

116TH CONGRESS
2D SESSION

S. 3499

To amend coverage requirements to ensure that no person incurs cost sharing when receiving a test to confirm a COVID–19 infection.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2020

Ms. SMITH (for herself, Mr. PETERS, Mr. SCHUMER, Mrs. MURRAY, Mr. WYDEN, Mr. CASEY, Mr. JONES, Mr. BROWN, Ms. DUCKWORTH, Mr. TESTER, Mr. WHITEHOUSE, Mr. SANDERS, Ms. BALDWIN, Mr. REED, Mr. MURPHY, Ms. KLOBUCHAR, Ms. HIRONO, Mr. SCHATZ, Mr. KING, Mr. COONS, Ms. STABENOW, Mr. BOOKER, Mrs. FEINSTEIN, Ms. HARRIS, Mr. UDALL, Ms. HASSAN, Mrs. GILLIBRAND, Mr. HEINRICH, Ms. ROSEN, Mrs. SHAHEEN, Mr. KAINE, Ms. WARREN, Mr. CARPER, Mr. WARNER, Mr. VAN HOLLEN, Mr. DURBIN, Mr. MARKEY, Mr. BLUMENTHAL, Mr. BENNET, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend coverage requirements to ensure that no person incurs cost sharing when receiving a test to confirm a COVID–19 infection.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Free COVID–19 Testing Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Coverage of testing for COVID–19.
- Sec. 3. Waiving cost sharing under the Medicare program for certain visits relating to testing for COVID–19.
- Sec. 4. Coverage of testing for COVID–19 at no cost sharing under the Medicare Advantage program.
- Sec. 5. Coverage at no cost sharing of COVID–19 testing under Medicaid and CHIP.
- Sec. 6. Laboratory reimbursement for diagnostic testing for COVID–19 in uninsured individuals.
- Sec. 7. Application with respect to TRICARE, coverage for veterans, and coverage for Federal civilians.
- Sec. 8. Coverage of testing for COVID–19 at no cost sharing for Indians receiving contract health services.

3 **SEC. 2. COVERAGE OF TESTING FOR COVID–19.**

4 (a) IN GENERAL.—A group health plan and a health
 5 insurance issuer offering group or individual health insur-
 6 ance coverage (including a grandfathered health plan (as
 7 defined in section 1251(e) of the Patient Protection and
 8 Affordable Care Act)) shall provide coverage, and shall not
 9 impose any cost sharing (including deductibles, copay-
 10 ments, and coinsurance) requirements or prior authoriza-
 11 tion or other medical management requirements, for the
 12 following items and services furnished during any portion
 13 of the emergency period defined in paragraph (1)(B) of
 14 section 1135(g) of the Social Security Act (42 U.S.C.
 15 1320b–5(g)) beginning on or after the date of the enact-
 16 ment of this Act:

17 (1) In vitro diagnostic products (as defined in
 18 section 809.3(a) of title 21, Code of Federal Regula-
 19 tions) for the detection of SARS–CoV–2 or the diag-

1 nosis of the virus that causes COVID–19 that are
2 approved, cleared, or authorized under section
3 510(k), 513, 515, or 564 of the Federal Food,
4 Drug, and Cosmetic Act, and the administration of
5 such in vitro diagnostic products.

6 (2) Health care provider office visits, urgent
7 care center visits, and emergency room visits that
8 result in an order for or administration of an in
9 vitro diagnostic product described in paragraph (1).

10 (b) ENFORCEMENT.—The provisions of subsection
11 (a) shall be applied by the Secretary of Health and Human
12 Services, Secretary of Labor, and Secretary of the Treas-
13 ury to group health plans and health insurance issuers of-
14 fering group or individual health insurance coverage as if
15 included in the provisions of part A of title XXVII of the
16 Public Health Service Act, part 7 of the Employee Retire-
17 ment Income Security Act of 1974, and subchapter B of
18 chapter 100 of the Internal Revenue Code of 1986, as ap-
19 plicable.

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

1 (d) TERMS.—The terms “group health plan”, “health
 2 insurance issuer”, “group health insurance coverage”, and
 3 “individual health insurance coverage” have the meanings
 4 given such terms in section 2791 of the Public Health
 5 Service Act (42 U.S.C. 300gg–91), section 733 of the Em-
 6 ployee Retirement Income Security Act of 1974 (29
 7 U.S.C. 1191b), and section 9832 of the Internal Revenue
 8 Code of 1986, as applicable.

9 **SEC. 3. WAIVING COST SHARING UNDER THE MEDICARE**
 10 **PROGRAM FOR CERTAIN VISITS RELATING**
 11 **TO TESTING FOR COVID-19.**

12 (a) IN GENERAL.—Section 1833 of the Social Secu-
 13 rity Act (42 U.S.C. 1395l) is amended—

14 (1) in subsection (a)(1)—

15 (A) by striking “and” before “(CC)”; and

16 (B) by inserting before the period at the
 17 end the following: “, and (DD) with respect to
 18 a specified COVID–19 testing-related service
 19 described in paragraph (1) of subsection (cc)
 20 for which payment may be made under a speci-
 21 fied outpatient payment provision described in
 22 paragraph (2) of such subsection, the amounts
 23 paid shall be 100 percent of the payment
 24 amount otherwise recognized under such respec-

1 tive specified outpatient payment provision for
2 such service,”;

3 (2) in subsection (b), in the first sentence—

4 (A) by striking “and” before “(10)”; and

5 (B) by inserting before the period at the
6 end the following: “, and (11) such deductible
7 shall not apply with respect to any specified
8 COVID–19 testing-related service described in
9 paragraph (1) of subsection (cc) for which pay-
10 ment may be made under a specified outpatient
11 payment provision described in paragraph (2)
12 of such subsection”; and

13 (3) by adding at the end the following new sub-
14 section:

15 “(cc) SPECIFIED COVID–19 TESTING-RELATED
16 SERVICES.—For purposes of subsection (a)(1)(DD):

17 “(1) DESCRIPTION.—

18 “(A) IN GENERAL.—A specified COVID–
19 19 testing-related service described in this para-
20 graph is a medical visit that—

21 “(i) is in any of the categories of
22 HCPCS evaluation and management serv-
23 ice codes described in subparagraph (B);

24 “(ii) is furnished during any portion
25 of the emergency period (as defined in sec-

1 tion 1135(g)(1)(B)) beginning on or after
 2 the date of the enactment of this sub-
 3 section; and

4 “(iii) results in an order for or admin-
 5 istration of a diagnostic test described in
 6 section 1852(a)(1)(B)(iv)(IV).

7 “(B) CATEGORIES OF HCPCS CODES.—For
 8 purposes of subparagraph (A), the categories of
 9 HCPCS evaluation and management services
 10 codes are the following:

11 “(i) Office and other outpatient serv-
 12 ices.

13 “(ii) Hospital observation services.

14 “(iii) Emergency department services.

15 “(iv) Nursing facility services.

16 “(v) Domiciliary, rest home, or custo-
 17 dial care services.

18 “(vi) Home services.

19 “(2) SPECIFIED OUTPATIENT PAYMENT PROVI-
 20 SION.—A specified outpatient payment provision de-
 21 scribed in this paragraph is any of the following:

22 “(A) The hospital outpatient prospective
 23 payment system under subsection (t).

24 “(B) The physician fee schedule under sec-
 25 tion 1848.

1 “(C) The prospective payment system de-
2 veloped under section 1834(o).

3 “(D) Section 1834(g), with respect to an
4 outpatient critical access hospital service.

5 “(E) The payment basis determined in
6 regulations pursuant to section 1833(a)(3) for
7 rural health clinic services.”.

8 (b) CLAIMS MODIFIER.—The Secretary of Health
9 and Human Services shall provide for an appropriate
10 modifier (or other identifier) to include on claims to iden-
11 tify, for purposes of subparagraph (DD) of section
12 1833(a)(1), as added by subsection (a), specified COVID-
13 19 testing-related services described in paragraph (1) of
14 section 1833(cc) of the Social Security Act, as added by
15 subsection (a), for which payment may be made under a
16 specified outpatient payment provision described in para-
17 graph (2) of such subsection.

18 (c) IMPLEMENTATION.—Notwithstanding any other
19 provision of law, the Secretary of Health and Human
20 Services may implement the provisions of, including
21 amendments made by, this section through program in-
22 struction or otherwise.

1 **SEC. 4. COVERAGE OF TESTING FOR COVID-19 AT NO COST**
2 **SHARING UNDER THE MEDICARE ADVAN-**
3 **TAGE PROGRAM.**

4 (a) IN GENERAL.—Section 1852(a)(1)(B) of the So-
5 cial Security Act (42 U.S.C. 1395w-22(a)(1)(B)) is
6 amended—

7 (1) in clause (iv)—

8 (A) by redesignating subclause (IV) as
9 subclause (VI); and

10 (B) by inserting after subclause (III) the
11 following new subclauses:

12 “(IV) Clinical diagnostic labora-
13 tory test administered during any por-
14 tion of the emergency period defined
15 in paragraph (1)(B) of section
16 1135(g) beginning on or after the
17 date of the enactment of the Free
18 COVID-19 Testing Act for the detec-
19 tion of SARS-CoV-2 or the diagnosis
20 of the virus that causes COVID-19
21 and the administration of such test.

22 “(V) Specified COVID-19 test-
23 ing-related services (as described in
24 section 1833(cc)(1)) for which pay-
25 ment would be payable under a speci-

1 fied outpatient payment provision de-
2 scribed in section 1833(cc)(2).”;

3 (2) in clause (v), by inserting “, other than sub-
4 clauses (IV) and (V) of such clause,” after “clause
5 (iv)”;

6 (3) by adding at the end the following new
7 clause:

8 “(vi) PROHIBITION OF APPLICATION
9 OF CERTAIN REQUIREMENTS FOR COVID-19
10 TESTING.—In the case of a product or
11 service described in subclause (IV) or (V),
12 respectively, of clause (iv) that is adminis-
13 tered or furnished during any portion of
14 the emergency period described in such
15 subclause beginning on or after the date of
16 the enactment of this clause, an MA plan
17 may not impose any prior authorization or
18 other utilization management requirements
19 with respect to the coverage of such a
20 product or service under such plan.”.

21 (b) IMPLEMENTATION.—Notwithstanding any other
22 provision of law, the Secretary of Health and Human
23 Services may implement the amendments made by this
24 section by program instruction or otherwise.

1 **SEC. 5. COVERAGE AT NO COST SHARING OF COVID-19**
2 **TESTING UNDER MEDICAID AND CHIP.**

3 (a) MEDICAID.—

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

7 (A) by striking “other laboratory” and in-
8 serting “(A) other laboratory”;

9 (B) by inserting “and” after the semicolon;
10 and

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

13 “(B) in vitro diagnostic products (as defined in
14 section 809.3(a) of title 21, Code of Federal Regula-
15 tions) administered during any portion of the emer-
16 gency period defined in paragraph (1)(B) of section
17 1135(g) beginning on or after the date of the enact-
18 ment of this subparagraph for the detection of
19 SARS-CoV-2 or the diagnosis of the virus that
20 causes COVID-19 that are approved, cleared, or au-
21 thORIZED under section 510(k), 513, 515, or 564 of
22 the Federal Food, Drug, and Cosmetic Act, and the
23 administration of such in vitro diagnostic products;”.

24 (2) NO COST SHARING.—

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

4 (i) in subparagraph (D), by striking
5 “or” at the end;

6 (ii) in subparagraph (E), by striking
7 “; and” and inserting a comma; and

8 (iii) by adding at the end the fol-
9 lowing new subparagraphs:

10 “(F) any in vitro diagnostic product de-
11 scribed in section 1905(a)(3)(B) that is admin-
12 istered during any portion of the emergency pe-
13 riod described in such section beginning on or
14 after the date of the enactment of this subpara-
15 graph (and the administration of such product),
16 or

17 “(G) any medical visit for which payment
18 may be made under the State plan, that is fur-
19 nished during any such portion of such emer-
20 gency period, and that relates to testing for
21 COVID-19; and”.

22 (B) APPLICATION TO ALTERNATIVE COST
23 SHARING.—Section 1916A(b)(3)(B) of the So-
24 cial Security Act (42 U.S.C. 1396o-1(b)(3)(B))

1 is amended by adding at the end the following
2 new clause:

3 “(xi) Any in vitro diagnostic product
4 described in section 1905(a)(3)(B) that is
5 administered during any portion of the
6 emergency period described in such section
7 beginning on or after the date of the enact-
8 ment of this clause (and the administration
9 of such product) and any visit described in
10 section 1916(a)(2)(G) that is furnished
11 during any such portion.”.

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

16 (3) STATE OPTION TO PROVIDE COVERAGE FOR
17 UNINSURED INDIVIDUALS.—

18 (A) IN GENERAL.—Section 1902(a)(10) of
19 the Social Security Act (42 U.S.C.
20 1396a(a)(10)) is amended—

21 (i) in subparagraph (A)(ii)—

22 (I) in subclause (XXI), by strik-
23 ing “or” at the end;

24 (II) in subclause (XXII), by add-
25 ing “or” at the end; and

1 (III) by adding at the end the
2 following new subclause:

3 “(XXIII) during any portion of
4 the emergency period defined in para-
5 graph (1)(B) of section 1135(g) be-
6 ginning on or after the date of the en-
7 actment of this subclause, who are un-
8 insured individuals (as defined in sub-
9 section (ss));” and

10 (ii) in the matter following subpara-
11 graph (G)—

12 (I) by striking “and (XVII)” and
13 inserting “, (XVII)”; and

14 (II) by inserting after “instead of
15 through subclause (VIII)” the fol-
16 lowing: “, and (XVIII) the medical as-
17 sistance made available to an unin-
18 sured individual (as defined in sub-
19 section (ss)) who is eligible for med-
20 ical assistance only because of sub-
21 paragraph (A)(ii)(XXIII) shall be lim-
22 ited to medical assistance for any in
23 vitro diagnostic product described in
24 section 1905(a)(3)(B) that is adminis-
25 tered during any portion of the emer-

1 agency period described in such section
 2 beginning on or after the date of the
 3 enactment of this subclause (and the
 4 administration of such product) and
 5 any visit described in section
 6 1916(a)(2)(G) that is furnished dur-
 7 ing any such portion”.

8 (B) RECEIPT AND INITIAL PROCESSING OF
 9 APPLICATIONS AT CERTAIN LOCATIONS.—Sec-
 10 tion 1902(a)(55) of the Social Security Act (42
 11 U.S.C. 1396a(a)(55)) is amended, in the matter
 12 preceding subparagraph (A), by striking “or
 13 (a)(10)(A)(ii)(IX)” and inserting
 14 “(a)(10)(A)(ii)(IX), or (a)(10)(A)(ii)(XXIII)”.

15 (C) UNINSURED INDIVIDUAL DEFINED.—
 16 Section 1902 of the Social Security Act (42
 17 U.S.C. 1396a) is amended by adding at the end
 18 the following new subsection:

19 “(ss) UNINSURED INDIVIDUAL DEFINED.—For pur-
 20 poses of this section, the term ‘uninsured individual’
 21 means, notwithstanding any other provision of this title,
 22 any individual who is—

23 “(1) not described in subsection (a)(10)(A)(i);
 24 and

1 “(2) not enrolled in a Federal health care pro-
2 gram (as defined in section 1128B(f)), a group
3 health plan, group or individual health insurance
4 coverage offered by a health insurance issuer (as
5 such terms are defined in section 2791 of the Public
6 Health Service Act), or a health plan offered under
7 chapter 89 of title 5, United States Code.”.

8 (D) FEDERAL MEDICAL ASSISTANCE PER-
9 CENTAGE.—Section 1905(b) of the Social Secu-
10 rity Act (42 U.S.C. 1396d(b)) is amended by
11 adding at the end the following new sentence:
12 “Notwithstanding the first sentence of this sub-
13 section, the Federal medical assistance percent-
14 age shall be 100 per centum with respect to
15 (and, notwithstanding any other provision of
16 this title, available for) medical assistance pro-
17 vided to uninsured individuals (as defined in
18 section 1902(ss)) who are eligible for such as-
19 sistance only on the basis of section
20 1902(a)(10)(A)(ii)(XXIII) and with respect to
21 expenditures described in section 1903(a)(7)
22 that a State demonstrates to the satisfaction of
23 the Secretary are attributable to administrative
24 costs related to providing for such medical as-

1 sistance to such individuals under the State
2 plan.”.

3 (b) CHIP.—

4 (1) IN GENERAL.—Section 2103(c) of the So-
5 cial Security Act (42 U.S.C. 1397cc(e)) is amended
6 by adding at the end the following paragraph:

7 “(9) CERTAIN IN VITRO DIAGNOSTIC PRODUCTS
8 FOR COVID–19 TESTING.—The child health assist-
9 ance provided to a targeted low-income child shall
10 include coverage of any in vitro diagnostic product
11 described in section 1905(a)(3)(B) that is adminis-
12 tered during any portion of the emergency period de-
13 scribed in such section beginning on or after the
14 date of the enactment of this subparagraph (and the
15 administration of such product).”.

16 (2) COVERAGE FOR TARGETED LOW-INCOME
17 PREGNANT WOMEN.—Section 2112(b)(4) of the So-
18 cial Security Act (42 U.S.C. 1397ll(b)(4)) is amend-
19 ed by inserting “under section 2103(c)” after “same
20 requirements”.

21 (3) PROHIBITION OF COST SHARING.—Section
22 2103(e)(2) of the Social Security Act (42 U.S.C.
23 1397cc(e)(2)) is amended—

1 (A) in the paragraph header, by inserting
 2 “, COVID–19 TESTING,” before “OR PREGNANCY-
 3 RELATED ASSISTANCE”; and

4 (B) by striking “category of services de-
 5 scribed in subsection (c)(1)(D) or” and insert-
 6 ing “categories of services described in sub-
 7 section (c)(1)(D), in vitro diagnostic products
 8 described in subsection (c)(9) (and administra-
 9 tion of such products), visits described in sec-
 10 tion 1916(a)(2)(G), or”.

11 **SEC. 6. LABORATORY REIMBURSEMENT FOR DIAGNOSTIC**
 12 **TESTING FOR COVID–19 IN UNINSURED INDI-**
 13 **VIDUALS.**

14 (a) REIMBURSEMENT.—Through the National Dis-
 15 aster Medical System under section 2812 of the Public
 16 Health Service Act (42 U.S.C. 300hh–11), and in coordi-
 17 nation with the Administrator of the Centers for Medicare
 18 & Medicaid Services, the Secretary of Health and Human
 19 Services shall, subject to the availability of appropriations
 20 under subsection (c), pay the claims of laboratories for
 21 reimbursement, as described in subsection (a)(3)(D) of
 22 such section 2812, for health services consisting of diag-
 23 nostic testing to detect or diagnose COVID–19 in unin-
 24 sured individuals. The amount that will be paid shall be
 25 equal to the amount that would have been paid to a physi-

1 cian or laboratory under Clinical Laboratory Fee Schedule
2 under section 1833(h)(8) of the Social Security Act.

3 (b) DEFINITION.—In this section, the term “unin-
4 sured individual” means an individual who is not enrolled
5 in—

6 (1) a Federal health care program (as defined
7 under section 1128B(f) of the Social Security Act
8 (42 U.S.C. 1320a–7b(f))); or

9 (2) a group health plan or health insurance cov-
10 erage offered by a health insurance issuer in the
11 group or individual market (as such terms are de-
12 fined in section 2791 of the Public Health Service
13 Act (42 U.S.C. 300gg–91)) or a health plan offered
14 under chapter 89 of title 5, United States Code.

15 (c) FUNDING.—To carry out this section, there is au-
16 thorized to be appropriated, and there is hereby appro-
17 priated, out of amounts in the Treasury not otherwise obli-
18 gated, \$1,000,000,000, to remain available until ex-
19 pended.

20 **SEC. 7. APPLICATION WITH RESPECT TO TRICARE, COV-**
21 **ERAGE FOR VETERANS, AND COVERAGE FOR**
22 **FEDERAL CIVILIANS.**

23 (a) TRICARE.—The Secretary of Defense may not
24 require any copayment or other cost sharing under chap-
25 ter 55 of title 10, United States Code, for in vitro diag-

1 nostic products described in paragraph (1) of section 2(a)
2 (or the administration of such products) or visits described
3 in paragraph (2) of such section furnished during any por-
4 tion of the emergency period defined in paragraph (1)(B)
5 of section 1135(g) of the Social Security Act (42 U.S.C.
6 1320b–5(g)) beginning on or after the date of the enact-
7 ment of this Act.

8 (b) VETERANS.—The Secretary of Veterans Affairs
9 may not require any copayment or other cost sharing
10 under chapter 17 of title 38, United States Code, for in
11 vitro diagnostic products described in paragraph (1) of
12 section 2(a) (or the administration of such products) or
13 visits described in paragraph (2) of such section furnished
14 during any portion of the emergency period defined in
15 paragraph (1)(B) of section 1135(g) of the Social Security
16 Act (42 U.S.C. 1320b–5(g)) beginning on or after the date
17 of the enactment of this Act.

18 (c) FEDERAL CIVILIANS.—No copayment or other
19 cost sharing may be required for any individual occupying
20 a position in the civil service (as that term is defined in
21 section 2101(1) of title 5, United States Code) enrolled
22 in a health benefits plan, including any plan under chapter
23 89 of title 5, United States Code, or for any other indi-
24 vidual currently enrolled in any plan under chapter 89 of
25 title 5 for diagnostic tests” after “including any plan

1 under chapter 89 of title 5, United States Code), for in
2 vitro diagnostic products described in paragraph (1) of
3 section 2(a) (or the administration of such products) or
4 visits described in paragraph (2) of such section furnished
5 during any portion of the emergency period defined in
6 paragraph (1)(B) of section 1135(g) of the Social Security
7 Act (42 U.S.C. 1320b–5(g)) beginning on or after the date
8 of the enactment of this Act.

9 **SEC. 8. COVERAGE OF TESTING FOR COVID-19 AT NO COST**
10 **SHARING FOR INDIANS RECEIVING CON-**
11 **TRACT HEALTH SERVICES.**

12 The Secretary of Health and Human Services shall
13 cover, without the imposition of any cost sharing require-
14 ments, the cost of providing any COVID–19 related items
15 and services as described in paragraph (1) of section 2(a)
16 (or the administration of such products) or visits described
17 in paragraph (2) of such section furnished during any por-
18 tion of the emergency period defined in paragraph (1)(B)
19 of section 1135(g) of the Social Security Act (42 U.S.C.
20 320b–5(g)) beginning on or after the date of the enact-
21 ment of this Act to Indians (as defined in section 4 of
22 the Indian Health Care Improvement Act (25 U.S.C.
23 1603)) receiving health services through the Indian Health
24 Service, regardless of whether such items or services have
25 been authorized under the contract health services system

- 1 funded by the Indian Health Service or is covered as a
- 2 health service of the Indian Health Service.

