

117TH CONGRESS  
1ST SESSION

# H. R. 3259

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 HOUSE OF REPRESENTATIVES

MAY 14, 2021

Ms. SEWELL (for herself, Mr. MCKINLEY, Ms. KUSTER, and Mr. FITZPATRICK) 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 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”.

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

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

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

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

10 “(G) ACCESS TO NON-OPIOID TREATMENTS  
11 FOR PAIN.—

12 “(i) IN GENERAL.—Notwithstanding  
13 any other provision of this subsection, with  
14 respect to a covered OPD service (or group  
15 of services) furnished on or after January  
16 1, 2022, and before January 1, 2027, the  
17 Secretary shall not package, and shall  
18 make a separate payment as specified in  
19 clause (ii) for, a non-opioid treatment (as  
20 defined in clause (iii)) furnished as part of  
21 such service (or group of services).

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

1                   “(I) a drug or biological product,  
2                   the amount of payment for such drug  
3                   or biological determined under section  
4                   1847A; or

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

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

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

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

1 (b) AMBULATORY SURGICAL CENTER PAYMENT SYS-  
2 TEM.—Section 1833(i)(2)(D) of the Social Security Act  
3 (42 U.S.C. 1395l(i)(2)(D)) is amended—

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

6 (2) by redesignating clause (vi) as clause (vii);  
7 and

8 (3) by inserting after clause (v) the following  
9 new clause:

10 “(vi) In the case of surgical services  
11 furnished on or after January 1, 2022, and  
12 before January 1, 2027, the payment sys-  
13 tem described in clause (i) shall provide, in  
14 a budget-neutral manner, for a separate  
15 payment for a non-opioid treatment (as de-  
16 fined in clause (iii) of subsection  
17 (t)(16)(G)) furnished as part of such serv-  
18 ices in the amount specified in clause (ii)  
19 of such subsection.”.

20 (c) EVALUATION OF THERAPEUTIC SERVICES FOR  
21 PAIN MANAGEMENT.—

22 (1) REPORT TO CONGRESS.—Not later than 1  
23 year after the date of the enactment of this Act, the  
24 Secretary of Health and Human Services (in this  
25 subsection referred to as the “Secretary”), acting

1 through the Administrator of the Centers for Medi-  
2 care & Medicaid Services, shall submit to Congress  
3 a report identifying—

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

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

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

21 (3) EXCLUSIVE TREATMENT.—Any drug, bio-  
22 logical product, or medical device that is a non-  
23 opioid treatment (as defined in section  
24 1833(t)(16)(G)(iii) of the Social Security Act, as  
25 added by subsection (a)) shall not be considered a

- 1 therapeutic service for the purpose of the report de-
- 2 scribed in paragraph (1).

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