

116TH CONGRESS
2D SESSION

S. 3790

To provide reimbursements for certain costs of health care items and services, including prescription drugs, furnished during the public health emergency declared with respect to COVID–19.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2020

Mrs. GILLIBRAND (for Mr. SANDERS (for himself, Mrs. GILLIBRAND, Mr. MARKEY, Ms. WARREN, Mr. BOOKER, Mr. MERKLEY, and Ms. HARRIS)) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide reimbursements for certain costs of health care items and services, including prescription drugs, furnished during the public health emergency declared with respect to COVID–19.

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 “Health Care Emer-
5 gency Guarantee Act”.

1 **SEC. 2. REIMBURSEMENTS FOR CERTAIN COSTS OF**
2 **HEALTH CARE ITEMS AND SERVICES INCLUD-**
3 **ING PRESCRIPTION DRUGS FURNISHED DUR-**
4 **ING PUBLIC HEALTH EMERGENCY.**

5 (a) IN GENERAL.—During the period beginning on
6 the date of enactment of this Act and ending on the date
7 the Secretary certifies to Congress that a vaccine approved
8 by the Food and Drug Administration for COVID–19 is
9 widely available to the public, the Secretary shall make
10 payments to qualified providers with respect to applicable
11 health care items and services as defined in subsection (b)
12 that are furnished to an applicable individual an amount
13 equal to—

14 (1) in the case of any portion of such period in
15 which an applicable individual is enrolled in a public
16 or private health insurance plan, the amount of any
17 cost-sharing, including any deductibles, copayments,
18 coinsurance or similar charges, that would otherwise
19 be applicable under such plan, including with respect
20 to prescription drug coverage under the plan;

21 (2) in the case of any portion of such period in
22 which an applicable individual is uninsured, an
23 amount equal to the amount that would be paid to
24 the qualified provider for the same or equivalent
25 items or services, including with respect to any inpa-
26 tient or physician-administered drugs (and excluding

1 outpatient prescription drugs or biologicals with re-
 2 spect to which coverage is provided under subsection
 3 (e)), under the Medicare program under title XVIII
 4 of the Social Security Act (42 U.S.C. 1395 et seq.).

5 (b) APPLICABLE HEALTH CARE ITEMS AND SERV-
 6 ICES; APPLICABLE INDIVIDUAL DEFINED.—In this sec-
 7 tion:

8 (1) APPLICABLE HEALTH CARE ITEMS AND
 9 SERVICES.—The term “applicable health care items
 10 and services” means, with respect to an applicable
 11 individual, any health care items and services that
 12 are medically necessary or appropriate for the main-
 13 tenance of health or for the diagnosis, treatment, or
 14 rehabilitation of a health condition of the applicable
 15 individual, including—

16 (A) any testing services and treatments for
 17 COVID–19 or related complications, including
 18 vaccines, diagnostic tests, drugs and biologicals,
 19 and therapies; and

20 (B) in the case of an applicable individual
 21 who is enrolled in a public or private health in-
 22 surance plan, any health care items and serv-
 23 ices covered by such plan as of March 1, 2020,
 24 or in the case of an applicable individual who
 25 enrolls in such plan after the date, any health

1 care items and services covered by such plan as
 2 of the date of such enrollment.

3 (2) APPLICABLE INDIVIDUAL.—The term “ap-
 4 plicable individual” means an individual who is a
 5 resident of the United States.

6 (c) REQUIREMENTS.—

7 (1) NO EFFECT ON APPLICABLE COST-SHARING
 8 REQUIREMENTS.—Nothing in this section shall af-
 9 fect the application of any requirements applicable
 10 under Federal or State law with respect to coverage
 11 of health care items and services without any cost-
 12 sharing.

13 (2) MAINTENANCE OF EFFORT.—

14 (A) IN GENERAL.—During the period de-
 15 scribed in subsection (a), a public or private
 16 health plan shall not increase cost-sharing, de-
 17 crease benefits, or otherwise make coverage less
 18 generous than the benefits offered on the date
 19 of enactment of this Act.

20 (B) NEW ITEMS AND SERVICES.—During
 21 such period, a public or private health plan
 22 shall provide coverage of new items and serv-
 23 ices, including those related to COVID–19, as
 24 appropriate, at a minimum, at a level consistent

1 with the prior coverage practices and
2 formularies of the plan.

3 (3) LIMITATION ON OUT-OF-POCKET EX-
4 PENSES.—During such period, in order to be eligible
5 to receive payments under this section, a qualified
6 provider shall agree not to impose on an applicable
7 individual any charge for applicable health care
8 items and services furnished to the applicable indi-
9 vidual.

10 (4) PERMISSIBLE BILLING OF PLANS; LIMITA-
11 TION ON BALANCE BILLING.—During such period, in
12 order to be eligible to receive payments under this
13 section, a qualified provider shall agree, with respect
14 to applicable health care items and services fur-
15 nished to an applicable individual when such indi-
16 vidual is enrolled in a public or private health insur-
17 ance plan—

18 (A) not to impose any charge on the plan
19 for such items and services beyond the amount
20 otherwise payable by the plan; and

21 (B) not to bill the applicable individual for
22 any amounts in excess of the amount described
23 in subparagraph (A).

24 (5) MEDICAL DEBT COLLECTION.—A qualified
25 provider shall agree—

1 (A) to immediately halt all medical debt
2 collection, including collection activities carried
3 out by third parties, during such period and
4 shall not collect medical debt or have third par-
5 ties collect medical debt for applicable health
6 care items and services furnished during such
7 period; and

8 (B) to refrain from pursuing medical debt
9 collection, including collection activities carried
10 out by third parties, after such period with re-
11 spect to items and services related to the diag-
12 nosis or treatment of COVID–19 (regardless of
13 whether such services were furnished before,
14 during, or after such period) and shall not col-
15 lect medical debt or have third parties collect
16 medical debt for such items or services after
17 such period.

18 (6) SUBMISSION OF BILLS AND DOCUMENTA-
19 TION.—A qualified provider shall agree to submit
20 bills and any required supporting documentation re-
21 lating to the provision of applicable health care
22 items and services within 30 days after the date of
23 providing such services, in such manner as the Sec-
24 retary determines appropriate.

1 (d) WAIVER OF LATE ENROLLMENT PENALTIES
 2 UNDER MEDICARE.—During the period described in sub-
 3 section (a), no increase in the monthly premium of an indi-
 4 vidual pursuant to section 1818(c), 1839(b), or 1860D–
 5 13 of the Social Security Act (42 U.S.C. 1395i–2(c),
 6 1395r(b), 1395w–113) shall be effected in the case of any
 7 individual who enrolls for benefits under title XVIII of
 8 such Act with respect to any period prior to the date of
 9 such enrollment.

10 (e) COVERAGE WITH RESPECT TO OUTPATIENT PRE-
 11 SCRIPTION DRUGS.—

12 (1) IN GENERAL.—During the period described
 13 in subsection (a), with respect to outpatient pre-
 14 scription drugs or biologicals described in subsection
 15 (b)(1)(A) that are dispensed to uninsured individ-
 16 uals, the Secretary shall establish procedures under
 17 which—

18 (A) such drugs or biologicals are dispensed
 19 at no cost to such individuals;

20 (B) pharmacies that dispense such drugs
 21 or biologicals—

22 (i) are reimbursed by the Secretary
 23 for such drugs or biologicals dispensed to
 24 such individuals at an amount equal to the
 25 price paid by the Secretary of Veterans Af-

1 fairs to procure the drug or biological
 2 under the laws administered by the Sec-
 3 retary of Veterans Affairs; and

4 (ii) agree not to charge such individ-
 5 uals for any difference between the amount
 6 reimbursed under clause (i) and the cost to
 7 the pharmacy for the drug; and

8 (C) manufacturers of such drugs or
 9 biologicals reimburse pharmacies for any dif-
 10 ference described in subparagraph (B)(ii) with
 11 respect to drugs or biologicals of the manufac-
 12 turer that are dispensed to such individuals.

13 (2) CONDITION OF COVERAGE UNDER MEDI-
 14 CARE.—During the period described in subsection
 15 (a), no coverage may be provided under part B or
 16 D of title XVIII of the Social Security Act (42
 17 U.S.C. 1395j et seq., 1395w–101 et seq.) with re-
 18 spect to a drug or biological of a manufacturer if the
 19 manufacturer does not enter into an agreement with
 20 the Secretary to carry out the requirements applica-
 21 ble with respect to such manufacturers under this
 22 subsection.

23 (3) REQUIREMENT FOR PARTICIPATING PHAR-
 24 MACIES.—During the period described in subsection
 25 (a), a prescription drug plan under part D of title

1 XVIII of the Social Security Act (42 U.S.C. 1395w–
2 101 et seq.) may not contract with a pharmacy if
3 the pharmacy does not enter into an agreement with
4 the Secretary to carry out the requirements applica-
5 ble with respect to pharmacies under this subsection.

6 (f) OTHER DEFINITIONS.—

7 (1) PUBLIC OR PRIVATE HEALTH INSURANCE
8 PLAN.—

9 (A) IN GENERAL.—The term “public or
10 private health insurance plan” means any of
11 the following:

12 (i) A group health plan, or group
13 health insurance coverage, as such terms
14 are defined in section 2791 of the Public
15 Health Service Act (42 U.S.C. 300gg–91).

16 (ii) A qualified health plan, as defined
17 in section 1301 of the Patient Protection
18 and Affordable Care Act (42 U.S.C.
19 18021).

20 (iii) Subject to subparagraph (B), any
21 health insurance coverage (other than a
22 plan described in clause (ii)) offered in the
23 individual market, as such terms are de-
24 fined in section 2791 of the Public Health

1 Service Act, including any short-term lim-
2 ited duration insurance.

3 (iv) A health plan offered under chap-
4 ter 89 of title 5, United States Code.

5 (v) A Federal health care program (as
6 defined under section 1128B(f) of the So-
7 cial Security Act (42 U.S.C. 1320a-7b(f)),
8 including—

9 (I) health benefits furnished
10 under the TRICARE program (as de-
11 fined in section 1072 of title 10,
12 United States Code);

13 (II) health benefits furnished to
14 veterans under the laws administered
15 by the Secretary of Veterans Affairs;
16 and

17 (III) health benefits furnished to
18 Indians (as defined in section 4 of the
19 Indian Health Care Improvement Act
20 (25 U.S.C. 1603)) receiving health
21 services through the Indian Health
22 Service, including through an Urban
23 Indian Organization, regardless of
24 whether such benefits are for items or
25 services that have been authorized

1 under the purchased/referred care sys-
2 tem funded by the Indian Health
3 Service or are covered as a health
4 service of the Indian Health Service.

5 (B) LIMITATION ON INDIVIDUAL HEALTH
6 INSURANCE COVERAGE.—The term “public or
7 private health insurance coverage” includes the
8 health insurance coverage described in clause
9 (iii) of subparagraph (A) only with respect to
10 an individual who is enrolled in such coverage
11 on March 1, 2020.

12 (2) QUALIFIED PROVIDER.—The term “quali-
13 fied provider” means a health care provider who is
14 a participating provider under the Medicare program
15 under title XVIII of the Social Security Act (42
16 U.S.C. 1395 et seq.). Such term includes a health
17 care provider who is not a participating provider
18 under such program if the health care provider
19 would meet the criteria for such participation and,
20 if the State requires the health care provider to be
21 licensed by the State, is licensed by the State in
22 which the items or services are furnished.

23 (3) SECRETARY.—The term “Secretary” means
24 the Secretary of Health and Human Services.

25 (g) IMPLEMENTATION.—

1 (1) IN GENERAL.—The Secretary, in coordina-
 2 tion with the Secretary of the Treasury, the Com-
 3 missioner of Social Security, and the Secretary of
 4 Labor, shall implement the provisions of this section
 5 not later than the date that is 7 days after the date
 6 of the enactment of this Act.

7 (2) ENSURING TIMELY PAYMENT.—The Sec-
 8 retary shall establish a process and issue such guid-
 9 ance as is necessary to ensure a qualified provider
 10 receives payments under this section in a timely
 11 manner.

12 (3) ENSURING COLLECTION OF DATA ON DIS-
 13 PARITIES.—The Secretary shall implement this sec-
 14 tion in a manner and issue such guidance as is nec-
 15 essary to allow for the ongoing, accurate, and timely
 16 collection and analysis of data on disparities in ac-
 17 cordance with subsection (h).

18 (h) COLLECTION OF DATA ON DISPARITIES.—

19 (1) IN GENERAL.—During the period described
 20 in subsection (a), the Secretary shall collect data on
 21 disparities across race, ethnicity, primary language,
 22 gender, sexual orientation, disability status, age, ge-
 23 ographic area, insurance status, and socioeconomic
 24 status—

1 (A) in health outcomes and access to
2 health care related to the COVID–19 outbreak,
3 including data on COVID–19 cases, treatment,
4 and deaths; and

5 (B) in patient access to applicable health
6 care items and services under this section.

7 (2) PUBLIC AVAILABILITY.—The Secretary
8 shall—

9 (A) make data collected under this sub-
10 section publicly available on the internet website
11 of the Department of Health and Human Serv-
12 ices as soon as is practicable, but not later than
13 30 days after the date of enactment of this Act,
14 in a manner that allows researchers, scholars,
15 health care providers, and others to access and
16 analyze such data, without compromising pa-
17 tient privacy; and

18 (B) update such data on a weekly basis
19 thereafter for the duration of the period de-
20 scribed in subsection (a).

21 (i) WEEKLY REPORTS TO CONGRESS.—

22 (1) IN GENERAL.—On a weekly basis during
23 the period described in subsection (a), the Secretary
24 shall report to Congress on—

1 (A) the implementation of this section, in-
2 cluding information on the amount, type, and
3 geographic distribution of payments to qualified
4 providers under this section; and

5 (B) any disparities in health and access to
6 health care related to the COVID–19 outbreak
7 or patient access to applicable health care items
8 and services under this section, as identified
9 through the collection and analysis of data col-
10 lected under subsection (h).

11 (2) PUBLIC AVAILABILITY.—The Secretary
12 shall make each report submitted under paragraph
13 (1) publicly available on the internet website of the
14 Department of Health and Human Services.

15 (j) FUNDING.—There are authorized to be appro-
16 priated such sums as are necessary to carry out this sec-
17 tion.

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