing “, a practitioner (described in section
10 1842(b)(18)(C)), a federally qualified health
11 center, or a rural health clinic”; and

12 (B) by striking “or practitioner” and in-
13 sserting “, practitioner, federally qualified health
14 center, or rural health clinic”;

15 (2) in paragraph (2)(A)—

16 (A) by inserting “or to a federally qualified
17 health center or rural health clinic that serves
18 as a distant site” after “a distant site”; and

19 (B) by striking “such physician or practi-
20 tioner” and inserting “such physician, practi-
21 tioner, federally qualified health center, or rural
22 health clinic”; and

23 (3) in paragraph (4)—

24 (A) in subparagraph (A), by inserting
25 “and includes a federally qualified health center
26 or rural health clinic that furnishes a telehealth

1 service to an eligible individual” before the pe-
2 riod at the end; and

3 (B) in subparagraph (F), by adding at the
4 end the following new clause:

5 “(iii) INCLUSION OF RURAL HEALTH
6 CLINIC SERVICES AND FEDERALLY QUALI-
7 FIED HEALTH CENTER SERVICES FUR-
8 NISHED USING TELEHEALTH.—For pur-
9 poses of this subparagraph, the term ‘tele-
10 health services’ includes a rural health
11 clinic service or Federally qualified health
12 center service that is furnished using tele-
13 health to the extent that payment codes
14 corresponding to services identified by the
15 Secretary under clause (i) or (ii) are listed
16 on the corresponding claim for such rural
17 health clinic service or Federally qualified
18 health center service.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to services furnished on or after
21 January 1, 2022.

22 **SEC. 4. ELIMINATION OF RESTRICTIONS RELATING TO**
23 **TELEHEALTH SERVICES.**

24 (a) ELIMINATION OF GEOGRAPHIC RESTRICTIONS OF
25 ORIGINATING SITES.—Section 1834(m)(4)(C)(i) of the

1 Social Security Act (42 U.S.C. 1395m(m)(4)(C)(i)) is
2 amended—

3 (1) by striking “the service is furnished via a
4 telecommunications system and only if such site is
5 located—” and inserting “the service—”;

6 (2) by redesignating subclauses (I) through
7 (III) as items (aa) through (cc), respectively, and
8 moving the margins two ems to the right; and

9 (3) by inserting before item (aa), as redesignig-
10 nated by paragraph (2), the following new sub-
11 clauses:

12 “(I) is furnished via a tele-
13 communications system; and

14 “(II) for the period beginning on
15 the date of the enactment of this sub-
16 clause and ending on December 31,
17 2021, only if such site is located—”.

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 Se-
21 curity Act (42 U.S.C. 1395m(m)(4)(C)(ii)(X) is amended
22 to 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-

1 ber 31, 2021, the home of an indi-
2 vidual but only for purposes of section
3 1881(b)(3)(B) or telehealth services
4 described in paragraph (7).

5 “(bb) For the period beginning
6 on or after January 1, 2022, the
7 home of an individual.”.

8 (c) INCLUSION OF ADDITIONAL ORIGINATING SITES
9 AS DETERMINED BY THE SECRETARY.—Section
10 1834(m)(4)(C)(ii) of the Social Security Act (42 U.S.C.
11 1395m(m)(4)(C)(ii)) is amended by adding at the end the
12 following new subclause:

13 “(XI) Any other location deter-
14 mined by the Secretary.”.

○

Protecting Access to Post-COVID–19 Telehealth Act of 2021 (H.R. 366)

This legislation was introduced by Reps. Mike Thompson (D-CA), Peter Welch (D-VT), Bill Johnson (R-OH), David Schweikert (R-AZ), and Doris Matsui (D-CA), who are all members of the Congressional Telehealth Caucus. There are 53 cosponsors, including 37 Democrats and 16 Republicans.

There is currently no Senate companion legislation.

It has been supported by numerous organizations, including the American Telemedicine Association, American College of Gastroenterology, HIMSS, and The Alliance of Community Health Plans.

This legislation would ensure the expanded use of telehealth after the Coronavirus public health emergency by eliminating restrictions on the use in Medicare and requiring a study on the use of the practices during the pandemic. This legislation was first introduced in 2020 during the 116th Congress and was endorsed by the ACC, and a key ask of the ACC 2020 Legislative Conference.

The bill would:

- Eliminate most geographic and originating site restrictions on the use of telehealth in Medicare and establishing the patient's home as an eligible distant site so patients can receive telehealth care at home
- Prevent a sudden loss of telehealth services for Medicare beneficiaries by authorizing the Centers for Medicare and Medicaid Service to continue reimbursement for telehealth for 90 days beyond the end of the public health emergency
- Make permanent the disaster waiver authority, enabling HHS to expand telehealth in Medicare during all future emergencies and disasters
- Require a study on the use of telehealth during COVID, including its costs, uptake rates, measurable health outcomes, and racial and geographic disparities.

117TH CONGRESS
1ST SESSION

H. R. 1332

To amend title XVIII of the Social Security Act to make permanent certain telehealth flexibilities under the Medicare program related to the COVID–19 public health emergency.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2021

Mr. CARTER of Georgia (for himself, Ms. BLUNT ROCHESTER, Mr. GRIFFITH, Mr. VAN DREW, Mr. MORELLE, Mr. KILMER, Mr. PENCE, and Mr. PANETTA) 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

A BILL

To amend title XVIII of the Social Security Act to make permanent certain telehealth flexibilities under the Medicare program related to the COVID–19 public health emergency.

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 “Telehealth Moderniza-
5 tion Act”.

1 **SEC. 2. EXTENDING MEDICARE TELEHEALTH FLEXIBILI-**
2 **TIES.**

3 (a) **EXPANDING ACCESS TO TELEHEALTH SERV-**
4 **ICES.—**

5 (1) **IN GENERAL.—**Section 1834(m)(4)(C) of
6 the Social Security Act (42 U.S.C. 1395m(m)(4)(C))
7 is amended by adding at the end the following new
8 clause:

9 “(iii) **EXPANDING ACCESS TO TELE-**
10 **HEALTH SERVICES.—**With respect to tele-
11 health services furnished beginning on the
12 first day after the end of the emergency
13 period described in section 1135(g)(1)(B)
14 of this clause, the term ‘originating site’
15 means any site at which the eligible tele-
16 health individual is located at the time the
17 service is furnished via a telecommuni-
18 cations system, including the home of an
19 individual.”.

20 (2) **CONFORMING AMENDMENTS.—**Such section
21 is amended—

22 (A) in paragraph (2)(B)—

23 (i) in clause (i), in the matter pre-
24 ceding subclause (I), by striking “clause
25 (ii)” and inserting “clauses (ii) and (iii)”;
26 and

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

3 “(iii) NO FACILITY FEE FOR NEW
4 SITES.—With respect to telehealth services
5 furnished on or after the date of enact-
6 ment of this clause, a facility fee shall only
7 be paid under this subparagraph to an
8 originating site that is described in para-
9 graph (4)(C)(ii) (other than subclause (X)
10 of such paragraph).”;

11 (B) in paragraph (4)(C)—

12 (i) in clause (i), in the matter pre-
13 ceding subclause (I), by inserting “and
14 clause (iii)” after “and (7)”; and

15 (ii) in clause (ii)(X), by inserting
16 “prior to the first day after the end of the
17 emergency period described in section
18 1135(g)(1)(B)” before the period;

19 (C) in paragraph (5), by inserting “and
20 prior to the first day after the end of the emer-
21 gency period described in section
22 1135(g)(1)(B)” after “January 1, 2019,”;

23 (D) in paragraph (6)(A), by inserting “and
24 prior to the first day after the end of the emer-

1 agency period described in section
2 1135(g)(1)(B),” after “January 1, 2019,”; and

3 (E) in paragraph (7), by adding at the end
4 the following new subparagraph:

5 “(C) SUNSET.—The provisions of this
6 paragraph shall not apply with respect to serv-
7 ices furnished on or after the first day after the
8 end of the emergency period described in sec-
9 tion 1135(g)(1)(B).”.

10 (b) EXPANDING PRACTITIONERS ELIGIBLE TO FUR-
11 NISH TELEHEALTH SERVICES.—Section 1834(m) of the
12 Social Security Act (42 U.S.C. 1395m(m)) is amended—

13 (1) in paragraph (1), by striking “(described in
14 section 1842(b)(18)(C))” and inserting “(defined in
15 paragraph (4)(E))”; and

16 (2) in paragraph (4)(E)—

17 (A) by striking “PRACTITIONER.—The
18 term” and inserting “PRACTITIONER.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), the term”; and

21 (B) by adding at the end the following new
22 subparagraph:

23 “(B) EXPANSION.—The Secretary, after
24 consulting with stakeholders regarding services
25 that are clinically appropriate, may expand the

1 types of practitioners who may furnish tele-
2 health services to include any health care pro-
3 fessional that is eligible to bill the program
4 under this title for their professional services.”.

5 (c) RETENTION OF ADDITIONAL SERVICES AND SUB-
6 REGULATORY PROCESS FOR MODIFICATIONS FOLLOWING
7 EMERGENCY PERIOD.—Section 1834(m)(4)(F) of the So-
8 cial Security Act (42 U.S.C. 1395m(m)(4)(F)) is amend-
9 ed—

10 (1) in clause (i), by inserting “and clause (iii)”
11 after “paragraph (8)”;

12 (2) in clause (ii), by striking “The Secretary”
13 and inserting “Subject to clause (iii), the Sec-
14 retary”; and

15 (3) by adding at the end the following new
16 clause:

17 “(iii) RETENTION OF ADDITIONAL
18 SERVICES AND SUBREGULATORY PROCESS
19 FOR MODIFICATIONS FOLLOWING EMER-
20 GENCY PERIOD.—With respect to tele-
21 health services furnished after the last day
22 of the emergency period described in sec-
23 tion 1135(g)(1)(B), the Secretary may—

24 “(I) retain as appropriate the ex-
25 panded list of telehealth services spec-

1 ified in clause (i) pursuant to the
2 waiver authority under section
3 1135(b)(8) during such emergency pe-
4 riod; and

5 “**(II)** retain the subregulatory
6 process used to modify the services in-
7 cluded on the list of such telehealth
8 services pursuant to clause (ii) during
9 such emergency period.”.

10 (d) **ENHANCING TELEHEALTH SERVICES FOR FED-**
11 **ERALLY QUALIFIED HEALTH CENTERS AND RURAL**
12 **HEALTH CLINICS.**—Section 1834(m)(8) of the Social Se-
13 curity Act (42 U.S.C. 1395m(m)(8)) is amended—

14 (1) in the paragraph heading by inserting “**AND**
15 **AFTER**” after “**DURING**”;

16 (2) in subparagraph (A), in the matter pre-
17 ceding clause (i), by inserting “and after” after
18 “During”; and

19 (3) in the first sentence of subparagraph (B)(i),
20 by inserting “and after” after “during”.

21 (e) **USE OF TELEHEALTH, AS CLINICALLY APPRO-**
22 **PRIATE, TO CONDUCT FACE-TO-FACE ENCOUNTER FOR**
23 **HOSPICE CARE.**—Section 1814(a)(7)(D)(i)(II) of the So-
24 cial Security Act (42 U.S.C. 1395f(a)(7)(D)(i)(II)) is

1 amended by inserting “and after such emergency period
2 as clinically appropriate” after “1135(g)(1)(B)”.

3 (f) USE OF TELEHEALTH, AS CLINICALLY APPRO-
4 PRIATE, TO CONDUCT FACE-TO-FACE CLINICAL ASSESS-
5 MENTS FOR HOME DIALYSIS.—Clause (iii) of section
6 1881(b)(3)(B) of the Social Security Act (42 U.S.C.
7 1395rr(b)(3)(B)) is amended—

8 (1) by moving such clause 4 ems to the left;
9 and

10 (2) by inserting “and after such emergency pe-
11 riod as clinically appropriate” before the period.

12 (g) IMPLEMENTATION.—Notwithstanding any provi-
13 sion of law, the Secretary may implement the provisions
14 of, and amendments made by, this section by interim final
15 rule, program instruction, or otherwise.

○

The Telehealth Modernization Act of 2021 (H.R. 1332/S. 368)

The Senate version was introduced by Senator Tim Scott (R-SC) and Sen. Brian Schatz (D-HI). It has 13 cosponsors, including 6 Democrats, 6 Republicans, and one independent.

The House version was introduced by Rep. Buddy Carter (R-GA) and Rep. Lisa Blunt Rochester (D-DE). It has 74 cosponsors, including 32 Democrats and 42 Republicans.

It has been endorsed by numerous health organizations, including the American Medical Association, American Academy of Orthopedic Surgeons, American Academy of Neurology, and the American Hospital Association.

This legislation modifies requirements relating to coverage of telehealth services under Medicare. Specifically, the bill extends certain flexibilities that were initially authorized during the public health emergency relating to COVID-19. Among other things, the bill allows:

- Rural health clinics and federally qualified health centers to serve as the distant site (i.e., the location of the health care practitioner)
- The home of a beneficiary to serve as the originating site (i.e., the location of the beneficiary) for all services (rather than for only certain services)
- All types of practitioners to furnish telehealth services, as determined by the Centers for Medicare & Medicaid Services.