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115TH CONGRESS
2D SESSION

H. R. 5776

To amend title XVIII to provide for Medicare coverage of certain services furnished by opioid treatment programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2018

Mr. NEAL (for himself, Mr. HOLDING, Mr. CARTWRIGHT, and Mr. TAYLOR) 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 to provide for Medicare coverage of certain services furnished by opioid treatment programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare and Opioid Safe Treatment Act'' or the ''MOST Act''.

SEC. 2. MEDICARE COVERAGE OF CERTAIN SERVICES FURNISHED BY OPIOID TREATMENT PROGRAMS.

(a) COVERAGE.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) in subparagraph (FF), by striking at the end ''and'';

(2) in subparagraph (GG), by inserting at the end ''; and''; and

(3) by adding at the end the following new subparagraph:

''(HH) opioid use disorder treatment services (as defined in subsection (jjj)).''.

(b) OPIOID USE DISORDER TREATMENT SERVICES AND OPIOID TREATMENT PROGRAM DEFINED.—Section 1861 of the Social Security Act is amended by adding at the end the following new subsection:

''(jjj) OPIOID USE DISORDER TREATMENT SERVICES; OPIOID TREATMENT PROGRAM.—

''(1) OPIOID USE DISORDER TREATMENT SERVICES.—The term 'opioid use disorder treatment services' means items and services that are furnished by an opioid treatment program for the treatment of opioid abuse disorder, including—

''(A) opioid agonist treatment medications (including oral versions) that are approved by the Food and Drug Administration under sec-

tion 505 of the Federal Food, Drug and Cosmetic Act for use in the treatment of opioid use disorder;

''(B) dispensing and administration of such medications, if applicable;

''(C) substance abuse counseling by a professional to the extent authorized under State law to furnish such services;

''(D) behavioral individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law);

''(E) toxicology testing; and

''(F) other items and services that the Secretary determines are appropriate.

''(2) OPIOID TREATMENT PROGRAM.—The term 'opioid treatment program' means an opioid treatment program (as defined in section 8.2 of title 42 of the Code of Federal Regulations, or any successor regulation) that—

''(A) is enrolled under section 1866(j);

''(B) has in effect a certification by the Substance Abuse and Mental Health Services Administration for such a program;

''(C) is accredited by an accrediting body approved by the Substance Abuse and Mental Health Services Administration; and

''(D) meets such additional conditions as the Secretary may find necessary to ensure—

''(i) the health and safety of individuals being furnished services under such program; and

''(ii) the effective and efficient furnishing of such services.''.

(c) PAYMENT.—

(1) IN GENERAL.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—

(A) by striking ''and (BB)'' and inserting ''(BB)''; and

(B) by inserting before the semicolon at the end the following '', and (CC) with respect to opioid use disorder treatment services furnished during an episode of care, the amount paid shall be equal to the amount payable in accordance with section 1834(w) less any copayment required as specified by the Secretary''.

(2) PAYMENT DETERMINATION.—Section 1834 of the Social Security Act (42 U.S.C. 1395m) is

amended by adding at the end the following new subsection:

''(w) OPIOID USE DISORDER TREATMENT SERVICES.—

''(1) IN GENERAL.—The Secretary shall pay to an opioid treatment program (as defined in paragraph (2) of section 1861(jjj)) an amount that is equal to 100 percent of a bundled payment under this part for opioid use disorder treatment services (as defined in paragraph (1) of such section) that are furnished by such program to an individual during an episode of care (as defined by the Secretary) beginning on or after January 1, 2020. The Secretary shall ensure that no duplicative payments are made under this part or part D to a physician, practitioner, or pharmacy for items and services furnished by an opioid treatment program.

''(2) CONSIDERATIONS.—The Secretary may implement this subsection through one or more bundles based on the type of medication provided (such as buprenorphine, methadone, naltrexone, or a new innovative drug), the frequency of services, the scope of services furnished, characteristics of the individuals furnished such services, or other factors as the Secretary determine appropriate. In developing such

bundles, the Secretary may consider payment rates paid to opioid treatment programs for comparable services under State plans under title XIX, under the TRICARE program under chapter 55 of title 10 of the United States Code, or by other health care payers.

''(3) ANNUAL UPDATES.—The Secretary shall provide an update each year to the bundled payment amounts under this subsection.''.

(d) INCLUDING OPIOID TREATMENT PROGRAMS AS MEDICARE PROVIDERS.—Section 1866(e) of the Social Security Act (42 U.S.C. 1395cc(e)) is amended—

(1) in paragraph (2), by striking at the end ''and'';

(2) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) opioid treatment programs (as defined in paragraph (2) of section 1861(jjj)), but only with respect to the furnishing of opioid treatment program services (as defined in paragraph (1) of such section).''.

SEC. 3. 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.

(a) OUTPATIENT PROSPECTIVE PAYMENT SYSTEM.—Section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)) is amended by adding at the end the following new paragraph:

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

''(A) IN GENERAL.—With respect to payments made under this subsection for covered OPD services (or groups of services), including covered OPD services assigned to a comprehensive ambulatory payment classification, the Secretary—

''(i) shall, as soon as practicable, conduct a review (part of which may include a request for information) of payments for opioids and evidence-based non-opioid alternatives for pain management (including drugs and devices, nerve blocks, surgical injections, and neuromodulation) with a goal of ensuring that there are not finan-

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

''(ii) may, as the Secretary determines appropriate, conduct subsequent reviews of such payments; and

''(iii) shall consider the extent to which revisions under this subsection to such payments (such as the creation of additional groups of covered OPD services to classify separately those procedures that utilize opioids and non-opioid alternatives for pain management) would reduce payment incentives to use opioids instead of non-opioid alternatives for pain management.

''(B) PRIORITY.—In conducting the review under clause (i) of subparagraph (A) and considering revisions under clause (iii) of such subparagraph, the Secretary shall focus on covered OPD services (or groups of services) assigned to a comprehensive ambulatory payment classification, ambulatory payment classifications that primarily include surgical services, and other services determined by the Secretary

which generally involve treatment for pain management.

''(C) REVISIONS.—If the Secretary identifies revisions to payments pursuant to subparagraph (A)(iii), the Secretary shall, as determined appropriate, begin making such revisions for services furnished on or after January 1, 2020. Revisions under the previous sentence shall be treated as adjustments for purposes of application of paragraph (9)(B).

''(D) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed to preclude the Secretary—

''(i) from conducting a demonstration before making the revisions described in subparagraph (C); or

''(ii) prior to implementation of this paragraph, from changing payments under this subsection for covered OPD services (or groups of services) which include opioids or non-opioid alternatives for pain management.''.

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

is amended by adding at the end the following new paragraph:

''(8) The Secretary shall apply the provisions of paragraph (22) of section 1833(t), including the second sentence of subparagraph (C) of such paragraph, to payment for services under this subsection in an appropriate manner (as determined by the Secretary).''.

SEC. 4. EXPANDING ACCESS UNDER THE MEDICARE PROGRAM TO ADDICTION TREATMENT IN FEDERALLY QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.

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

''(3) ADDITIONAL PAYMENTS FOR CERTAIN FQHCS WITH PRACTITIONERS RECEIVING DATA 2000 CERTIFICATION.—

''(A) IN GENERAL.—In the case of a Federally qualified health center with respect to which, beginning January 1, 2019, Federally-qualified health center services (as defined in section 1861(aa)(3)) are furnished by a health care practitioner who first receives on or after

such date a registration or waiver under section 303(g) of the Controlled Substances Act to prescribe or dispense methadone, buprenorphine, or suboxone for the purpose of maintenance or detoxification treatment, the Secretary shall, subject to availability of funds under subparagraph (B), make a payment (in accordance with such timing, method, and procedures as specified by the Secretary) to such Federally qualified health center in an amount determined by the Secretary, based on an approximation of the cost to receive training for purposes of such registration or waiver, as applicable. For purposes of the previous sentence, a Federally-qualified health center shall apply for a payment described in such sentence at such time and in such manner as specified by the Secretary and may apply for such a payment for each practitioner furnishing such services at such center who is described in such sentence.

''(B) FUNDING.—For purposes of making payments under this paragraph, there are appropriated, out of amounts in the Treasury not otherwise appropriated, $6,000,000, which shall remain available until expended.''.

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

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

(2) by adding at the end the following new subsection:

''(bb) ADDITIONAL PAYMENTS FOR CERTAIN RURAL HEALTH CLINICS WITH PRACTITIONERS RECEIVING DATA 2000 CERTIFICATION.—

''(1) IN GENERAL.—In the case of a rural health clinic with respect to which, beginning January 1, 2019, rural health clinic services (as defined in section 1861(aa)(1)) are furnished by a health care practitioner who first receives on or after such date a registration or waiver under section 303(g) of the Controlled Substances Act to prescribe or dispense methadone, buprenorphine, or suboxone for the purpose of maintenance or detoxification treatment, the Secretary shall, subject to availability of funds under subparagraph (B), make a payment (in accordance with such timing, method, and procedures as specified by the Secretary) to such rural health clinic in an amount determined by the Secretary, based on an approximation of the cost to re-

ceive training for purposes of such registration or waiver, as applicable. For purposes of the previous sentence, a rural health clinic shall apply for a payment described in such sentence at such time and in such manner as specified by the Secretary and may apply for such a payment for each practitioner furnishing such services at such clinic who is described in such sentence.

''(2) FUNDING.—For purposes of making payments under this subsection, there are appropriated, out of amounts in the Treasury not otherwise appropriated, $2,000,000, which shall remain available until expended.''.

SEC. 5. STUDYING THE AVAILABILITY OF SUPPLEMENTAL BENEFITS DESIGNED TO TREAT OR PREVENT SUBSTANCE USE DISORDERS UNDER MEDICARE ADVANTAGE PLANS.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall submit to Congress a report on the availability of supplemental health care benefits (as described in section 1852(a)(3)(A) of the Social Security Act (42 U.S.C. 1395w–22(a)(3)(A))) designed to treat or prevent substance use disorders under Medicare Advantage

plans offered under part C of title XVIII of such Act. Such report shall include the analysis described in subsection (c) and any differences in the availability of such benefits under specialized MA plans for special needs individuals (as defined in section 1859(b)(6) of such Act (42 U.S.C. 1395w–28(b)(6))) offered to individuals entitled to medical assistance under title XIX of such Act and other such Medicare Advantage plans.

(b) CONSULTATION.—The Secretary shall develop the report described in subsection (a) in consultation with relevant stakeholders, including—

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

(2) entities who advocate on behalf of such individuals;

(3) Medicare Advantage organizations;

(4) pharmacy benefit managers; and

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

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

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

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

(B) non-opioid alternatives for the treatment of pain.

(2) Challenges associated with such plans offering supplemental health care benefits relating to coverage 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. 6. CLINICAL PSYCHOLOGIST SERVICES MODELS UNDER THE CENTER FOR MEDICARE AND MEDICAID INNOVATION; GAO STUDY AND REPORT.

(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)).

''(xxvi) Exploring ways to avoid unnecessary hospitalizations or emergency department visits for mental and behavioral health services (such as for treating depression) through use of a 24-hour, 7-day a week help line that may inform individuals about the availability of treatment options, including the availability of qualified psychologist services (as defined in section 1861(ii)).''.

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

(1) Information about services furnished by psychiatrists, clinical psychologists, and other professionals.

(2) Information about ways that Medicare beneficiaries familiarize themselves about the availability of Medicare payment for qualified psychologist services (as defined in section 1861(ii) of the Social Security Act (42 U.S.C. 1395x(ii))) and ways that the provision of such information could be improved.

SEC. 7. PAIN MANAGEMENT STUDY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall conduct a study and submit to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report containing recommendations on whether and how payment to pro-

viders and suppliers of services and coverage related to the use of multi-disciplinary, evidence-based, non-opioid treatments for acute and chronic pain management for individuals entitled to benefits under part A or enrolled under part B of title XVIII of the Social Security Act should be revised. The Secretary shall make such report available on the public website of the Centers for Medicare & Medicaid Services.

(b) CONSULTATION.—In developing the report described in subsection (a), the Secretary shall consult with—

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

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

(3) providers and suppliers of services (as such terms are defined in section 1861 of the Social Security Act (42 U.S.C. 1395x));

(4) substance abuse and mental health professional organizations;

(5) pain management professional organizations and advocacy entities, including individuals who personally suffer chronic pain;

(6) medical professional organizations and medical specialty organizations;

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

(8) organizations with expertise in the development of innovative medical technologies for pain management;

(9) beneficiary advocacy organizations; and

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

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

(1) The recommendations described in subsection (d).

(2) The impact analysis described in subsection (e).

(3) An assessment of pain management guidance published by the Federal Government that may be relevant to coverage determinations or other coverage requirements under title XVIII of the Social Security Act. Such assessment shall consider incorporating into such guidance relevant elements of the ''Va/DoD Clinical Practice Guideline for Opioid Therapy for Chronic Pain'' published in February

2017 by the Department of Veterans Affairs and Department of Defense, including adoption of elements of the Department of Defense and Veterans Administration pain rating scale.

(4) An evaluation of the following:

(A) Barriers inhibiting individuals entitled to benefits under part A or enrolled under part B of such title from accessing treatments and technologies described in subparagraphs (A) through (F) of paragraph (6).

(B) Potential legislative and administrative changes under such title to improve individuals' access to items and services currently covered under such title and used for the treatment of pain, such as cognitive behavioral interventions, physical therapy, occupational therapy, physical medicine, biofeedback therapy, and chiropractic therapy, and other pain treatments services furnished in a hospital or post-acute care setting.

(C) Costs and benefits associated with potential expansion of coverage under such title to include items and services not covered under such title that may be used for the treatment of pain, such as acupuncture, therapeutic mas-

sage, and items and services furnished by integrated pain management programs.

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

(A) Evidence-based treatments and technologies for chronic or acute pain, including such treatments that are covered, not covered, or have limited coverage under such title.

(B) Evidence-based treatments and technologies that monitor substance use withdrawal and prevent overdoses of opioids.

(C) Evidence-based treatments and technologies that treat substance use disorders.

(D) Items and services furnished by practitioners through a multi-disciplinary treatment model for pain management, including the patient-centered medical home.

(E) Medical devices, non-opioid based drugs, and other therapies (including interventional and integrative pain therapies) approved or cleared by the Food and Drug Administration for the treatment of pain.

(F) Items and services furnished to beneficiaries with psychiatric disorders, substance

use disorders, or who are at risk of suicide, or have comorbidities and require consultation or management of pain with one or more specialists in pain management, mental health, or addiction treatment.

(d) RECOMMENDATIONS.—The recommendations described in this subsection are, with respect to individuals entitled to benefits under part A or enrolled under part B of title XVIII of the Social Security Act, legislative and administrative recommendations on the following:

(1) Options for additional coverage of pain management therapies without the use of opioids, including interventional pain therapies, and options to augment opioid therapy with other clinical and complementary, integrative health services to minimize the risk of substance use disorder, including in a hospital setting.

(2) Options for coverage and payment modifications of medical devices and non-opioid based pharmacological and non-pharmacological therapies (including interventional and integrative pain therapies) approved or cleared by the Food and Drug Administration for the treatment of pain as an alternative or augment to opioid therapy.

(3) Treatment strategies for beneficiaries with psychiatric disorders, substance use disorders, or who are at risk of suicide, and treatment strategies to address health disparities related to opioid use and opioid abuse treatment.

(4) Treatment strategies for beneficiaries with comorbidities who require a consultation or co-management of pain with one or more specialists in pain management, mental health, or addiction treatment, including in a hospital setting.

(5) Coadministration of opioids and other drugs, particularly benzodiazepines.

(6) Appropriate case management for beneficiaries who transition between inpatient and outpatient hospital settings, or between opioid therapy to non-opioid therapy, which may include the use of care transition plans.

(7) Outreach activities designed to educate providers of services and suppliers under the Medicare program and individuals entitled to benefits under part A or under part B of such title on alternative, non-opioid therapies to manage and treat acute and chronic pain.

(8) Creation of a beneficiary education tool on alternatives to opioids for chronic pain management.

(e) IMPACT ANALYSIS.—The impact analysis described in this subsection consists of an analysis of any potential effects implementing the recommendations described in subsection (d) would have—

(1) on expenditures under the Medicare program; and

(2) on preventing or reducing opioid addiction for individuals receiving benefits under the Medicare program.

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