

118TH CONGRESS  
2D SESSION

# S. 3967

To amend title XVIII of the Social Security Act to make permanent certain telehealth flexibilities under the Medicare program.

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## IN THE SENATE OF THE UNITED STATES

MARCH 19, 2024

Mr. SCOTT of South Carolina (for himself, Mr. SCHATZ, Mrs. BLACKBURN, Ms. SMITH, Mr. SULLIVAN, Mr. WARNOCK, Mr. MARSHALL, and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to make permanent certain telehealth flexibilities 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 “Telehealth Moderniza-  
5 tion Act”.

6 **SEC. 2. EXTENDING MEDICARE TELEHEALTH FLEXIBILI-**  
7 **TIES.**

8 (a) EXPANDING ACCESS TO TELEHEALTH SERV-  
9 ICES.—

1           (1) IN GENERAL.—Section 1834(m)(4)(C)(iii)  
2 of the Social Security Act (42 U.S.C.  
3 1395m(m)(4)(C)(iii)) is amended by striking “In the  
4 case that” and all that follows through “ending on  
5 December 31, 2024,” and inserting “Beginning on  
6 the date of the enactment of the Telehealth Mod-  
7 ernization Act,”.

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

11           (A) in paragraph (2)(B)(iii), by striking  
12 “In the case that” and all that follows through  
13 “ending December 31, 2024,” and inserting  
14 “With respect to telehealth services furnished  
15 on or after the date of the enactment of the  
16 Telehealth Modernization Act,”;

17           (B) in paragraph (4)(C)(ii)(X), by striking  
18 “, but only for purposes of section  
19 1881(b)(3)(B) or telehealth services described  
20 in paragraph (7)”;

21           (C) in paragraph (5), by inserting “and  
22 prior to the date of the enactment of the Tele-  
23 health Modernization Act,” after “January 1,  
24 2019,”;

1 (D) in paragraph (6)(A), by inserting “and  
 2 prior to the date of the enactment of the Tele-  
 3 health Modernization Act,” after “January 1,  
 4 2019,”; and

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

7 “(C) SUNSET.—The provisions of this  
 8 paragraph shall not apply with respect to serv-  
 9 ices furnished on or after the date of the enact-  
 10 ment of this subparagraph.”.

11 (b) EXPANDING PRACTITIONERS ELIGIBLE TO FUR-  
 12 NISH TELEHEALTH SERVICES.—Section 1834(m)(4)(E)  
 13 of the Social Security Act (42 U.S.C. 1395m(m)(4)(E))  
 14 is amended—

15 (1) by striking “PRACTITIONER.—The term”  
 16 and inserting “PRACTITIONER.—

17 “(A) IN GENERAL.—Subject to subpara-  
 18 graph (B), the term”;

19 (2) in subparagraph (A), as so inserted, by  
 20 striking “, in the case that the emergency period de-  
 21 scribed in section 1135(g)(1)(B) ends before Decem-  
 22 ber 31, 2024, for the period beginning on the first  
 23 day after the end of such emergency period and end-  
 24 ing on December 31, 2024,”; and

1           (3) by adding at the end the following new sub-  
2 paragraph:

3           “(B) EXPANSION.—The Secretary, after  
4 consulting with stakeholders regarding services  
5 that are clinically appropriate, may expand the  
6 types of practitioners who may furnish tele-  
7 health services to include any health care pro-  
8 fessional that is eligible to bill the program  
9 under this title for their professional services.”.

10       (c) RETENTION OF ADDITIONAL SERVICES AND SUB-  
11 REGULATORY PROCESS FOR MODIFICATIONS FOLLOWING  
12 EMERGENCY PERIOD.—Section 1834(m)(4)(F) of the So-  
13 cial Security Act (42 U.S.C. 1395m(m)(4)(F)) is amend-  
14 ed—

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

17           (2) in clause (ii), by striking “The Secretary”  
18 and inserting “Subject to clause (iii), the Sec-  
19 retary”; and

20           (3) by adding at the end the following new  
21 clause:

22           “(iii) RETENTION OF ADDITIONAL  
23 SERVICES AND SUBREGULATORY PROCESS  
24 FOR MODIFICATIONS FOLLOWING EMER-  
25 GENCY PERIOD.—With respect to tele-

1 health services furnished on or after the  
2 date of the enactment of this clause, the  
3 Secretary may—

4 “(I) retain as appropriate the ex-  
5 panded list of telehealth services spec-  
6 ified in clause (i) pursuant to the  
7 waiver authority under section  
8 1135(b)(8) during the emergency pe-  
9 riod described in section  
10 1135(g)(1)(B); and

11 “(II) retain the subregulatory  
12 process used to modify the services in-  
13 cluded on the list of such telehealth  
14 services pursuant to clause (ii) during  
15 such emergency period.”.

16 (d) ENHANCING TELEHEALTH SERVICES FOR FED-  
17 ERALLY QUALIFIED HEALTH CENTERS AND RURAL  
18 HEALTH CLINICS.—Section 1834(m)(8) of the Social Se-  
19 curity Act (42 U.S.C. 1395m(m)(8)) is amended—

20 (1) in subparagraph (A)—

21 (A) in the matter preceding clause (i), by  
22 striking “and, in the case” and all that follows  
23 through “2024—” and inserting “and after  
24 such period—”; and

1 (B) in clause (ii), by inserting “or (C), as  
2 applicable” after “subparagraph (B)”; and

3 (2) in subparagraph (B)—

4 (A) in the header, by inserting “BEFORE  
5 2025” after “RULE”; and

6 (B) in clause (i), by striking “during the  
7 periods for which subparagraph (A) applies”  
8 and inserting “before January 1, 2025”; and

9 (3) by adding at the end the following new sub-  
10 paragraph:

11 “(C) PAYMENT RULE FOR 2025 AND SUB-  
12 SEQUENT YEARS.—

13 “(i) IN GENERAL.—A telehealth serv-  
14 ice furnished to an eligible telehealth indi-  
15 vidual by a Federally qualified health cen-  
16 ter or rural health clinic on or after Janu-  
17 ary 1, 2025, shall be deemed to be so fur-  
18 nished to such individual as an outpatient  
19 of such center or clinic (as applicable) for  
20 purposes of paragraphs (1) and (3), re-  
21 spectively, of section 1861(aa), and pay-  
22 able as a Federally qualified health center  
23 service or rural health clinic service (as ap-  
24 plicable) under the prospective payment  
25 system established under section 1834(o)

1 or the payment methodology established  
2 under section 1833(a)(3), respectively.

3 “(ii) TREATMENT OF COSTS.—Costs  
4 associated with the delivery of telehealth  
5 services by a Federally qualified health  
6 center or rural health clinic on or after  
7 January 1, 2025, shall be considered allow-  
8 able costs for purposes of the prospective  
9 payment system established under section  
10 1834(o) and any payment methodologies  
11 developed under section 1833(a)(3), as ap-  
12 plicable.”.

13 (e) USE OF TELEHEALTH, AS CLINICALLY APPRO-  
14 PRIATE, TO CONDUCT FACE-TO-FACE ENCOUNTER FOR  
15 HOSPICE CARE.—Section 1814(a)(7)(D)(i)(II) of the So-  
16 cial Security Act (42 U.S.C. 1395f(a)(7)(D)(i)(II)) is  
17 amended by striking “, and, in the case” and all that fol-  
18 lows through “ending on December 31, 2024,” and insert-  
19 ing “and after such period, as clinically appropriate,”.

20 (f) USE OF TELEHEALTH, AS CLINICALLY APPRO-  
21 PRIATE, TO CONDUCT FACE-TO-FACE CLINICAL ASSESS-  
22 MENTS FOR HOME DIALYSIS.—Clause (iii) of section  
23 1881(b)(3)(B) of the Social Security Act (42 U.S.C.  
24 1395rr(b)(3)(B)) is amended—

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

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

5           (g) ALLOWING FOR THE USE OF AUDIO-ONLY TELE-  
6           COMMUNICATIONS TECHNOLOGY.—Section 1834(m)(9) of  
7           the Social Security Act (42 U.S.C. 1395m(m)(9)) is  
8           amended—

9           (1) by striking the first sentence and inserting  
10          the following: “The Secretary shall provide coverage  
11          and payment under this part for telehealth services  
12          identified in paragraph (4)(F)(i) as of the date of  
13          the enactment of this paragraph that are furnished  
14          via an audio-only communications system.”; and

15          (2) in the second sentence, by striking “during  
16          such emergency period” and inserting “during the  
17          emergency period described in section  
18          1135(g)(1)(B)”.

19          (h) IMPLEMENTATION.—Notwithstanding any provi-  
20          sion of law, the Secretary may implement the provisions  
21          of, and amendments made by, this section by interim final  
22          rule, program instruction, or otherwise.

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