116TH CONGRESS
2D SESSION

S. 4198

To require health plans to provide coverage for COVID–19 serology testing.

IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Mr. SCOTT of Florida (for himself and Ms. MCSALLY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To require health plans to provide coverage for COVID–19 serology testing.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Affordable Coronavirus Testing Act''.

SEC. 2. COVERAGE OF CORONAVIRUS ANTIBODY TESTS.

(a) COVERAGE.—

(1) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage (including a grandfathered

health plan (as defined in section 1251(e) of the Patient Protection and Affordable Care Act) shall provide coverage, and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, for eligible COVID–19 serology tests performed during any portion of the 2020 or 2021 plans years.

(2) ELIGIBLE TEST.—For purpose of paragraph (1), an eligible COVID–19 serology test shall include the following:

(A) A test that has been approved, cleared, or authorized under section 510(k), 513, 515, or 564 of the Federal Food, Drug, and Cosmetic Act for the detection of the presence of SARS–CoV–2 antibodies.

(B) A serology test kit that is made available within the 10-day grace period prior to an emergency use authorization submission and with respect to which such emergency use authorization submission is under consideration, except that this subparagraph shall not apply in the case of a serology test kit where the emergency use authorization submission request under section 564 of the Federal Food, Drug,

and Cosmetic Act has been denied or not submitted within a reasonable timeframe.

(C) A serology laboratory developed test that the Food and Drug Administration permits for clinical use without an emergency use authorization submission.

(D) Any other test the Secretary determines appropriate through guidance.

(b) ENFORCEMENT.—The provisions of this section shall be applied by the Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury to group health plans and health insurance issuers offering group or individual health insurance coverage as if included in the provisions of part A of title XXVII of the Public Health Service Act, part 7 of the Employee Retirement Income Security Act of 1974, and subchapter B of chapter 100 of the Internal Revenue Code of 1986, as applicable.

(c) IMPLEMENTATION.—The Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury may implement the provisions of this section through sub-regulatory guidance, program instruction or otherwise.

(d) RULE OF CONSTRUCTION.—Nothing in this Act, or the amendments made by this Act, shall be construed

to limit the number of COVID–19 serology tests that will be covered with respect to an individual under this Act (or amendments).

(e) TERMS.—In this section:

(1) GENERAL TERMS.—The terms ''group health plan'', ''health insurance issuer'', ''group health insurance coverage'', and ''individual health insurance coverage'' shall have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), and section 9832 of the Internal Revenue Code of 1986, as applicable.

(2) MEDICAL MANAGEMENT.—The term ''medical management'' includes requirements relating to clinical criteria for coverage, frequency limitations, and similar restrictions as determined by the Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury.

(f) CONFORMING AMENDMENT.—Section 6001(d) of the Families First Coronavirus Response Act (42 U.S.C. 1320b–5 note) is amended—

(1) by striking ''The terms'' and inserting the following:

''(1) IN GENERAL.—The terms''; and

(2) by adding at the end the following:

''(2) MEDICAL MANAGEMENT.—The term 'medical management' includes requirements relating to clinical criteria for coverage, frequency limitations, and similar restrictions as determined by the Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury.''.

SEC. 3. COVERAGE OF CORONAVIRUS ANTIBODY TESTS AT NO COST SHARING UNDER MEDICARE.

(a) IN GENERAL.—Section 1833(cc)(1)(A)(iii) of the Social Security Act (42 U.S.C. 1395l(cc)(1)(A)(iii) is amended by inserting the following before the semicolon: ''or a COVID–19 serology test described in section 1852(a)(1)(B)(VII)''.

(b) COVERAGE UNDER MEDICARE ADVANTAGE.—Section 1852(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–22(a)(1)(B)) is amended—

(1) in clause (iv)—

(A) by redesignating subclause (VII) as subclause (VIII); and

(B) by inserting after subclause (VI) the following new clause:

''(VII) A COVID–19 serology test administered during any portion of the 2-year period beginning on Jan-

uary 1, 2020, that begins on or after the date of enactment of this subclause, and the administration of such test.'';

(2) in clause (v), by striking ''and (VI)'' and inserting ''(VI), and (VII)''; and

(3) in clause (vi), by inserting '', or in the case of a product or service described in subclause (VII) of such clause that is administered or furnished during any portion of the period described in such subclause'' after ''this clause''.

SEC. 4. COVERAGE OF CORONAVIRUS ANTIBODY TESTS UNDER MEDICAID AND CHIP.

(a) MEDICAID.—

(1) IN GENERAL.—Section 1905(a)(3) of the Social Security Act (42 U.S.C. 1396d(a)(3)) is amended—

(A) in subparagraph (A), by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (B), by inserting ''and'' after the semicolon; and

(C) by adding at the end the following new subparagraph:

''(C) COVID–19 serology tests administered during any portion of the 2-year period beginning on

January 1, 2020, that begins on or after the date of enactment of this subparagraph, and the administration of such tests;''.

(2) NO COST SHARING.—

(A) IN GENERAL.—Subsections (a)(2) and (b)(2) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended—

(i) in subparagraph (F), by striking ''or'' at the end;

(ii) by redesignating subparagraph (G) as subparagraph (H); and

(iii) by inserting after subparagraph (F) the following new subparagraph:

''(G) any COVID–19 serology test described in section 1905(a)(3)(C) that is performed during any portion of the 2-year period described in such section beginning on or after the date of enactment of this subparagraph (and the administration of such test), or''.

(B) APPLICATION TO ALTERNATIVE COST SHARING.—Section 1916A(b)(3)(B) of the Social Security Act (42 U.S.C. 1396o–1(b)(3)(B)) is amended by adding at the end the following new clause:

''(xii) Any COVID–19 serology test described in section 1905(a)(3)(C) that is administered during any portion of the 2-year period described in such section beginning on or after the date of enactment of this clause (and the administration of such test).''.

(C) CLARIFICATION.—The amendments made in this paragraph shall apply with respect to a State plan of a territory in the same manner as a State plan of one of the 50 States.

(b) CHIP.—

(1) IN GENERAL.—Section 2103(c) of the Social Security Act (42 U.S.C. 1397cc(c)) is amended by adding at the end the following paragraph:

''(11) COVID–19 SEROLOGY TESTING.—The child health assistance provided to a targeted low-income child shall include coverage of any COVID–19 serology test described in section 1905(a)(3)(C) that is administered during any portion of the 2-year period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such test).''.

(2) PROHIBITION OF COST SHARING.—Section 2103(e)(2) of the Social Security Act (42 U.S.C.

1397cc(e)(2)) is amended by inserting ''COVID–19 serology tests described in subsection (c)(11) (and administration of such tests),'' after ''products),''.

SEC. 5. COVERAGE OF CORONAVIRUS ANTIBODY TESTS UNDER THE TRICARE PROGRAM.

(a) IN GENERAL.—The Secretary of Defense shall provide coverage under the TRICARE program, and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, for COVID–19 serology tests performed for covered beneficiaries during calendar year 2020 or 2021.

(b) DEFINITIONS.—In this section, the terms ''TRICARE program'' and ''covered beneficiary'' have the meanings given those terms in section 1072 of title 10, United States Code.

SEC. 6. COVERAGE OF CORONAVIRUS ANTIBODY TESTS FROM DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall furnish a COVID–19 serology test to any enrolled veteran, upon request by the veteran, during calendar years 2020 and 2021 and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical man-

agement requirements for the receipt of such a test by an enrolled veteran during such period.

(b) ENROLLED VETERAN DEFINED.—In this section, the term ''enrolled veteran'' means a veteran enrolled in the system of annual patient enrollment of the Department of Veterans Affairs established and operated under section 1705(a) of title 38, United States Code.

SEC. 7. COVERAGE OF CORONAVIRUS ANTIBODY TESTS UNDER FEHBP.

Section 8902 of title 5, United States Code, is amended by adding at the end the following:

''(p) A contract for a plan under this chapter shall—

''(1) require the carrier to provide coverage for—

''(A) a COVID–19 serology test administered on any date during the period beginning on the date of enactment of this subsection and ending on December 31, 2021; and

''(B) the administration of a test described in subparagraph (A); and

''(2) prohibit the carrier from imposing any cost sharing requirement (including a deductible, copayment, or coinsurance requirement), or prior authorization or other medical management requirement,

with respect to a test described in paragraph (1)(A).''.

SEC. 8. REIMBURSEMENT FOR UNINSURED PATIENT COSTS.

The Secretary of Health and Human Services shall utilize amounts in the Public Health and Social Services Emergency Fund (as established in the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136)) to reimburse health care providers for the costs of providing health care services for the diagnosis and treatment of COVID–19 for individuals who are not covered under a group health plan or other health insurance coverage.

SEC. 9. ELECTRONIC REPORTING STANDARDS.

(a) COMMITTEE.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall convene a committee to make recommendations to the Secretary on the expedited adoption of private sector standards (as defined in section 1171(7) of the Social Security Act (42 U.S.C. 1320d(7))) and the platform described in subsection (b).

(2) MEMBERSHIP.—The committee under paragraph (1) shall include representatives of—

(A) the Centers for Disease Control and Prevention;

(B) the Office of Civil Rights of the Department of Health and Human Services;

(C) the Office of the National Coordinator for Health Information Technology;

(D) the Department of Defense;

(E) the Department of Veterans Affairs;

(F) the Centers for Medicare & Medicaid Services; and

(G) standards development organizations defined under section 1171(8) of the Social Security Act (42 U.S.C. 1320d(8)), including the National Council for Prescription Drug Programs and Health Level 7.

(b) STANDARDS AND PLATFORM.—Not later than 60 days after the date of the convening of the committee in subsection (a)(1), the committee shall recommend standards, implementation guidelines, and the attributes of a health data platform that facilitates the real-time sharing of information for both public health and clinical health that allows for—

(1) interoperable electronic reporting standards for the sharing of electronic patient data, including

case reports, laboratory results, serology, immunology, and hospital capacity data;

(2) standardized electronic information reporting for the automated e-reporting of COVID–19 or future epidemic surveillance results from health care providers, laboratories, and other sources to the Centers for Disease Control and Prevention and State and local departments of health;

(3) standardized immunization data that is shared with immunization registries, medication history, and serology available at the point of care for clinicians; and

(4) a common platform for automated queries and responses from hospitals, physicians, and other prescribers and pharmacies to—

(A) collect, maintain, and provide to prescribers and dispensers, in real-time and within ordinary clinical workflow, information on patient prescription and dispensing history, relevant clinical diagnoses, laboratory test results, vaccinations through pharmaceutical claims, and electronic prescribing data transactions to treat patients; and

(B) allow for the relevant information to be reported to public health officials for the

purposes of infectious disease surveillance, identification, and containment consistent with any electronic case reporting system.

Such recommendations shall be prioritized in order of impact on improvements to public and clinical health.

(c) ADOPTION OF STANDARDS.—Not later than 90 days after receipt of the recommendations under subsection (b), and in consultation with American National Standards Institute Accredited Standards Development Organizations, the Secretary of Health and Human Services shall adopt priority standards and implementation specifications recommended by the committee under subsection (a) on an expedited basis without regard to the process described in section 1174 of the Social Security Act (with respect to limits on the timeframe for adoption of the standards) (42 U.S.C. 1320d–3).

(d) ADOPTION OF PLATFORM.—Not later than 90 days after receipt of the recommendations under subsection (b) on a common platform as described in subsection (b)(4), the Secretary of Health and Human Services shall enter into a contract with a private sector entity to establish such platform, which shall be available for use within 180 days of the date of such contract.

(e) REPORT.—Not later than 30 days after the date on which the committee established under subsection (a) makes recommendations for standards and the platform under subsection (b), the committee shall submit to the appropriate committees of Congress a report on such standards and platform, including any legislative changes that would be necessary to implement such standards and platform.

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