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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

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.

IN THE HOUSE OF REPRESENTATIVES

Mr. KINZINGER introduced the following bill; which was referred to the Committee on _____

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

1 described in this subparagraph is a hospital
2 that—

3 “(i) is a sole community hospital (as
4 defined in section 1886(d)(5)(D)(iii)), a
5 medicare dependent, small rural hospital
6 (as defined in section 1886(d)(5)(G)(iv)), a
7 low-volume hospital that in 2021 receives a
8 payment adjustment under section
9 1886(d)(12), a subsection (d) hospital (as
10 defined in section 1886(d)(1)(B)) that has
11 fewer than 50 beds, or, subject to the limi-
12 tation under subparagraph (G)(i)(I), is a
13 facility described in subparagraph (G)(ii);

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

16 “(iii)(I) is located—

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

22 “(bb) in a health professional
23 shortage area (as defined in section
24 332(a)(1)(A) of the Public Health
25 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.”.