

117TH CONGRESS  
1ST SESSION

# H. R. 1639

To amend title XVIII of the Social Security Act to restore State authority to waive for certain facilities the 35-mile rule for designating critical access hospitals under the Medicare program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2021

Mr. KINZINGER (for himself and Mr. PANETTA) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 restore State authority to waive for certain facilities the 35-mile rule for designating critical access hospitals under the Medicare program, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rural Hospital Closure  
5 Relief Act of 2021”.

1 **SEC. 2. RESTORING STATE AUTHORITY TO WAIVE THE 35-**  
2 **MILE RULE FOR CERTAIN MEDICARE CRIT-**  
3 **ICAL ACCESS HOSPITAL DESIGNATIONS.**

4 (a) IN GENERAL.—Section 1820 of the Social Secu-  
5 rity Act (42 U.S.C. 1395i–4) is amended—

6 (1) in subsection (c)(2)—

7 (A) in subparagraph (B)(i)—

8 (i) in subclause (I), by striking at the  
9 end “or”;

10 (ii) in subclause (II), by inserting at  
11 the end “or”; and

12 (iii) by adding at the end the fol-  
13 lowing new subclause:

14 “(III) subject to subparagraph  
15 (G), is a hospital described in sub-  
16 paragraph (F) and is certified on or  
17 after the date of the enactment of the  
18 Rural Hospital Closure Relief Act of  
19 2021 by the State as being a nec-  
20 essary provider of health care services  
21 to residents in the area;”;

22 (B) by adding at the end the following new  
23 subparagraphs:

24 “(F) HOSPITAL DESCRIBED.—For pur-  
25 poses of subparagraph (B)(i)(III), a hospital

described in this subparagraph is a hospital  
that—

“(i) is a sole community hospital (as  
defined in section 1886(d)(5)(D)(iii)), a  
medicare dependent, small rural hospital  
(as defined in section 1886(d)(5)(G)(iv)), a  
low-volume hospital that in 2021 receives a  
payment adjustment under section  
1886(d)(12), a subsection (d) hospital (as  
defined in section 1886(d)(1)(B)) that has  
fewer than 50 beds, or, subject to the limi-  
tation under subparagraph (G)(i)(I), is a  
facility described in subparagraph (G)(ii);

“(ii) is located in a rural area, as de-  
fined in section 1886(d)(2)(D);

“(iii)(I) is located—

“(aa) in a county that has a per-  
centage of individuals with income  
that is below 150 percent of the pov-  
erty line that is higher than the na-  
tional or statewide average in 2020;

“(bb) in a health professional  
shortage area (as defined in section  
332(a)(1)(A) of the Public Health  
Service Act); or

1 “(II) has a percentage of inpatient  
2 days of individuals entitled to benefits  
3 under part A of this title, enrolled under  
4 part B of this title, or enrolled under a  
5 State plan under title XIX that is higher  
6 than the national or statewide average in  
7 2019 or 2020;

8 “(iv) subject to subparagraph  
9 (G)(ii)(II), has attested to the Secretary  
10 two consecutive years of negative operating  
11 margins preceding the date of certification  
12 described in subparagraph (B)(i)(III); and

13 “(v) submits to the Secretary—

14 “(I) at such time and in such  
15 manner as the Secretary may require,  
16 an attestation outlining the good gov-  
17 ernance qualifications and strategic  
18 plan for multi-year financial solvency  
19 of the hospital; and

20 “(II) not later than 120 days  
21 after the date on which the Secretary  
22 issues final regulations pursuant to  
23 section 2(b) of the Rural Hospital  
24 Closure Relief Act of 2021, an appli-

1 cation for certification of the facility  
2 as a critical access hospital.

3 “(G) LIMITATION ON CERTAIN DESIGNA-  
4 TIONS.—

5 “(i) IN GENERAL.—The Secretary  
6 may not under subsection (e) certify pur-  
7 suant to a certification by a State under  
8 subparagraph (B)(i)(III)—

9 “(I) more than a total of 175 fa-  
10 cilities as critical access hospitals, of  
11 which not more than 20 percent may  
12 be facilities described in clause (ii);  
13 and

14 “(II) within any one State, more  
15 than 10 facilities as critical access  
16 hospitals.

17 “(ii) FACILITY DESCRIBED.—

18 “(I) IN GENERAL.—A facility de-  
19 scribed in this clause is a facility that  
20 as of the date of enactment of this  
21 subparagraph met the criteria for des-  
22 ignation as a critical access hospital  
23 under subparagraph (B)(i)(I).

24 “(II) NONAPPLICATION OF CER-  
25 TAIN CRITERIA.—For purposes of

1                    subparagraph (B)(i)(III), the criteria  
 2                    described in subparagraph (F)(iv)  
 3                    shall not apply with respect to the  
 4                    designation of a facility described in  
 5                    subclause (I).”; and

6                    (2) in subsection (e), by inserting “, subject to  
 7                    subsection (c)(2)(G),” after “The Secretary shall”.

8                    (b) REGULATIONS.—Not later than 120 days after  
 9                    the date of the enactment of this Act, the Secretary of  
 10                    Health and Human Services shall issue final regulations  
 11                    to carry out this section.

12                    (c) CLARIFICATION REGARDING FACILITIES THAT  
 13                    MEET DISTANCE OR OTHER CERTIFICATION CRITERIA.—  
 14                    Nothing in this section shall affect the application of cri-  
 15                    teria for designation as a critical access hospital described  
 16                    in subclause (I) or (II) of section 1820(c)(2)(B)(i) of the  
 17                    Social Security Act (42 U.S.C. 1395i–4(c)(2)(B)(i)).

18                    **SEC. 3. CMI TESTING OF NEW RURAL HOSPITAL DELIVERY**  
 19                    **AND PAYMENT MODEL.**

20                    Section 1115A of the Social Security Act (42 U.S.C.  
 21                    1315a) is amended—

22                    (1) in subsection (b)(2)(A), by adding at the  
 23                    end the following new sentence: “The models se-  
 24                    lected under this subparagraph shall include the  
 25                    testing of a new rural hospital delivery and payment

1 model (or models), as described in subsection (h).”;  
2 and

3 (2) by adding at the end the following new sub-  
4 section:

5 “(h) TESTING OF NEW RURAL HOSPITAL DELIVERY  
6 AND PAYMENT MODEL.—

7 “(1) IN GENERAL.—

8 “(A) TESTING.—The Secretary shall test  
9 the implementation of a new rural hospital de-  
10 livery and payment model (or models) that the  
11 Secretary determines would promote financially  
12 sustainable ways to ensure patient access to  
13 care in rural communities, which may include  
14 models under which such hospitals furnish out-  
15 patient emergency care services 24 hours a day,  
16 7 days a week for which payment is made  
17 under title XVIII based on the amount deter-  
18 mined under the prospective payment system  
19 for hospital outpatient department services  
20 under section 1833(t), plus a fixed rate for the  
21 cost of furnishing the emergency services.

22 “(B) PROMULGATION OF REGULATIONS.—  
23 Not later than 3 years after the date of the en-  
24 actment of this subsection, the Secretary shall  
25 promulgate regulations to test a new rural hos-

1           pital delivery and payment model (or models)  
2           described in subparagraph (A), unless Congress  
3           enacts legislation that establishes such a pay-  
4           ment model (or models) prior to the promulga-  
5           tion of regulations pursuant to this subpara-  
6           graph.

7           “(2) TRANSITION.—Effective beginning on the  
8           date on which the testing of a new rural hospital de-  
9           livery and payment model (or models) described in  
10          paragraph (1)(A) is implemented under this sub-  
11          section or such a payment model (or models) is es-  
12          tablished through the enactment of legislation de-  
13          scribed in paragraph (1)(B), the Secretary shall pro-  
14          vide a process under which—

15               “(A) all critical access hospitals may tran-  
16               sition to such new model or models under this  
17               subsection; and

18               “(B) any facility that was designated as a  
19               critical access hospital pursuant to a certifi-  
20               cation by a State under section  
21               1820(c)(2)(B)(i)(III) may revert to the prospec-  
22               tive payment model (or models) under which  
23               the facility received payment under title XVIII  
24               prior to being so designated.”.

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