

115TH CONGRESS
2D SESSION

H. R. 6110

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2018

Received; read twice and referred to the Committee on Finance

AN ACT

To amend title XVIII of the Social Security Act to provide for the review and adjustment of payments under the Medicare outpatient prospective payment system to avoid financial incentives to use opioids instead of non-opioid alternative treatments, 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 “Dr. Todd Graham Pain
5 Management, Treatment, and Recovery Act of 2018”.

6 **SEC. 2. REVIEW AND ADJUSTMENT OF PAYMENTS UNDER**
7 **THE MEDICARE OUTPATIENT PROSPECTIVE**
8 **PAYMENT SYSTEM TO AVOID FINANCIAL IN-**
9 **CENTIVES TO USE OPIOIDS INSTEAD OF NON-**
10 **OPIOID ALTERNATIVE TREATMENTS.**

11 (a) OUTPATIENT PROSPECTIVE PAYMENT SYS-
12 TEM.—Section 1833(t) of the Social Security Act (42
13 U.S.C. 1395l(t)) is amended by adding at the end the fol-
14 lowing new paragraph:

15 “(22) REVIEW AND REVISIONS OF PAYMENTS
16 FOR NON-OPIOID ALTERNATIVE TREATMENTS.—

17 “(A) IN GENERAL.—With respect to pay-
18 ments made under this subsection for covered
19 OPD services (or groups of services), including
20 covered OPD services assigned to a comprehen-
21 sive ambulatory payment classification, the Sec-
22 retary—

23 “(i) shall, as soon as practicable, con-
24 duct a review (part of which may include
25 a request for information) of payments for

1 opioids and evidence-based non-opioid al-
2 ternatives for pain management (including
3 drugs and devices, nerve blocks, surgical
4 injections, and neuromodulation) with a
5 goal of ensuring that there are not finan-
6 cial incentives to use opioids instead of
7 non-opioid alternatives;

8 “(ii) may, as the Secretary determines
9 appropriate, conduct subsequent reviews of
10 such payments; and

11 “(iii) shall consider the extent to
12 which revisions under this subsection to
13 such payments (such as the creation of ad-
14 ditional groups of covered OPD services to
15 classify separately those procedures that
16 utilize opioids and non-opioid alternatives
17 for pain management) would reduce pay-
18 ment incentives to use opioids instead of
19 non-opioid alternatives for pain manage-
20 ment.

21 “(B) PRIORITY.—In conducting the review
22 under clause (i) of subparagraph (A) and con-
23 sidering revisions under clause (iii) of such sub-
24 paragraph, the Secretary shall focus on covered
25 OPD services (or groups of services) assigned

1 to a comprehensive ambulatory payment classi-
2 fication, ambulatory payment classifications
3 that primarily include surgical services, and
4 other services determined by the Secretary
5 which generally involve treatment for pain man-
6 agement.

7 “(C) REVISIONS.—If the Secretary identi-
8 fies revisions to payments pursuant to subpara-
9 graph (A)(iii), the Secretary shall, as deter-
10 mined appropriate, begin making such revisions
11 for services furnished on or after January 1,
12 2020. Revisions under the previous sentence
13 shall be treated as adjustments for purposes of
14 application of paragraph (9)(B).

15 “(D) RULES OF CONSTRUCTION.—Nothing
16 in this paragraph shall be construed to preclude
17 the Secretary—

18 “(i) from conducting a demonstration
19 before making the revisions described in
20 subparagraph (C); or

21 “(ii) prior to implementation of this
22 paragraph, from changing payments under
23 this subsection for covered OPD services
24 (or groups of services) which include

1 opioids or non-opioid alternatives for pain
2 management.”.

3 (b) AMBULATORY SURGICAL CENTERS.—Section
4 1833(i) of the Social Security Act (42 U.S.C. 1395l(i))
5 is amended by adding at the end the following new para-
6 graph:

7 “(8) The Secretary shall conduct a similar type of
8 review as required under paragraph (22) of section
9 1833(t)), including the second sentence of subparagraph
10 (C) of such paragraph, to payment for services under this
11 subsection, and make such revisions under this paragraph,
12 in an appropriate manner (as determined by the Sec-
13 retary).”.

14 **SEC. 3. EXPANDING ACCESS UNDER THE MEDICARE PRO-**
15 **GRAM TO ADDICTION TREATMENT IN FEDER-**
16 **ALLY QUALIFIED HEALTH CENTERS AND**
17 **RURAL HEALTH CLINICS.**

18 (a) FEDERALLY QUALIFIED HEALTH CENTERS.—
19 Section 1834(o) of the Social Security Act (42 U.S.C.
20 1395m(o)) is amended by adding at the end the following
21 new paragraph:

22 “(3) ADDITIONAL PAYMENTS FOR CERTAIN
23 FQHCS WITH PHYSICIANS OR OTHER PRACTITIONERS
24 RECEIVING DATA 2000 WAIVERS.—

1 “(A) IN GENERAL.—In the case of a Fed-
2 erally qualified health center with respect to
3 which, beginning on or after January 1, 2019,
4 Federally-qualified health center services (as de-
5 fined in section 1861(aa)(3)) are furnished for
6 the treatment of opioid use disorder by a physi-
7 cian or practitioner who meets the requirements
8 described in subparagraph (C) the Secretary
9 shall, subject to availability of funds under sub-
10 paragraph (D), make a payment (at such time
11 and in such manner as specified by the Sec-
12 retary) to such Federally qualified health center
13 after receiving and approving an application
14 submitted by such Federally qualified health
15 center under subparagraph (B). Such a pay-
16 ment shall be in an amount determined by the
17 Secretary, based on an estimate of the average
18 costs of training for purposes of receiving a
19 waiver described in subparagraph (C)(ii). Such
20 a payment may be made only one time with re-
21 spect to each such physician or practitioner.

22 “(B) APPLICATION.—In order to receive a
23 payment described in subparagraph (A), a Fed-
24 erally-qualified health center shall submit to the
25 Secretary an application for such a payment at

1 such time, in such manner, and containing such
2 information as specified by the Secretary. A
3 Federally-qualified health center may apply for
4 such a payment for each physician or practi-
5 tioner described in subparagraph (A) furnishing
6 services described in such subparagraph at such
7 center.

8 “(C) REQUIREMENTS.—For purposes of
9 subparagraph (A), the requirements described
10 in this subparagraph, with respect to a physi-
11 cian or practitioner, are the following:

12 “(i) The physician or practitioner is
13 employed by or working under contract
14 with a Federally qualified health center de-
15 scribed in subparagraph (A) that submits
16 an application under subparagraph (B).

17 “(ii) The physician or practitioner
18 first receives a waiver under section 303(g)
19 of the Controlled Substances Act on or
20 after January 1, 2019.

21 “(D) FUNDING.—For purposes of making
22 payments under this paragraph, there are ap-
23 propriated, out of amounts in the Treasury not
24 otherwise appropriated, \$6 million, which shall
25 remain available until expended.”.

1 (b) RURAL HEALTH CLINIC.—Section 1833 of the
2 Social Security Act (42 U.S.C. 1395l) is amended—

3 (1) by redesignating the subsection (z) relating
4 to medical review of spinal subluxation services as
5 subsection (aa); and

6 (2) by adding at the end the following new sub-
7 section:

8 “(bb) ADDITIONAL PAYMENTS FOR CERTAIN RURAL
9 HEALTH CLINICS WITH PHYSICIANS OR PRACTITIONERS
10 RECEIVING DATA 2000 WAIVERS.—

11 “(1) IN GENERAL.—In the case of a rural
12 health clinic with respect to which, beginning on or
13 after January 1, 2019, rural health clinic services
14 (as defined in section 1861(aa)(1)) are furnished for
15 the treatment of opioid use disorder by a physician
16 or practitioner who meets the requirements de-
17 scribed in paragraph (3), the Secretary shall, subject
18 to availability of funds under paragraph (4), make
19 a payment (at such time and in such manner as
20 specified by the Secretary) to such rural health clinic
21 after receiving and approving an application de-
22 scribed in paragraph (2). Such payment shall be in
23 an amount determined by the Secretary, based on an
24 estimate of the average costs of training for pur-
25 poses of receiving a waiver described in paragraph

1 (3)(B). Such payment may be made only one time
2 with respect to each such physician or practitioner.

3 “(2) APPLICATION.—In order to receive a pay-
4 ment described in paragraph (1), a rural health clin-
5 ic shall submit to the Secretary an application for
6 such a payment at such time, in such manner, and
7 containing such information as specified by the Sec-
8 retary. A rural health clinic may apply for such a
9 payment for each physician or practitioner described
10 in paragraph (1) furnishing services described in
11 such paragraph at such clinic.

12 “(3) REQUIREMENTS.—For purposes of para-
13 graph (1), the requirements described in this para-
14 graph, with respect to a physician or practitioner,
15 are the following:

16 “(A) The physician or practitioner is em-
17 ployed by or working under contract with a
18 rural health clinic described in paragraph (1)
19 that submits an application under paragraph
20 (2).

21 “(B) The physician or practitioner first re-
22 ceives a waiver under section 303(g) of the
23 Controlled Substances Act on or after January
24 1, 2019.

1 “(4) FUNDING.—For purposes of making pay-
2 ments under this subsection, there are appropriated,
3 out of amounts in the Treasury not otherwise appro-
4 priated, \$2 million, which shall remain available
5 until expended.”.

6 **SEC. 4. STUDYING THE AVAILABILITY OF SUPPLEMENTAL**
7 **BENEFITS DESIGNED TO TREAT OR PREVENT**
8 **SUBSTANCE USE DISORDERS UNDER MEDI-**
9 **CARE ADVANTAGE PLANS.**

10 (a) IN GENERAL.—Not later than 2 years after the
11 date of the enactment of this Act, the Secretary of Health
12 and Human Services (in this section referred to as the
13 “Secretary”) shall submit to Congress a report on the
14 availability of supplemental health care benefits (as de-
15 scribed in section 1852(a)(3)(A) of the Social Security Act
16 (42 U.S.C. 1395w–22(a)(3)(A))) designed to treat or pre-
17 vent substance use disorders under Medicare Advantage
18 plans offered under part C of title XVIII of such Act. Such
19 report shall include the analysis described in subsection
20 (c) and any differences in the availability of such benefits
21 under specialized MA plans for special needs individuals
22 (as defined in section 1859(b)(6) of such Act (42 U.S.C.
23 1395w–28(b)(6))) offered to individuals entitled to med-
24 ical assistance under title XIX of such Act and other such
25 Medicare Advantage plans.

1 (b) CONSULTATION.—The Secretary shall develop the
2 report described in subsection (a) in consultation with rel-
3 evant stakeholders, including—

4 (1) individuals entitled to benefits under part A
5 or enrolled under part B of title XVIII of the Social
6 Security Act;

7 (2) entities who advocate on behalf of such indi-
8 viduals;

9 (3) Medicare Advantage organizations;

10 (4) pharmacy benefit managers; and

11 (5) providers of services and suppliers (as such
12 terms are defined in section 1861 of such Act (42
13 U.S.C. 1395x)).

14 (c) CONTENTS.—The report described in subsection
15 (a) shall include an analysis on the following:

16 (1) The extent to which plans described in such
17 subsection offer supplemental health care benefits
18 relating to coverage of—

19 (A) medication-assisted treatments for
20 opioid use, substance use disorder counseling,
21 peer recovery support services, or other forms
22 of substance use disorder treatments (whether
23 furnished in an inpatient or outpatient setting);
24 and

1 (B) non-opioid alternatives for the treat-
 2 ment of pain.

3 (2) Challenges associated with such plans offer-
 4 ing supplemental health care benefits relating to cov-
 5 erage of items and services described in subpara-
 6 graph (A) or (B) of paragraph (1).

7 (3) The impact, if any, of increasing the appli-
 8 cable rebate percentage determined under section
 9 1854(b)(1)(C) of the Social Security Act (42 U.S.C.
 10 1395w-24(b)(1)(C)) for plans offering such benefits
 11 relating to such coverage would have on the avail-
 12 ability of such benefits relating to such coverage of-
 13 fered under Medicare Advantage plans.

14 (4) Potential ways to improve upon such cov-
 15 erage or to incentivize such plans to offer additional
 16 supplemental health care benefits relating to such
 17 coverage.

18 **SEC. 5. CLINICAL PSYCHOLOGIST SERVICES MODELS**
 19 **UNDER THE CENTER FOR MEDICARE AND**
 20 **MEDICAID INNOVATION; GAO STUDY AND RE-**
 21 **PORT.**

22 (a) CMI MODELS.—Section 1115A(b)(2)(B) of the
 23 Social Security Act (42 U.S.C. 1315a(b)(2)(B) is amend-
 24 ed by adding at the end the following new clauses:

1 “(xxv) Supporting ways to familiarize
2 individuals with the availability of coverage
3 under part B of title XVIII for qualified
4 psychologist services (as defined in section
5 1861(ii)).

6 “(xxvi) Exploring ways to avoid un-
7 necessary hospitalizations or emergency de-
8 partment visits for mental and behavioral
9 health services (such as for treating de-
10 pression) through use of a 24-hour, 7-day
11 a week help line that may inform individ-
12 uals about the availability of treatment op-
13 tions, including the availability of qualified
14 psychologist services (as defined in section
15 1861(ii)).”.

16 (b) GAO STUDY AND REPORT.—Not later than 18
17 months after the date of the enactment of this Act, the
18 Comptroller General of the United States shall conduct
19 a study, and submit to Congress a report, on mental and
20 behavioral health services under the Medicare program
21 under title XVIII of the Social Security Act, including an
22 examination of the following:

23 (1) Information about services furnished by
24 psychiatrists, clinical psychologists, and other profes-
25 sionals.

1 (2) Information about ways that Medicare bene-
2 ficiaries familiarize themselves about the availability
3 of Medicare payment for qualified psychologist serv-
4 ices (as defined in section 1861(ii) of the Social Se-
5 curity Act (42 U.S.C. 1395x(ii)) and ways that the
6 provision of such information could be improved.

7 **SEC. 6. PAIN MANAGEMENT STUDY.**

8 (a) IN GENERAL.—Not later than 1 year after the
9 date of enactment of this Act, the Secretary of Health and
10 Human Services (referred to in this section as the “Sec-
11 retary”) shall conduct a study analyzing best practices as
12 well as payment and coverage for pain management serv-
13 ices under title XVIII of the Social Security Act and sub-
14 mit to the Committee on Ways and Means and the Com-
15 mittee on Energy and Commerce of the House of Rep-
16 resentatives and the Committee on Finance of the Senate
17 a report containing options for revising payment to pro-
18 viders and suppliers of services and coverage related to
19 the use of multi-disciplinary, evidence-based, non-opioid
20 treatments for acute and chronic pain management for in-
21 dividuals entitled to benefits under part A or enrolled
22 under part B of title XVIII of the Social Security Act.
23 The Secretary shall make such report available on the
24 public website of the Centers for Medicare & Medicaid
25 Services.

1 (b) CONSULTATION.—In developing the report de-
2 scribed in subsection (a), the Secretary shall consult
3 with—

4 (1) relevant agencies within the Department of
5 Health and Human Services;

6 (2) licensed and practicing osteopathic and
7 allopathic physicians, behavioral health practitioners,
8 physician assistants, nurse practitioners, dentists,
9 pharmacists, and other providers of health services;

10 (3) providers and suppliers of services (as such
11 terms are defined in section 1861 of the Social Secu-
12 rity Act (42 U.S.C. 1395x));

13 (4) substance abuse and mental health profes-
14 sional organizations;

15 (5) pain management professional organizations
16 and advocacy entities, including individuals who per-
17 sonally suffer chronic pain;

18 (6) medical professional organizations and med-
19 ical specialty organizations;

20 (7) licensed health care providers who furnish
21 alternative pain management services;

22 (8) organizations with expertise in the develop-
23 ment of innovative medical technologies for pain
24 management;

25 (9) beneficiary advocacy organizations; and

1 (10) other organizations with expertise in the
2 assessment, diagnosis, treatment, and management
3 of pain, as determined appropriate by the Secretary.

4 (c) CONTENTS.—The report described in subsection
5 (a) shall include the following:

6 (1) An analysis of payment and coverage under
7 title XVIII of the Social Security Act with respect
8 to the following:

9 (A) Evidence-based treatments and tech-
10 nologies for chronic or acute pain, including
11 such treatments that are covered, not covered,
12 or have limited coverage under such title.

13 (B) Evidence-based treatments and tech-
14 nologies that monitor substance use withdrawal
15 and prevent overdoses of opioids.

16 (C) Evidence-based treatments and tech-
17 nologies that treat substance use disorders.

18 (D) Items and services furnished by practi-
19 tioners through a multi-disciplinary treatment
20 model for pain management, including the pa-
21 tient-centered medical home.

22 (E) Medical devices, non-opioid based
23 drugs, and other therapies (including inter-
24 ventional and integrative pain therapies) ap-

1 proved or cleared by the Food and Drug Ad-
2 ministration for the treatment of pain.

3 (F) Items and services furnished to bene-
4 ficiaries with psychiatric disorders, substance
5 use disorders, or who are at risk of suicide, or
6 have comorbidities and require consultation or
7 management of pain with one or more special-
8 ists in pain management, mental health, or ad-
9 diction treatment.

10 (2) An evaluation of the following:

11 (A) Barriers inhibiting individuals entitled
12 to benefits under part A or enrolled under part
13 B of such title from accessing treatments and
14 technologies described in subparagraphs (A)
15 through (F) of paragraph (1).

16 (B) Costs and benefits associated with po-
17 tential expansion of coverage under such title to
18 include items and services not covered under
19 such title that may be used for the treatment
20 of pain, such as acupuncture, therapeutic mas-
21 sage, and items and services furnished by inte-
22 grated pain management programs.

23 (C) Pain management guidance published
24 by the Federal Government that may be rel-
25 evant to coverage determinations or other cov-

1 erage requirements under title XVIII of the So-
2 cial Security Act.

3 (3) An assessment of all guidance published by
4 the Department of Health and Human Services on
5 or after January 1, 2016, relating to the prescribing
6 of opioids. Such assessment shall consider incor-
7 porating into such guidance relevant elements of the
8 “VA/DoD Clinical Practice Guideline for Opioid
9 Therapy for Chronic Pain” published in February
10 2017 by the Department of Veterans Affairs and
11 Department of Defense, including adoption of ele-
12 ments of the Department of Defense and Veterans
13 Administration pain rating scale.

14 (4) The options described in subsection (d).

15 (5) The impact analysis described in subsection
16 (e).

17 (d) OPTIONS.—The options described in this sub-
18 section are, with respect to individuals entitled to benefits
19 under part A or enrolled under part B of title XVIII of
20 the Social Security Act, legislative and administrative op-
21 tions for accomplishing the following:

22 (1) Improving coverage of and payment for pain
23 management therapies without the use of opioids, in-
24 cluding interventional pain therapies, and options to
25 augment opioid therapy with other clinical and com-

1 plementary, integrative health services to minimize
2 the risk of substance use disorder, including in a
3 hospital setting.

4 (2) Improving coverage of and payment for
5 medical devices and non-opioid based pharma-
6 cological and non-pharmacological therapies ap-
7 proved or cleared by the Food and Drug Administra-
8 tion for the treatment of pain as an alternative or
9 augment to opioid therapy.

10 (3) Improving and disseminating treatment
11 strategies for beneficiaries with psychiatric dis-
12 orders, substance use disorders, or who are at risk
13 of suicide, and treatment strategies to address
14 health disparities related to opioid use and opioid
15 abuse treatment.

16 (4) Improving and disseminating treatment
17 strategies for beneficiaries with comorbidities who
18 require a consultation or comanagement of pain with
19 one or more specialists in pain management, mental
20 health, or addiction treatment, including in a hos-
21 pital setting.

22 (5) Educating providers on risks of coadminis-
23 tration of opioids and other drugs, particularly
24 benzodiazepines.

1 (6) Ensuring appropriate case management for
2 beneficiaries who transition between inpatient and
3 outpatient hospital settings, or between opioid ther-
4 apy to non-opioid therapy, which may include the
5 use of care transition plans.

6 (7) Expanding outreach activities designed to
7 educate providers of services and suppliers under the
8 Medicare program and individuals entitled to bene-
9 fits under part A or under part B of such title on
10 alternative, non-opioid therapies to manage and
11 treat acute and chronic pain.

12 (8) Creating a beneficiary education tool on al-
13 ternatives to opioids for chronic pain management.

14 (e) IMPACT ANALYSIS.—The impact analysis de-
15 scribed in this subsection consists of an analysis of any
16 potential effects implementing the options described in
17 subsection (d) would have—

18 (1) on expenditures under the Medicare pro-
19 gram; and

20 (2) on preventing or reducing opioid addiction
21 for individuals receiving benefits under the Medicare
22 program.

1 **SEC. 7. SUSPENSION OF PAYMENTS BY MEDICARE PRE-**
2 **SCRIPTION DRUG PLANS AND MA-PD PLANS**
3 **PENDING INVESTIGATIONS OF CREDIBLE AL-**
4 **LEGATIONS OF FRAUD BY PHARMACIES.**

5 (a) IN GENERAL.—Section 1860D–12(b) of the So-
6 cial Security Act (42 U.S.C. 1395w–112(b)) is amended
7 by adding at the end the following new paragraph:

8 “(7) SUSPENSION OF PAYMENTS PENDING IN-
9 VESTIGATION OF CREDIBLE ALLEGATIONS OF FRAUD
10 BY PHARMACIES.—

11 “(A) IN GENERAL.—The provisions of sec-
12 tion 1862(o) shall apply with respect to a PDP
13 sponsor with a contract under this part, a phar-
14 macy, and payments to such pharmacy under
15 this part in the same manner as such provisions
16 apply with respect to the Secretary, a provider
17 of services or supplier, and payments to such
18 provider of services or supplier under this title.

19 “(B) RULE OF CONSTRUCTION.—Nothing
20 in this paragraph shall be construed as limiting
21 the authority of a PDP sponsor to conduct
22 postpayment review.”.

23 (b) APPLICATION TO MA-PD PLANS.—Section
24 1857(f)(3) of the Social Security Act (42 U.S.C. 1395w–
25 27(f)(3)) is amended by adding at the end the following
26 new subparagraph:

1 “(D) SUSPENSION OF PAYMENTS PENDING
2 INVESTIGATION OF CREDIBLE ALLEGATIONS OF
3 FRAUD BY PHARMACIES.—Section 1860D–
4 12(b)(7).”.

5 (c) CONFORMING AMENDMENT.—Section 1862(o)(3)
6 of the Social Security Act (42 U.S.C. 1395y(o)(3)) is
7 amended by inserting “, section 1860D–12(b)(7) (includ-
8 ing as applied pursuant to section 1857(f)(3)(D)),” after
9 “this subsection”.

10 (d) CLARIFICATION RELATING TO CREDIBLE ALLE-
11 GATION OF FRAUD.—Section 1862(o) of the Social Secu-
12 rity Act (42 U.S.C. 1395y(o)) is amended by adding at
13 the end the following new paragraph:

14 “(4) CREDIBLE ALLEGATION OF FRAUD.—In
15 carrying out this subsection, section 1860D–
16 12(b)(7) (including as applied pursuant to section
17 1857(f)(3)(D)), and section 1903(i)(2)(C), a fraud
18 hotline tip (as defined by the Secretary) without fur-
19 ther evidence shall not be treated as sufficient evi-
20 dence for a credible allegation of fraud.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to plan years begin-
3 ning on or after January 1, 2020.

Passed the House of Representatives June 19, 2018.

Attest:

KAREN L. HAAS,
Clerk.