



2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

November 20, 2009

GENERAL MEMORANDUM 09-143

Rural Telemedicine Enhancing Community Health (TECH) Act of 2009

On November 5, 2009, Senator Tom Udall (D-NM) introduced S 2741, the Rural Telemedicine Enhancing Community (TECH) Act of 2009. The bill is designed to improve and expand the use of telemedicine in rural areas, including Indian country. It would authorize three telehealth pilot projects, expand access to telehealth services for strokes, and improve access to shared telehealth services. S 2741 was referred to the Senate Finance Committee.

In the bill the term "Indian Health Service (IHS) facilities" includes facilities operated by the IHS and by tribes and tribal organizations (as those terms are defined in section 4 of the Indian Health Care Improvement Act).

Pilot Projects. The bill would authorize \$13.5 million for fiscal years 2011 through 2014 for three telehealth pilot projects. Priority would be given to entities located in medically underserved areas and facilities of the Indian Health Service. The projects would be evaluated with regard to their effectiveness in 1) treating behavioral health issues, 2) increasing the capacity of non-medical and non-specialized providers in providing health services, and 3) using telehealth services to provide acute stroke evaluation and treatment. The Secretary of the Department of Health and Human Services (DHHS) would be authorized to initiate additional projects if the three pilot projects enhance outcomes for patients and reduce expenditures for participating entities.

Expanded Access for Telehealth Services for Strokes. The bill would amend the Medicare statute to expand access to stroke telehealth services and would specifically include facilities of the Indian Health Service as an originating site for telehealth services.

Improved Access to Store-and-Forward and Videoconferencing Technologies. The bill would specify that telehealth services provided by facilities of the IHS and Federally Qualified Health Centers include store-and-forward (i.e. digital information is stored on a provider's system and then forwarded via a secure method to a provider at another location) and videoconferencing technologies. IHS facilities could be reimbursed as users of telehealth services.

Credentialing and Privileging. The DHHS Secretary would be required to establish regulations for remote credentialing and privileging standards for telehealth services. The regulations are to allow an originating site "to accept, and not duplicate, the credentialing and privileging processes and decisions made by another site."

Attached is a copy of the Rural Telemedicine Enhancing Community Health (TECH) Act of 2009. Please let us know if we may provide additional information regarding this legislation.

#

Inquiries may be directed to:

Karen Funk (kfunk@hobbsstrauss.com)

Starla Roels (sroels@hobbsstrauss.com)

111TH CONGRESS
1ST SESSION

S. 2741

To establish telehealth pilot projects, expand access to stroke telehealth services under the Medicare program, improve access to “store-and-forward” telehealth services in facilities of the Indian Health Service and federally qualified health centers, reimburse facilities of the Indian Health Service as originating sites, establish regulations to consider credentialing and privileging standards for originating sites with respect to receiving telehealth services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 2009

Mr. UDALL of New Mexico introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish telehealth pilot projects, expand access to stroke telehealth services under the Medicare program, improve access to “store-and-forward” telehealth services in facilities of the Indian Health Service and federally qualified health centers, reimburse facilities of the Indian Health Service as originating sites, establish regulations to consider credentialing and privileging standards for originating sites with respect to receiving telehealth services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Rural Telemedicine
3 Enhancing Community Health (TECH) Act of 2009”.

4 **SEC. 2. TELEHEALTH PILOT PROJECTS.**

5 (a) **IN GENERAL.**—The Secretary of Health and
6 Human Services (referred to in this section as the “Sec-
7 retary”) shall establish 3-year telehealth pilot projects for
8 the purpose of analyzing the clinical outcomes and cost
9 effectiveness associated with telehealth services in a vari-
10 ety of geographic areas. The Secretary shall provide eval-
11 uation and treatment services to entities participating in
12 the pilot projects.

13 (b) **ELIGIBLE ENTITIES.**—

14 (1) **IN GENERAL.**—The Secretary shall select el-
15 igible entities to participate in the pilot projects
16 under this section.

17 (2) **PRIORITY.**—In selecting eligible entities to
18 participate in the pilot projects under this section,
19 the Secretary shall give priority to such entities lo-
20 cated in medically underserved areas and facilities of
21 the Indian Health Service.

22 (c) **EVALUATION.**—The Secretary shall, through the
23 pilot projects, evaluate—

24 (1) the effective and economic delivery of care
25 in treating behavioral health issues (including post-
26 traumatic stress disorder) with the use of telehealth

1 services in medically underserved and tribal areas,
2 including collaborative uses of health professionals,
3 integration of the range of telehealth and other tech-
4 nologies, and exploration of appropriate reimburse-
5 ment methods for third party payers;

6 (2) the effectiveness of improving the capacity
7 of non-medical providers and non-specialized medical
8 providers to provide health services for chronic com-
9 plex diseases in medically underserved and tribal
10 areas; and

11 (3) the effectiveness of using telehealth services
12 to provide acute stroke evaluation and treatment, oc-
13 cupational therapy, physical therapy, and speech lan-
14 guage pathology services to treat cerebrovascular
15 disease in medically underserved and tribal areas.

16 (d) REPORT.—Not later than 3 years after the pilot
17 projects are established under subsection (a), the Sec-
18 retary shall submit to Congress a report describing the
19 outcomes of such pilot projects and providing rec-
20 ommendations for expanding the use of telehealth services.

21 (e) EXPANSION OF PROJECT.—If the Secretary de-
22 termines that the pilot projects under this section enhance
23 outcomes for patients and reduce expenditures for partici-
24 pating entities, the Secretary may initiate similar projects
25 for additional medical conditions and geographic areas.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—To carry
2 out this section, there is authorized to be appropriated
3 \$13,500,000 for fiscal years 2011 through 2014.

4 **SEC. 3. EXPANDING ACCESS TO STROKE TELEHEALTH**
5 **SERVICES.**

6 (a) EXPANSION OF ORIGINATING SITES FOR STROKE
7 TELEHEALTH SERVICES.—Section 1834(m)(4) of the So-
8 cial Security Act (42 U.S.C. 1395m(m)(4)) is amended—

9 (1) in subparagraph (C)—

10 (A) in clause (i), in the matter preceding
11 subclause (I), by striking “The term” and in-
12 sserting “Subject to clause (iii), the term”; and

13 (B) by adding at the end the following new
14 clause:

15 “(iii) EXPANSION OF ORIGINATING
16 SITES FOR STROKE TELEHEALTH SERV-
17 ICES.—In the case of stroke telehealth
18 services, the term ‘originating site’ means
19 any site described in clause (ii) at which
20 the eligible telehealth individual is located
21 at the time the service is furnished via a
22 telecommunications system, regardless of
23 where the site is located.”; and

24 (2) by adding at the end the following new sub-
25 paragraph:

1 “(G) STROKE TELEHEALTH SERVICES.—

2 The term ‘stroke telehealth services’ means a
3 telehealth service used for the evaluation or
4 treatment of individuals with acute stroke, oc-
5 cupational therapy, physical therapy, and
6 speech language pathology services furnished
7 subsequent to a stroke, and stroke prevention
8 and education services.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall apply to telehealth services furnished
11 on or after the date that is 6 months after the date of
12 enactment of this Act.

13 **SEC. 4. IMPROVING ACCESS TO TELEHEALTH SERVICES AT**
14 **IHS FACILITIES AND FQHCS.**

15 (a) INCLUSION OF IHS FACILITIES AS ORIGINATING
16 SITES.—Section 1834(m)(4)(C)(ii) of the Social Security
17 Act (42 U.S.C. 1395m(m)(4)(C)(ii)) is amended by adding
18 at the end the following new subclause:

19 “(IX) A facility of the Indian
20 Health Service, whether operated by
21 such Service or by an Indian tribe or
22 tribal organization (as those terms are
23 defined in section 4 of the Indian
24 Health Care Improvement Act).”.

1 (b) ACCESS TO STORE-AND-FORWARD AND
2 VIDEOCONFERENCING TECHNOLOGIES.—

3 (1) IN GENERAL.—Section 1834(m)(1) of such
4 Act (42 U.S.C. 1395m(m)(1)) is amended by adding
5 at the end the following sentence: “For purposes of
6 the first sentence, in the case of telehealth services
7 described in subclause (I) of paragraph (4)(F)(iii)
8 that are furnished by a facility of the Indian Health
9 Service (whether operated by such Service or by an
10 Indian tribe or tribal organization (as those terms
11 are defined in section 4 of the Indian Health Care
12 Improvement Act)) or a federally qualified health
13 center (as defined in section 1861(aa)(4)), the term
14 ‘telecommunications system’ includes store-and-for-
15 ward technologies described in the preceding sen-
16 tence and, in the case of telehealth services described
17 in subclause (II) of such paragraph that are fur-
18 nished by such a facility or federally qualified health
19 center, such term includes videoconferencing tech-
20 nologies.”

21 (2) CONFORMING AMENDMENT.—Section
22 1834(m)(4)(F) of such Act (42 U.S.C.
23 1395m(m)(4)(F)) is amended by adding at the end
24 the following new clauses:

1 “(iii) TELEHEALTH SERVICES DE-
2 SCRIBED.—For purposes of paragraph (1):

3 “(I) The telehealth services de-
4 scribed in this subclause include con-
5 sultations related to neurosurgery,
6 neurology, cardiology, dermatology,
7 pediatric specialty, and orthopedic (as
8 specified by the Secretary).

9 “(II) The telehealth services de-
10 scribed in this subclause are services
11 related to hepatitis and other chronic
12 conditions and behavioral health serv-
13 ices (as specified by the Secretary).”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to telehealth services furnished on
16 or after the date that is 6 months after the date of enact-
17 ment of this Act.

18 **SEC. 5. IMPROVING CREDENTIALING AND PRIVILEGING**
19 **STANDARDS FOR TELEHEALTH SERVICES.**

20 Section 1834(m) of the Social Security Act (42
21 U.S.C. 1395m(m)) is amended by adding at the end the
22 following new paragraph:

23 “(5) ESTABLISHMENT OF REMOTE
24 CREDENTIALING AND PRIVILEGING STANDARDS.—

1 “(A) IN GENERAL.—Not later than 2 years
2 after the date of the enactment of this para-
3 graph, the Secretary shall establish reasonable
4 regulations for considering the remote
5 credentialing and privileging standards applica-
6 ble to telehealth services, including interpreta-
7 tive services, for originating sites under this
8 subsection. Such regulations shall allow an orig-
9 inating site to accept, and not duplicate, the
10 credentialing and privileging processes and deci-
11 sions made by another site.

12 “(B) CLARIFICATION REGARDING ACCEPT-
13 ANCE OF PROCESSES AND DECISIONS PRIOR TO
14 ENACTMENT OF REGULATIONS.—During the pe-
15 riod beginning on such date of enactment and
16 ending on the effective date of the regulations
17 under subparagraph (A), the Secretary shall
18 not take any punitive action under any rule or
19 regulation against an originating site on the
20 basis of that site’s acceptance, for purposes of
21 receiving telehealth services (including interpre-
22 tive services), the credentialing and privileging
23 processes and decisions made by another site
24 that is accredited by a national accreditation
25 body recognized by the Secretary under section

1 1865(a)(1) if the site accepting such
2 credentialing and privileging processes is also so
3 accredited and complies with the applicable re-
4 quirements for such acceptance.”.

○