

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

A BILL

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

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 “Affordable Coronavirus
5 Testing Act”.

6 **SEC. 2. COVERAGE OF CORONAVIRUS ANTIBODY TESTS.**

7 (a) COVERAGE.—

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

1 health plan (as defined in section 1251(e) of the Pa-
2 tient Protection and Affordable Care Act) shall pro-
3 vide coverage, and shall not impose any cost sharing
4 (including deductibles, copayments, and coinsurance)
5 requirements or prior authorization or other medical
6 management requirements, for eligible COVID-19
7 serology tests performed during any portion of the
8 2020 or 2021 plans years.

9 (2) ELIGIBLE TEST.—For purpose of para-
10 graph (1), an eligible COVID-19 serology test shall
11 include the following:

12 (A) A test that has been approved, cleared,
13 or authorized under section 510(k), 513, 515,
14 or 564 of the Federal Food, Drug, and Cos-
15 metic Act for the detection of the presence of
16 SARS-CoV-2 antibodies.

17 (B) A serology test kit that is made avail-
18 able within the 10-day grace period prior to an
19 emergency use authorization submission and
20 with respect to which such emergency use au-
21 thorization submission is under consideration,
22 except that this subparagraph shall not apply in
23 the case of a serology test kit where the emer-
24 gency use authorization submission request
25 under section 564 of the Federal Food, Drug,

1 and Cosmetic Act has been denied or not sub-
2 mitted within a reasonable timeframe.

3 (C) A serology laboratory developed test
4 that the Food and Drug Administration permits
5 for clinical use without an emergency use au-
6 thorization submission.

7 (D) Any other test the Secretary deter-
8 mines appropriate through guidance.

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

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

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

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

4 (e) TERMS.—In this section:

5 (1) GENERAL TERMS.—The terms “group
 6 health plan”, “health insurance issuer”, “group
 7 health insurance coverage”, and “individual health
 8 insurance coverage” shall have the meanings given
 9 such terms in section 2791 of the Public Health
 10 Service Act (42 U.S.C. 300gg–91), section 733 of
 11 the Employee Retirement Income Security Act of
 12 1974 (29 U.S.C. 1191b), and section 9832 of the
 13 Internal Revenue Code of 1986, as applicable.

14 (2) MEDICAL MANAGEMENT.—The term “med-
 15 ical management” includes requirements relating to
 16 clinical criteria for coverage, frequency limitations,
 17 and similar restrictions as determined by the Sec-
 18 retary of Health and Human Services, Secretary of
 19 Labor, and Secretary of the Treasury.

20 (f) CONFORMING AMENDMENT.—Section 6001(d) of
 21 the Families First Coronavirus Response Act (42 U.S.C.
 22 1320b–5 note) is amended—

23 (1) by striking “The terms” and inserting the
 24 following:

25 “(1) IN GENERAL.—The terms”; and

1 (2) by adding at the end the following:

2 “(2) MEDICAL MANAGEMENT.—The term ‘med-
3 ical management’ includes requirements relating to
4 clinical criteria for coverage, frequency limitations,
5 and similar restrictions as determined by the Sec-
6 retary of Health and Human Services, Secretary of
7 Labor, and Secretary of the Treasury.”.

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

10 (a) IN GENERAL.—Section 1833(cc)(1)(A)(iii) of the
11 Social Security Act (42 U.S.C. 1395l(cc)(1)(A)(iii) is
12 amended by inserting the following before the semicolon:
13 “or a COVID–19 serology test described in section
14 1852(a)(1)(B)(VII)”.

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

18 (1) in clause (iv)—

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

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

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

1 uary 1, 2020, that begins on or after
 2 the date of enactment of this sub-
 3 clause, and the administration of such
 4 test.”;

5 (2) in clause (v), by striking “and (VI)” and in-
 6 serting “(VI), and (VII)”;

7 (3) in clause (vi), by inserting “, or in the case
 8 of a product or service described in subclause (VII)
 9 of such clause that is administered or furnished dur-
 10 ing any portion of the period described in such sub-
 11 clause” after “this clause”.

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

14 (a) MEDICAID.—

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

18 (A) in subparagraph (A), by striking “;
 19 and” and inserting a semicolon;

20 (B) in subparagraph (B), by inserting
 21 “and” after the semicolon; and

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

24 “(C) COVID–19 serology tests administered
 25 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:

1 “(xii) Any COVID–19 serology test
 2 described in section 1905(a)(3)(C) that is
 3 administered during any portion of the 2-
 4 year period described in such section be-
 5 ginning on or after the date of enactment
 6 of this clause (and the administration of
 7 such test).”.

8 (C) CLARIFICATION.—The amendments
 9 made in this paragraph shall apply with respect
 10 to a State plan of a territory in the same man-
 11 ner as a State plan of one of the 50 States.

12 (b) CHIP.—

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

16 “(11) COVID–19 SEROLOGY TESTING.—The
 17 child health assistance provided to a targeted low-in-
 18 come child shall include coverage of any COVID–19
 19 serology test described in section 1905(a)(3)(C) that
 20 is administered during any portion of the 2-year pe-
 21 riod described in such section beginning on or after
 22 the date of the enactment of this subparagraph (and
 23 the administration of such test).”.

24 (2) PROHIBITION OF COST SHARING.—Section
 25 2103(e)(2) of the Social Security Act (42 U.S.C.

1 1397cc(e)(2)) is amended by inserting “COVID–19
2 serology tests described in subsection (c)(11) (and
3 administration of such tests),” after “products),”.

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

6 (a) IN GENERAL.—The Secretary of Defense shall
7 provide coverage under the TRICARE program, and shall
8 not impose any cost sharing (including deductibles, copay-
9 ments, and coinsurance) requirements or prior authoriza-
10 tion or other medical management requirements, for
11 COVID–19 serology tests performed for covered bene-
12 ficiaries during calendar year 2020 or 2021.

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

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

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

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

3 (b) ENROLLED VETERAN DEFINED.—In this section,
 4 the term “enrolled veteran” means a veteran enrolled in
 5 the system of annual patient enrollment of the Depart-
 6 ment of Veterans Affairs established and operated under
 7 section 1705(a) of title 38, United States Code.

8 **SEC. 7. COVERAGE OF CORONAVIRUS ANTIBODY TESTS**
 9 **UNDER FEHBP.**

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

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

13 “(1) require the carrier to provide coverage
 14 for—

15 “(A) a COVID–19 serology test adminis-
 16 tered on any date during the period beginning
 17 on the date of enactment of this subsection and
 18 ending on December 31, 2021; and

19 “(B) the administration of a test described
 20 in subparagraph (A); and

21 “(2) prohibit the carrier from imposing any cost
 22 sharing requirement (including a deductible, copay-
 23 ment, or coinsurance requirement), or prior author-
 24 ization or other medical management requirement,

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

3 **SEC. 8. REIMBURSEMENT FOR UNINSURED PATIENT**
4 **COSTS.**

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

13 **SEC. 9. ELECTRONIC REPORTING STANDARDS.**

14 (a) COMMITTEE.—

15 (1) IN GENERAL.—Not later than 30 days after
16 the date of enactment of this Act, the Secretary of
17 Health and Human Services shall convene a com-
18 mittee to make recommendations to the Secretary on
19 the expedited adoption of private sector standards
20 (as defined in section 1171(7) of the Social Security
21 Act (42 U.S.C. 1320d(7))) and the platform de-
22 scribed in subsection (b).

23 (2) MEMBERSHIP.—The committee under para-
24 graph (1) shall include representatives of—

1 (A) the Centers for Disease Control and
2 Prevention;

3 (B) the Office of Civil Rights of the De-
4 partment of Health and Human Services;

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

7 (D) the Department of Defense;

8 (E) the Department of Veterans Affairs;

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

11 (G) standards development organizations
12 defined under section 1171(8) of the Social Se-
13 curity Act (42 U.S.C. 1320d(8)), including the
14 National Council for Prescription Drug Pro-
15 grams and Health Level 7.

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

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

1 case reports, laboratory results, serology, immu-
2 nology, and hospital capacity data;

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

9 (3) standardized immunization data that is
10 shared with immunization registries, medication his-
11 tory, and serology available at the point of care for
12 clinicians; and

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

16 (A) collect, maintain, and provide to pre-
17 scribers and dispensers, in real-time and within
18 ordinary clinical workflow, information on pa-
19 tient prescription and dispensing history, rel-
20 evant clinical diagnoses, laboratory test results,
21 vaccinations through pharmaceutical claims,
22 and electronic prescribing data transactions to
23 treat patients; and

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

1 purposes of infectious disease surveillance, iden-
2 tification, and containment consistent with any
3 electronic case reporting system.

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

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

18 (d) ADOPTION OF PLATFORM.—Not later than 90
19 days after receipt of the recommendations under sub-
20 section (b) on a common platform as described in sub-
21 section (b)(4), the Secretary of Health and Human Serv-
22 ices shall enter into a contract with a private sector entity
23 to establish such platform, which shall be available for use
24 within 180 days of the date of such contract.

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

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