

118TH CONGRESS  
1ST SESSION

# H. R. 3440

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

MAY 17, 2023

Mr. PAPPAS (for himself, Mrs. McCLAIN, Mr. LATURNER, Mr. MOLINARO, Mr. MOONEY, and Mr. NUNN of Iowa) 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 striking “clause (iii)” and inserting  
9 “clauses (iii) and (iv)”; and

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

12 “(iv) **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, 2025.”.

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, 2024, 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, 2025, the  
6                   home of an individual.”.

7           (c) **ELIMINATION OF RESTRICTIONS ON STORE-AND-**  
8 **FORWARD TECHNOLOGIES.**—The second sentence of sec-  
9 tion 1834(m)(1) of the Social Security Act (42 U.S.C.  
10 1395m(m)(1)) is amended by striking “in the case of any  
11 Federal telemedicine demonstration program conducted in  
12 Alaska or Hawaii,”.

13 **SEC. 3. TELEHEALTH FLEXIBILITIES FOR CRITICAL ACCESS**  
14 **HOSPITALS.**

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

17                   (1) in the first sentence of paragraph (1), by  
18                   striking “and (9)” and inserting “(9), and (10)”;

19                   (2) in paragraph (2)(A), by striking “paragraph  
20                   (8)” and inserting “paragraphs (8) and (10)”;

21                   (3) in paragraph (4)—

22                           (A) in subparagraph (A), by striking  
23                           “paragraph (8)” and inserting “paragraphs (8)  
24                           and (10)”;

1 (B) in subparagraph (F)(i), by striking  
2 “paragraph (8)” and inserting “paragraphs (8)  
3 and (10)”; and

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

6 “(10) TELEHEALTH FLEXIBILITIES FOR CRIT-  
7 ICAL ACCESS HOSPITALS.—

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

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

24 “(ii) the amount of payment to a crit-  
25 ical access hospital that serves as a distant

1 site for such a telehealth service shall be  
2 determined under subparagraph (C); and

3 “(iii) for purposes of this subsection—

4 “(I) the term ‘distant site’ in-  
5 cludes a critical access hospital that  
6 furnishes a telehealth service to an eli-  
7 gible telehealth individual; and

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

19 “(B) DEFINITION OF QUALIFIED PRO-  
20 VIDER.—For purposes of this subsection, the  
21 term ‘qualified provider’ means, with respect to  
22 a telehealth service described in subparagraph  
23 (A)(i) that is furnished to an eligible telehealth  
24 individual, a critical access hospital that has an  
25 established patient relationship with such indi-

1           vidual as defined by the State in which the indi-  
2           vidual is located.

3           “(C) PAYMENT.—The amount of payment  
4           to a critical access hospital that serves as a dis-  
5           tant site that furnishes a telehealth service to  
6           an eligible telehealth individual under this para-  
7           graph shall be equal to 101 percent of the rea-  
8           sonable costs of the hospital in providing such  
9           services, unless the hospital makes an election  
10          under paragraph (2) of section 1834(g) to be  
11          paid for such services based on the methodology  
12          described in such paragraph. Telehealth services  
13          furnished by a critical access hospital shall be  
14          counted for purposes of determining the pro-  
15          vider productivity rate of the critical access hos-  
16          pital for purposes of payment under such sec-  
17          tion.

18          “(D) IMPLEMENTATION.—Notwithstanding  
19          any other provision of law, the Secretary may  
20          implement this paragraph through program in-  
21          struction, interim final rule, or otherwise.”.

1 **SEC. 4. EXTENDING MEDICARE TELEHEALTH FLEXIBILI-**  
2 **TIES FOR FEDERALLY QUALIFIED HEALTH**  
3 **CENTERS AND RURAL HEALTH CLINICS.**

4 Section 1834(m)(8) of the Social Security Act (42  
5 U.S.C. 1395m(m)(8)), as amended by section 4113(c) of  
6 division FF of the Consolidated Appropriations Act, 2023  
7 (Public Law 117–328) is amended—

8 (1) in subparagraph (A), in the matter pre-  
9 ceding clause (i), by inserting “, and on or after  
10 January 1, 2025” after “December 31, 2024”;

11 (2) by striking subparagraph (B) and inserting  
12 the following:

13 “(B) PAYMENT.—

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

24 “(ii) PAYMENT METHODOLOGY.—The  
25 Secretary shall establish a methodology for  
26 determining the appropriate payment rate

1 for telehealth services described in clause  
2 (i). Such methodology shall consider—

3 “(I) the geography of Federally  
4 qualified health centers and rural  
5 health clinics;

6 “(II) costs associated with the  
7 delivery of such telehealth services as  
8 allowable costs for the center or clinic;  
9 and

10 “(III) the full cost of providing  
11 the services via telehealth.

12 “(iii) IMPLEMENTATION.—

13 “(I) CODING SYSTEM.—The Sec-  
14 retary shall establish an effective cod-  
15 ing system for telehealth services de-  
16 scribed in clause (i) that is reflective  
17 of the services provided at a center or  
18 clinic.

19 “(II) IMPLEMENTATION.—Not-  
20 withstanding any other provision of  
21 law, the Secretary may implement this  
22 subparagraph through program in-  
23 struction, interim final rule, or other-  
24 wise.”; and



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

3                   “(C) REQUIREMENT DURING ADDITIONAL  
4 PERIOD.—

5                   “(i) IN GENERAL.—Beginning on Jan-  
6 uary 1, 2025, payment may only be made  
7 under this paragraph for a telehealth serv-  
8 ice described in subparagraph (A)(i) that  
9 is furnished to an eligible telehealth indi-  
10 vidual if such service is furnished by a  
11 qualified provider (as defined in clause  
12 (ii)).

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

1 **SEC. 5. ALLOWANCE OF CERTAIN TELEHEALTH SERVICES**  
2 **FURNISHED USING AUDIO-ONLY TECH-**  
3 **NOLOGY.**

4 Section 1834(m)(4) of the Social Security Act (42  
5 U.S.C. 1395m(m)(4)) of the Social Security Act (42  
6 U.S.C. 1395m(m)(4)) is amended by adding at the end  
7 the following new subparagraph:

8 “(G) TELECOMMUNICATIONS SYSTEM.—

9 “(i) IN GENERAL.—Notwithstanding  
10 paragraph (1) and section 410.78(a)(3) of  
11 title 42, Code of Federal Regulations (or  
12 any successor regulation), subject to clause  
13 (v), on or after January, 2025, the term  
14 ‘telecommunications system’ includes, in  
15 the case of the furnishing of a specified  
16 telehealth service (as defined in clause (ii))  
17 a communications system that uses audio-  
18 only technology.

19 “(ii) SPECIFIED TELEHEALTH SERV-  
20 ICE.—In this subparagraph, the term  
21 ‘specified telehealth service’ means a tele-  
22 health service described in clause (iii) that  
23 is furnished by a qualified provider (as de-  
24 fined in clause (iv)).

25 “(iii) TELEHEALTH SERVICE DE-  
26 SCRIBED.—Subject to clause (vi), a tele-

1 health service described in this clause is a  
2 telehealth service consisting of—

3 “(I) evaluation and management  
4 services;

5 “(II) behavioral health counseling  
6 and educational services; and

7 “(III) other services determined  
8 appropriate by the Secretary.

9 “(iv) QUALIFIED PROVIDER DE-  
10 FINED.—For purposes of clause (ii), the  
11 term ‘qualified provider’ means, with re-  
12 spect to a specified telehealth service that  
13 is furnished to an eligible telehealth indi-  
14 vidual—

15 “(I) a physician or practitioner  
16 who has an established patient rela-  
17 tionship with such individual as de-  
18 fined by the State in which the indi-  
19 vidual is located; or

20 “(II) a critical access hospital (as  
21 defined in section 1861(mm)(1)), a  
22 rural health clinic (as defined in sec-  
23 tion 1861(aa)(2)), a Federally quali-  
24 fied health center (as defined in sec-  
25 tion 1861(aa)(4)), a hospital (as de-

1           fined in section 1861(e)), a hospital-  
2           based or critical access hospital-based  
3           renal dialysis center (including sat-  
4           ellites), a skilled nursing facility (as  
5           defined in section 1819(a)), a commu-  
6           nity mental health center (as defined  
7           in section 1861(ff)(3)(B)), or a rural  
8           emergency hospital (as defined in sec-  
9           tion 1861(kkk)(2)).

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

21           “(vi) REVIEW.—

22           “(I) IN GENERAL.—Not later  
23           than 5 years after the date of the en-  
24           actment of this subparagraph, the  
25           Secretary shall conduct a review of

1 the furnishing of specified telehealth  
2 services through audio-only technology  
3 pursuant to this paragraph. Such re-  
4 view shall include an analysis of the  
5 impact of the roll out of broadband  
6 technology and whether the use of  
7 audio-only technology is necessary to  
8 ensure access to such telehealth serv-  
9 ices.

10 “(II) REDETERMINATION OF  
11 SPECIFIED TELEHEALTH SERVICES.—

12 The Secretary may, based on the re-  
13 view conducted under subclause (I),  
14 provide for the addition or deletion of  
15 services (and HCPCS codes), as ap-  
16 propriate, to those specified in clause  
17 (ii) that may be furnished using  
18 audio-only technology and authorized  
19 for payment pursuant to this subpara-  
20 graph.

21 “(vii) CLARIFICATION REGARDING  
22 PAYMENT.—The amount of payment for a  
23 specified telehealth service that is fur-  
24 nished using audio-only technology shall be  
25 equal to the amount that would have been

1           paid for such service under this subsection  
2           had such service been furnished via any  
3           other telecommunications system author-  
4           ized under this subsection.”.

5 **SEC. 6. SENSE OF CONGRESS REGARDING EXPANSION OF**  
6 **ELIGIBLE PRACTITIONERS THAT MAY FUR-**  
7 **NISH TELEHEALTH SERVICES.**

8           It is the sense of Congress that the expansion of eligi-  
9 ble practitioners that may furnish telehealth services (as  
10 defined in section 1834(m)(4)(F) of the Social Security  
11 Act (42 U.S.C. 1395m(m)(4)(F))) during the emergency  
12 period described in section 1135(g)(1)(B) of such Act (42  
13 U.S.C. 1320b–5(g)(1)(B)) should be extended on a perma-  
14 nent basis.

○