

115TH CONGRESS  
2D SESSION

# H. R. 5778

To amend title XVIII of the Social Security Act to provide for 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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2018

Mr. MARCHANT (for himself and Mr. LEVIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to provide for 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 “Promoting Outpatient  
5 Access to Non-Opioid Treatments Act”.

1 **SEC. 2. REVIEW AND ADJUSTMENT OF PAYMENTS UNDER**  
2 **THE MEDICARE OUTPATIENT PROSPECTIVE**  
3 **PAYMENT SYSTEM TO AVOID FINANCIAL IN-**  
4 **CENTIVES TO USE OPIOIDS INSTEAD OF NON-**  
5 **OPIOID ALTERNATIVE TREATMENTS.**

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

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

12 “(A) IN GENERAL.—With respect to pay-  
13 ments made under this subsection for covered  
14 OPD services (or groups of services), including  
15 covered OPD services assigned to a comprehen-  
16 sive ambulatory payment classification, the Sec-  
17 retary—

18 “(i) shall, as soon as practicable, con-  
19 duct a review (part of which may include  
20 a request for information) of payments for  
21 opioids and evidence-based non-opioid al-  
22 ternatives for pain management (including  
23 drugs and devices, nerve blocks, surgical  
24 injections, and neuromodulation) with a  
25 goal of ensuring that there are not finan-

1           cial incentives to use opioids instead of  
2           non-opioid alternatives;

3           “(ii) may, as the Secretary determines  
4           appropriate, conduct subsequent reviews of  
5           such payments; and

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

16          “(B) PRIORITY.—In conducting the review  
17          under clause (i) of subparagraph (A) and con-  
18          sidering revisions under clause (iii) of such sub-  
19          paragraph, the Secretary shall focus on covered  
20          OPD services (or groups of services) assigned  
21          to a comprehensive ambulatory payment classi-  
22          fication, ambulatory payment classifications  
23          that primarily include surgical services, and  
24          other services determined by the Secretary

1 which generally involve treatment for pain man-  
2 agement.

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

11 “(D) RULES OF CONSTRUCTION.—Nothing  
12 in this paragraph shall be construed to preclude  
13 the Secretary—

14 “(i) from conducting a demonstration  
15 before making the revisions described in  
16 subparagraph (C); or

17 “(ii) prior to implementation of this  
18 paragraph, from changing payments under  
19 this subsection for covered OPD services  
20 (or groups of services) which include  
21 opioids or non-opioid alternatives for pain  
22 management.”.

23 (b) AMBULATORY SURGICAL CENTERS.—Section  
24 1833(i) of the Social Security Act (42 U.S.C. 1395l(i))

1 is amended by adding at the end the following new para-  
2 graph:

3           “(8) The Secretary shall apply the provisions of  
4 paragraph (22) of section 1833(t), including the sec-  
5 ond sentence of subparagraph (C) of such para-  
6 graph, to payment for services under this subsection  
7 in an appropriate manner (as determined by the  
8 Secretary).”.

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