

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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 SENATE OF THE UNITED STATES

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Mr. DURBIN (for himself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on

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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 2023”.

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 “or”  
9 at the end;

10 (ii) in subclause (II), by inserting  
11 “or” at the end; 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 2023 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 2021;

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           2020 or 2021;

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 2023, 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 subsection (a).

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) section 1820(c)(2)(B)(i) of the So-  
17                    cial Security Act (42 U.S.C. 1395i-4(c)(2)(B)(i)).

18                    (d) GAO STUDY AND REPORT.—

19                    (1) STUDY.—The Comptroller General of the  
20                    United States (in this section referred to as the  
21                    “Comptroller General”), in consultation with the Ad-  
22                    ministrator of the Centers for Medicare & Medicaid  
23                    Services, shall conduct a study on the implementa-  
24                    tion of the amendments made by subsection (a).  
25                    Such study shall include an analysis of—

1 (A) the characteristics of facilities des-  
2 igned as critical access hospitals pursuant to  
3 section 1820(c)(2)(B)(i)(III) of the Social Secu-  
4 rity Act, as added by subsection (a);

5 (B) the financial status and outlook for  
6 such facilities based on their designation as a  
7 critical access hospital pursuant to such section;

8 (C) any increase in expenditures under the  
9 Medicare program under title XVIII of the So-  
10 cial Security Act (42 U.S.C. 1395 et seq.) as a  
11 result of such designation, relative to the ex-  
12 pected baseline expenditures under the Medi-  
13 care program if such facilities had not received  
14 such designation; and

15 (D) whether the authority to designate fa-  
16 cilities as critical access hospitals pursuant to  
17 such section 1820(c)(2)(B)(i)(III) should be  
18 maintained as is, modified in scale or scope, or  
19 sunset.

20 (2) REPORT.—Not later than 7 years after the  
21 date of the enactment of this Act, the Comptroller  
22 General shall submit to Congress a report containing  
23 the results of the study conducted under subsection  
24 (a), together with recommendations for such legisla-

1           tion and administrative action as the Comptroller  
2           General determines appropriate.

3           (e) GUIDANCE.—Not later than 2 years after the date  
4 of on which the Comptroller General submits the report  
5 to Congress under subsection (d)(2), the Administrator of  
6 the Centers for Medicare & Medicaid Services shall estab-  
7 lish a mechanism and provide guidance and technical as-  
8 sistance to facilities that have been designated as a critical  
9 access hospital pursuant to section 1820(c)(2)(B)(i)(III)  
10 of the Social Security Act, as added by subsection (a), on  
11 how such facilities may consider transitioning to a dif-  
12 ferent payment model under the Medicare program.