

116TH CONGRESS  
1ST SESSION

# H. R. 3416

To provide for health equity and access for returning troops and servicemembers, to provide for ambulatory surgical payment transparency under the Medicare program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2019

Ms. SEWELL of Alabama (for herself and Mr. SMITH of Nebraska) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Armed Services, 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 provide for health equity and access for returning troops and servicemembers, to provide for ambulatory surgical payment transparency under the Medicare program, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “HEARTS and Rural Relief Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Health Equity and Access for Returning Troops and Servicemembers and Rural Relief Act of 2019.
- Sec. 3. Ambulatory surgical center payment transparency.
- Sec. 4. Exclusion of complex rehabilitative manual wheelchairs from Medicare competitive acquisition program; non-application of Medicare fee schedule adjustments for certain wheelchair accessories and cushions.
- Sec. 5. Extension of enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2021.

3 **SEC. 2. HEALTH EQUITY AND ACCESS FOR RETURNING**  
 4 **TROOPS AND SERVICEMEMBERS AND RURAL**  
 5 **RELIEF ACT OF 2019.**

6 (a) MODIFICATION OF REQUIREMENT FOR CERTAIN  
 7 FORMER MEMBERS OF THE ARMED FORCES TO ENROLL  
 8 IN MEDICARE PART B TO BE ELIGIBLE FOR TRICARE  
 9 FOR LIFE.—

10 (1) TRICARE ELIGIBILITY.—

11 (A) IN GENERAL.—Subsection (d) of sec-  
 12 tion 1086 of title 10, United States Code, is  
 13 amended by adding at the end the following  
 14 new paragraph:

15 “(6)(A) The requirement in paragraph (2)(A)  
 16 to enroll in the supplementary medical insurance  
 17 program under part B of title XVIII of the Social  
 18 Security Act (42 U.S.C. 1395j et seq.) shall not  
 19 apply to a person described in subparagraph (B)  
 20 during any month in which such person is not enti-

1 tled to a benefit described in subparagraph (A) of  
2 section 226(b)(2) of the Social Security Act (42  
3 U.S.C. 426(b)(2)) if such person has received the  
4 counseling and information under subparagraph (C).

5 “(B) A person described in this subparagraph  
6 is a person—

7 “(i) who is under 65 years of age;

8 “(ii) who is entitled to hospital insurance  
9 benefits under part A of title XVIII of the So-  
10 cial Security Act pursuant to subparagraph (A)  
11 or (C) of section 226(b)(2) of such Act (42  
12 U.S.C. 426(b)(2));

13 “(iii) whose entitlement to a benefit de-  
14 scribed in subparagraph (A) of such section has  
15 terminated due to performance of substantial  
16 gainful activity; and

17 “(iv) who is retired under chapter 61 of  
18 this title.

19 “(C) The Secretary of Defense shall coordinate  
20 with the Secretary of Health and Human Services  
21 and the Commissioner of Social Security to notify  
22 persons described in subparagraph (B) of, and pro-  
23 vide information and counseling regarding, the ef-  
24 fects of not enrolling in the supplementary medical  
25 insurance program under part B of title XVIII of

1 the Social Security Act (42 U.S.C. 1395j et seq.), as  
2 described in subparagraph (A).”.

3 (B) CONFORMING AMENDMENT.—Para-  
4 graph (2)(A) of such subsection is amended by  
5 striking “is enrolled” and inserting “except as  
6 provided by paragraph (6), is enrolled”.

7 (C) IDENTIFICATION OF PERSONS.—Sec-  
8 tion 1110a of such title is amended by adding  
9 at the end the following new subsection:

10 “(c) CERTAIN INDIVIDUALS NOT REQUIRED TO EN-  
11 ROLL IN MEDICARE PART B.—In carrying out subsection  
12 (a), the Secretary of Defense shall coordinate with the  
13 Secretary of Health and Human Services and the Commis-  
14 sioner of Social Security to—

15 “(1) identify persons described in subparagraph  
16 (B) of section 1086(d)(6) of this title; and

17 “(2) provide information and counseling pursu-  
18 ant to subparagraph (C) of such section.”.

19 (2) NON-APPLICATION OF MEDICARE PART B  
20 LATE ENROLLMENT PENALTY.—Section 1839(b) of  
21 the Social Security Act (42 U.S.C. 1395r(b)) is  
22 amended, in the second sentence, by inserting “or  
23 months for which the individual can demonstrate  
24 that the individual is an individual described in  
25 paragraph (6)(B) of section 1086(d) of title 10,

1 United States Code, who is enrolled in the  
2 TRICARE program pursuant to such section” after  
3 “an individual described in section 1837(k)(3)”.

4 (3) REPORT.—Not later than October 1, 2024,  
5 the Secretary of Defense, the Secretary of Health  
6 and Human Services, and the Commissioner of So-  
7 cial Security shall jointly submit to the Committees  
8 on Armed Services of the House of Representatives  
9 and the Senate, the Committee on Ways and Means  
10 and the Committee on Energy and Commerce of the  
11 House of Representatives, and the Committee on Fi-  
12 nance of the Senate a report on the implementation  
13 of section 1086(d)(6) of title 10, United States  
14 Code, as added by paragraph (1). Such report shall  
15 include, with respect to the period covered by the re-  
16 port—

17 (A) the number of individuals enrolled in  
18 TRICARE for Life who are not enrolled in the  
19 supplementary medical insurance program  
20 under part B of title XVIII of the Social Secu-  
21 rity Act (42 U.S.C. 1395j et seq.) by reason of  
22 such section 1086(d)(6); and

23 (B) the number of individuals who—

1 (i) are retired from the Armed Forces  
 2 under chapter 61 of title 10, United States  
 3 Code;

4 (ii) are entitled to hospital insurance  
 5 benefits under part A of title XVIII of the  
 6 Social Security Act pursuant to receiving  
 7 benefits for 24 months as described in sub-  
 8 paragraph (A) or (C) of section 226(b)(2)  
 9 of such Act (42 U.S.C. 426(b)(2)); and

10 (iii) because of such entitlement, are  
 11 no longer enrolled in TRICARE Standard,  
 12 TRICARE Prime, TRICARE Extra, or  
 13 TRICARE Select under chapter 55 of title  
 14 10, United States Code.

15 (4) DEPOSIT OF SAVINGS INTO MEDICARE IM-  
 16 PROVEMENT FUND.—Section 1898(b)(1) of the So-  
 17 cial Security Act (42 U.S.C. 1395iii(b)(1)) is amend-  
 18 ed by striking “during and after fiscal year 2021,  
 19 \$0” and inserting “during and after fiscal year  
 20 2024, \$5,000,000”.

21 (5) APPLICATION.—The amendments made by  
 22 paragraphs (1) and (2) shall apply with respect to  
 23 a person who, on or after October 1, 2023, is a per-  
 24 son described in section 1086(d)(6)(B) of title 10,  
 25 United States Code, as added by paragraph (1).

1 (b) COVERAGE OF CERTAIN DNA SPECIMEN PROVE-  
 2 NANCE ASSAY TESTS UNDER MEDICARE.—

3 (1) BENEFIT.—

4 (A) COVERAGE.—Section 1861 of the So-  
 5 cial Security Act (42 U.S.C. 1395x) is amend-  
 6 ed—

7 (i) in subsection (s)(2)—

8 (I) in subparagraph (GG), by  
 9 striking “and” at the end;

10 (II) in subparagraph (HH), by  
 11 striking the period and inserting “;  
 12 and”; and

13 (III) by adding at the end the  
 14 following new subparagraph:

15 “(II) a prostate cancer DNA Specimen Prove-  
 16 nance Assay test (DSPA test) (as defined in sub-  
 17 section (kkk));”; and

18 (ii) by adding at the end the following  
 19 new subsection:

20 “(kkk) PROSTATE CANCER DNA SPECIMEN PROVE-  
 21 NANCE ASSAY TEST.—The term ‘prostate cancer DNA  
 22 Specimen Provenance Assay Test’ (DSPA test) means a  
 23 test that, after a determination of cancer in one or more  
 24 prostate biopsy specimens obtained from an individual, as-  
 25 sesses the identity of the DNA in such specimens by com-

1   paring such DNA with the DNA that was separately taken  
 2   from such individual at the time of the biopsy.”.

3                   (B) EXCLUSION FROM COVERAGE.—Sec-  
 4                   tion 1862(a)(1) of the Social Security Act (42  
 5                   U.S.C. 1395y(a)(1)) is amended—

6                   (i) in subparagraph (O), by striking  
 7                   “and” at the end;

8                   (ii) in subparagraph (P), by striking  
 9                   the semicolon at the end and inserting “,  
 10                  and”; and

11                  (iii) by adding at the end the fol-  
 12                  lowing new subparagraph:

13                  “(Q) in the case of a prostate cancer DNA  
 14                  Specimen Provenance Assay test (DSPA test) (as  
 15                  defined in section 1861(kkk)), unless such test is  
 16                  furnished on or after January 1, 2020, and before  
 17                  January 1, 2025, and such test is ordered by the  
 18                  physician who furnished the prostate cancer biopsy  
 19                  that obtained the specimen tested;”.

20                  (2) PAYMENT AMOUNT AND RELATED REQUIRE-  
 21                  MENTS.—Section 1834 of the Social Security Act  
 22                  (42 U.S.C. 1395m) is amended by adding at the end  
 23                  the following new subsection:

24                  “(x) PROSTATE CANCER DNA SPECIMEN PROVE-  
 25                  NANCE ASSAY TESTS.—



1 “(1) PAYMENT FOR COVERED TESTS.—

2 “(A) IN GENERAL.—Subject to subpara-  
3 graph (B), the payment amount for a prostate  
4 cancer DNA Specimen Provenance Assay test  
5 (DSPA test) (as defined in section 1861(kkk))  
6 shall be \$200. Such payment shall be payment  
7 for all of the specimens obtained from the bi-  
8 opsy furnished to an individual that are tested.

9 “(B) LIMITATION.—Payment for a DSPA  
10 test under subparagraph (A) may only be made  
11 on an assignment-related basis.

12 “(C) PROHIBITION ON SEPARATE PAY-  
13 MENT.—No separate payment shall be made for  
14 obtaining DNA that was separately taken from  
15 an individual at the time of a biopsy described  
16 in subparagraph (A).

17 “(2) HCPCS CODE AND MODIFIER ASSIGN-  
18 MENT.—

19 “(A) IN GENERAL.—The Secretary shall  
20 assign one or more HCPCS codes to a prostate  
21 cancer DNA Specimen Provenance Assay test  
22 and may use a modifier to facilitate making  
23 payment under this section for such test.

24 “(B) IDENTIFICATION OF DNA MATCH ON  
25 CLAIM.—The Secretary shall require an indica-

tion on a claim for a prostate cancer DNA Specimen Provenance Assay test of whether the DNA of the prostate biopsy specimens match the DNA of the individual diagnosed with prostate cancer. Such indication may be made through use of a HCPCS code, a modifier, or other means, as determined appropriate by the Secretary.

“(3) DNA MATCH REVIEW.—

“(A) IN GENERAL.—The Secretary shall review at least three years of claims under part B for prostate cancer DNA Specimen Provenance Assay tests to identify whether the DNA of the prostate biopsy specimens match the DNA of the individuals diagnosed with prostate cancer.

“(B) POSTING ON INTERNET WEBSITE.—Not later than July 1, 2023, the Secretary shall post on the internet website of the Centers for Medicare & Medicaid Services the findings of the review conducted under subparagraph (A).”.

(3) COST-SHARING.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—

1 (A) by striking “and (CC)” and inserting  
 2 “(CC)”; and

3 (B) by inserting before the semicolon at  
 4 the end the following: “, and (DD) with respect  
 5 to a prostate cancer DNA Specimen Provenance  
 6 Assay test (DSPA test) (as defined in section  
 7 1861(kkk)), the amount paid shall be an  
 8 amount equal to 80 percent of the lesser of the  
 9 actual charge for the test or the amount speci-  
 10 fied under section 1834(x)”.

11 **SEC. 3. AMBULATORY SURGICAL CENTER PAYMENT TRANS-**  
 12 **PARENCY.**

13 (a) ADVISORY PANEL ON HOSPITAL OUTPATIENT  
 14 PAYMENT REPRESENTATION.—

15 (1) ASC REPRESENTATIVE.—The second sen-  
 16 tence of section 1833(t)(9)(A) of the Social Security  
 17 Act (42 U.S.C. 1395l(t)(9)(A)) is amended by in-  
 18 serting “and at least one ambulatory surgical center  
 19 representative” after “an appropriate selection of  
 20 representatives of providers”.

21 (2) EFFECTIVE DATE.—The amendment made  
 22 by paragraph (1) shall apply with respect to advisory  
 23 panels consulted on or after the date that is 1 year  
 24 after the date of the enactment of this Act.

1       (b) REASONS FOR EXCLUDING ADDITIONAL PROCE-  
2 DURES FROM ASC APPROVED LIST.—Section 1833(i)(1)  
3 of the Social Security Act (42 U.S.C. 1395l(i)(1)) is  
4 amended by adding at the end the following: “In updating  
5 such lists for application in years beginning with the sec-  
6 ond year beginning after the date of the enactment of this  
7 sentence, for each procedure that was not proposed to be  
8 included in such lists in the proposed rule with respect  
9 to such lists and that was subsequently requested to be  
10 included in such lists during the public comment period  
11 with respect to such proposed rule and that is not included  
12 in the final rule updating such lists, the Secretary shall  
13 cite in such final rule the specific criteria in paragraph  
14 (b) or (c) of section 416.166 of title 42, Code of Federal  
15 Regulations (or any successor regulation), based on which  
16 the procedure was excluded. If paragraph (b) of such sec-  
17 tion is cited for exclusion of a procedure, the Secretary  
18 shall identify the peer-reviewed research, if any, or the evi-  
19 dence upon which such determination is based.”.

1 **SEC. 4. EXCLUSION OF COMPLEX REHABILITATIVE MAN-**  
 2 **UAL WHEELCHAIRS FROM MEDICARE COM-**  
 3 **PETITIVE ACQUISITION PROGRAM; NON-AP-**  
 4 **PLICATION OF MEDICARE FEE SCHEDULE**  
 5 **ADJUSTMENTS FOR CERTAIN WHEELCHAIR**  
 6 **ACCESSORIES AND CUSHIONS.**

7 (a) EXCLUSION OF COMPLEX REHABILITATIVE MAN-  
 8 UAL WHEELCHAIRS FROM COMPETITIVE ACQUISITION  
 9 PROGRAM.—Section 1847(a)(2)(A) of the Social Security  
 10 Act (42 U.S.C. 1395w–3(a)(2)(A)) is amended—

11 (1) by inserting “, complex rehabilitative man-  
 12 ual wheelchairs (as determined by the Secretary),  
 13 and certain manual wheelchairs (identified, as of Oc-  
 14 tober 1, 2018, by HCPCS codes E1235, E1236,  
 15 E1237, E1238, and K0008 or any successor to such  
 16 codes)” after “group 3 or higher”; and

17 (2) by striking “such wheelchairs” and insert-  
 18 ing “such complex rehabilitative power wheelchairs,  
 19 complex rehabilitative manual wheelchairs, and cer-  
 20 tain manual wheelchairs”.

21 (b) NON-APPLICATION OF MEDICARE FEE SCHED-  
 22 ULE ADJUSTMENTS FOR WHEELCHAIR ACCESSORIES AND  
 23 SEAT AND BACK CUSHIONS WHEN FURNISHED IN CON-  
 24 NECTION WITH COMPLEX REHABILITATIVE MANUAL  
 25 WHEELCHAIRS.—

1           (1) IN GENERAL.—Notwithstanding any other  
2       provision of law, the Secretary of Health and  
3       Human Services shall not, during the period begin-  
4       ning on July 1, 2019, and ending on December 31,  
5       2020, use information on the payment determined  
6       under the competitive acquisition programs under  
7       section 1847 of the Social Security Act (42 U.S.C.  
8       1395w–3) to adjust the payment amount that would  
9       otherwise be recognized under section  
10      1834(a)(1)(B)(ii) of such Act (42 U.S.C.  
11      1395m(a)(1)(B)(ii)) for wheelchair accessories (in-  
12      cluding seating systems) and seat and back cushions  
13      when furnished in connection with complex rehabili-  
14      tative manual wheelchairs (as determined by the  
15      Secretary), and certain manual wheelchairs (identi-  
16      fied, as of October 1, 2018, by HCPCS codes  
17      E1235, E1236, E1237, E1238, and K0008 or any  
18      successor to such codes).

19           (2) IMPLEMENTATION.—Notwithstanding any  
20      other provision of law, the Secretary may implement  
21      this subsection by program instruction or otherwise.

1 **SEC. 5. EXTENSION OF ENFORCEMENT INSTRUCTION ON**  
2 **SUPERVISION REQUIREMENTS FOR OUT-**  
3 **PATIENT THERAPEUTIC SERVICES IN CRIT-**  
4 **ICAL ACCESS AND SMALL RURAL HOSPITALS**  
5 **THROUGH 2021.**

6 Section 1 of Public Law 113–198, as amended by sec-  
7 tion 1 of Public Law 114–112, section 16004 of Public  
8 Law 114–255, and section 51007 of Public Law 115–123,  
9 is amended—

10 (1) in the section heading, by striking “**2017**”  
11 and inserting “**2021**”; and

12 (2) by striking “and 2017” and inserting “,  
13 2017, 2020, and 2021”.

