

115TH CONGRESS
2D SESSION

H. R. 6110

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2018

Mrs. WALORSKI (for herself, Ms. JUDY CHU of California, Mrs. NOEM, Mr. MARCHANT, Ms. SÁNCHEZ, Mr. BLUMENAUER, Mr. ROTHFUS, Mr. ROSKAM, Mr. MACARTHUR, and Mr. DANNY K. DAVIS of Illinois) 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

A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Dr. Todd Graham Pain
3 Management, Treatment, and Recovery Act of 2018”.

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

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

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

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

21 “(i) shall, as soon as practicable, con-
22 duct a review (part of which may include
23 a request for information) of payments for
24 opioids and evidence-based non-opioid al-
25 ternatives for pain management (including
26 drugs and devices, nerve blocks, surgical

1 injections, and neuromodulation) with a
2 goal of ensuring that there are not finan-
3 cial incentives to use opioids instead of
4 non-opioid alternatives;

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

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

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

1 other services determined by the Secretary
2 which generally involve treatment for pain man-
3 agement.

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

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

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

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

24 (b) AMBULATORY SURGICAL CENTERS.—Section
25 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 conduct a similar type of
 4 review as required under paragraph (22) of section
 5 1833(t), including the second sentence of subparagraph
 6 (C) of such paragraph, to payment for services under this
 7 subsection, and make such revisions under this paragraph,
 8 in an appropriate manner (as determined by the Sec-
 9 retary).”.

10 **SEC. 3. EXPANDING ACCESS UNDER THE MEDICARE PRO-**
 11 **GRAM TO ADDICTION TREATMENT IN FEDER-**
 12 **ALLY QUALIFIED HEALTH CENTERS AND**
 13 **RURAL HEALTH CLINICS.**

14 (a) **FEDERALLY QUALIFIED HEALTH CENTERS.—**
 15 Section 1834(o) of the Social Security Act (42 U.S.C.
 16 1395m(o)) is amended by adding at the end the following
 17 new paragraph:

18 “(3) **ADDITIONAL PAYMENTS FOR CERTAIN**
 19 **FQHCS WITH PHYSICIANS OR OTHER PRACTITIONERS**
 20 **RECEIVING DATA 2000 WAIVERS.—**

21 “(A) **IN GENERAL.—**In the case of a Fed-
 22 erally qualified health center with respect to
 23 which, beginning on or after January 1, 2019,
 24 Federally qualified health center services (as
 25 defined in section 1861(aa)(3)) are furnished

1 for the treatment of opioid use disorder by a
2 physician or practitioner who meets the require-
3 ments described in subparagraph (C) the Sec-
4 retary shall, subject to availability of funds
5 under subparagraph (D), make a payment (at
6 such time and in such manner as specified by
7 the Secretary) to such Federally qualified
8 health center after receiving and approving an
9 application submitted by such Federally quali-
10 fied health center under subparagraph (B).
11 Such a payment shall be in an amount deter-
12 mined by the Secretary, based on an estimate
13 of the average costs of training for purposes of
14 receiving a waiver described in subparagraph
15 (C)(ii). Such a payment may be made only one
16 time with respect to each such physician or
17 practitioner.

18 “(B) APPLICATION.—In order to receive a
19 payment described in subparagraph (A), a Fed-
20 erally qualified health center shall submit to the
21 Secretary an application for such a payment at
22 such time, in such manner, and containing such
23 information as specified by the Secretary. A
24 Federally qualified health center may apply for
25 such a payment for each physician or practi-

1 tioner described in subparagraph (A) furnishing
2 services described in such subparagraph at such
3 center.

4 “(C) REQUIREMENTS.—For purposes of
5 subparagraph (A), the requirements described
6 in this subparagraph, with respect to a physi-
7 cian or practitioner, are the following:

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

13 “(ii) The physician or practitioner
14 first receives a waiver under section 303(g)
15 of the Controlled Substances Act on or
16 after January 1, 2019.

17 “(D) FUNDING.—For purposes of making
18 payments under this paragraph, there are ap-
19 propriated, out of amounts in the Treasury not
20 otherwise appropriated, \$6,000,000, which shall
21 remain available until expended.”.

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

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

4 (2) by adding at the end the following new sub-
5 section:

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

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

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

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

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

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

23 “(4) FUNDING.—For purposes of making pay-
24 ments under this subsection, there are appropriated,
25 out of amounts in the Treasury not otherwise appro-

1 priated, \$2,000,000, which shall remain available
2 until expended.”.

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

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

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

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

4 (2) entities who advocate on behalf of such indi-
5 viduals;

6 (3) Medicare Advantage organizations;

7 (4) pharmacy benefit managers; and

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

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

13 (1) The extent to which plans described in such
14 subsection offer supplemental health care benefits
15 relating to coverage of—

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

22 (B) non-opioid alternatives for the treat-
23 ment of pain.

24 (2) Challenges associated with such plans offer-
25 ing supplemental health care benefits relating to cov-

erage of items and services described in subparagraph (A) or (B) of paragraph (1).

(3) The impact, if any, of increasing the applicable rebate percentage determined under section 1854(b)(1)(C) of the Social Security Act (42 U.S.C. 1395w-24(b)(1)(C)) for plans offering such benefits relating to such coverage would have on the availability of such benefits relating to such coverage offered under Medicare Advantage plans.

(4) Potential ways to improve upon such coverage or to incentivize such plans to offer additional supplemental health care benefits relating to such coverage.

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

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

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

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

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

18 (1) Information about services furnished by
19 psychiatrists, clinical psychologists, and other profes-
20 sionals.

21 (2) Information about ways that Medicare bene-
22 ficiaries familiarize themselves about the availability
23 of Medicare payment for qualified psychologist serv-
24 ices (as defined in section 1861(ii) of the Social Se-

1 security Act (42 U.S.C. 1395x(ii)) and ways that the
2 provision of such information could be improved.

3 **SEC. 6. PAIN MANAGEMENT STUDY.**

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

22 (b) CONSULTATION.—In developing the report de-
23 scribed in subsection (a), the Secretary shall consult
24 with—

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

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

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

10 (4) substance abuse and mental health profes-
11 sional organizations;

12 (5) pain management professional organizations
13 and advocacy entities, including individuals who per-
14 sonally suffer chronic pain;

15 (6) medical professional organizations and med-
16 ical specialty organizations;

17 (7) licensed health care providers who furnish
18 alternative pain management services;

19 (8) organizations with expertise in the develop-
20 ment of innovative medical technologies for pain
21 management;

22 (9) beneficiary advocacy organizations; and

23 (10) other organizations with expertise in the
24 assessment, diagnosis, treatment, and management
25 of pain, as determined appropriate by the Secretary.

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

3 (1) An analysis of payment and coverage under
4 title XVIII of the Social Security Act with respect
5 to the following:

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

10 (B) Evidence-based treatments and tech-
11 nologies that monitor substance use withdrawal
12 and prevent overdoses of opioids.

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

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

19 (E) Medical devices, non-opioid based
20 drugs, and other therapies (including inter-
21 ventional and integrative pain therapies) ap-
22 proved or cleared by the Food and Drug Ad-
23 ministration for the treatment of pain.

24 (F) Items and services furnished to bene-
25 ficiaries with psychiatric disorders, substance

1 use disorders, or who are at risk of suicide, or
2 have comorbidities and require consultation or
3 management of pain with one or more special-
4 ists in pain management, mental health, or ad-
5 diction treatment.

6 (2) An evaluation of the following:

7 (A) Barriers inhibiting individuals entitled
8 to benefits under part A or enrolled under part
9 B of such title from accessing treatments and
10 technologies described in subparagraphs (A)
11 through (F) of paragraph (1).

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

19 (C) Pain management guidance published
20 by the Federal Government that may be rel-
21 evant to coverage determinations or other cov-
22 erage requirements under title XVIII of the So-
23 cial Security Act.

24 (3) An assessment of all guidance published by
25 the Department of Health and Human Services on

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

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

11 (5) The impact analysis described in subsection
12 (e).

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

18 (1) Improving coverage of and payment for pain
19 management therapies without the use of opioids, in-
20 cluding interventional pain therapies, and options to
21 augment opioid therapy with other clinical and com-
22plementary, integrative health services to minimize
23 the risk of substance use disorder, including in a
24 hospital setting.

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

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

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

19 (5) Educating providers on risks of coadminis-
20 tration of opioids and other drugs, particularly
21 benzodiazepines.

22 (6) Ensuring appropriate case management for
23 beneficiaries who transition between inpatient and
24 outpatient hospital settings, or between opioid ther-

1 apy to non-opioid therapy, which may include the
2 use of care transition plans.

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

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

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

15 (1) on expenditures under the Medicare pro-
16 gram; and

17 (2) on preventing or reducing opioid addiction
18 for individuals receiving benefits under the Medicare
19 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.”.

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

○