

116TH CONGRESS
1ST SESSION

S. 3067

To amend title XVIII of the Social Security Act to combat the opioid crisis by promoting access to non-opioid treatments in the hospital outpatient setting.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2019

Mrs. CAPITO (for herself, Mr. JONES, Ms. ERNST, Mrs. SHAHEEN, and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to combat the opioid crisis by promoting access to non-opioid treatments in the hospital outpatient setting.

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 “Non-Opioids Prevent
5 Addiction In the Nation Act” or the “NOPAIN Act”.

6 **SEC. 2. ACCESS TO NON-OPIOID TREATMENTS FOR PAIN.**

7 (a) IN GENERAL.—Section 1833(t) of the Social Se-
8 curity Act (42 U.S.C. 1395l(t)) is amended—

1 (1) in paragraph (2)(E), by inserting “and sep-
 2 arate payments for non-opioid treatments under
 3 paragraph (16)(G),” after “payments under para-
 4 graph (6)”;

5 (2) in paragraph (16), by adding at the end the
 6 following new subparagraph:

7 “(G) ACCESS TO NON-OPIOID TREATMENTS
 8 FOR PAIN.—

9 “(i) IN GENERAL.—Notwithstanding
 10 any other provision of this subsection, with
 11 respect to a covered OPD service (or group
 12 of services) furnished on or after January
 13 1, 2020, and before January 1, 2025, the
 14 Secretary shall not package, and shall
 15 make a separate payment as specified in
 16 clause (ii) for, a non-opioid treatment (as
 17 defined in clause (iii)) furnished as part of
 18 such service (or group of services).

19 “(ii) AMOUNT OF PAYMENT.—The
 20 amount of the payment specified in this
 21 clause is, with respect to a non-opioid
 22 treatment that is—

23 “(I) a drug or biological product,
 24 the amount of payment for such drug

1 or biological determined under section
2 1847A; or

3 “(II) a medical device, the
4 amount of the hospital’s charges for
5 the device, adjusted to cost.

6 “(iii) DEFINITION OF NON-OPIOID
7 TREATMENT.—A ‘non-opioid treatment’
8 means—

9 “(I) a drug or biological product
10 that is indicated to produce analgesia
11 without acting upon the body’s opioid
12 receptors; or

13 “(II) an implantable, reusable, or
14 disposable medical device cleared or
15 approved by the Administrator for
16 Food and Drugs for the intended use
17 of managing or treating pain,
18 that has demonstrated the ability to re-
19 place or reduce opioid consumption in a
20 clinical trial or through clinical data pub-
21 lished in a peer-reviewed journal.”.

22 (b) AMBULATORY SURGICAL CENTER PAYMENT SYS-
23 TEM.—Section 1833(i)(2)(D) of the Social Security Act
24 (42 U.S.C. 1395l(i)(2)(D)) is amended—

1 (1) by aligning the margins of clause (v) with
2 the margins of clause (iv);

3 (2) by redesignating clause (vi) as clause (vii);
4 and

5 (3) by inserting after clause (v) the following
6 new clause:

7 “(vi) In the case of surgical services
8 furnished on or after January 1, 2020, and
9 before January 1, 2025, the payment sys-
10 tem described in clause (i) shall provide for
11 a separate payment for a non-opioid treat-
12 ment (as defined in clause (iii) of sub-
13 section (t)(16)(G)) furnished as part of
14 such services in the amount specified in
15 clause (ii) of such subsection.”.

16 (c) EVALUATION OF THERAPEUTIC SERVICES FOR
17 PAIN MANAGEMENT.—

18 (1) REPORT TO CONGRESS.—Not later than 1
19 year after the date of the enactment of this Act, the
20 Secretary of Health and Human Services (in this
21 subsection referred to as the “Secretary”), acting
22 through the Administrator of the Centers for Medi-
23 care & Medicaid Services, shall submit to Congress
24 a report identifying—

1 (A) limitations, gaps, barriers to access, or
2 deficits in Medicare coverage or reimbursement
3 for restorative therapies, behavioral approaches,
4 and complementary and integrative health serv-
5 ices that are identified in the Pain Management
6 Best Practices Inter-Agency Task Force Report
7 and that have demonstrated the ability to re-
8 place or reduce opioid consumption; and

9 (B) recommendations to address the limi-
10 tations, gaps, barriers to access, or deficits
11 identified under subparagraph (A) to improve
12 Medicare coverage and reimbursement for such
13 therapies, approaches, and services.

14 (2) PUBLIC CONSULTATION.—In developing the
15 report described in paragraph (1), the Secretary
16 shall consult with relevant stakeholders as deter-
17 mined appropriate by the Secretary.

18 (3) EXCLUSIVE TREATMENT.—Any drug, bio-
19 logical product, or medical device that is a non-
20 opioid treatment (as defined in section
21 1833(t)(16)(G)(iii) of the Social Security Act, as
22 added by subsection (a)) shall not be considered a
23 therapeutic service for the purpose of the report de-
24 scribed in paragraph (1).

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