

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.

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## 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

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## 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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