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116TH CONGRESS
1ST SESSION

H. R. 5172

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.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2019

Ms. SEWELL of Alabama (for herself, Mr. MCKINLEY, and Mr. BRINDISI) 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.

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 ''Non-Opioids Prevent Addiction In the Nation Act'' or the ''NOPAIN Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The United States is undergoing an epidemic of addiction and deaths caused by prescription drug overdoses. According to the Centers for Disease Control and Prevention (CDC), opioids are the main driver of drug overdose deaths accounting for 47,600 overdose deaths in 2017. Every day, over 130 people die in the United States from opioid overdoses.

(2) Additionally, the CDC estimates that the economic costs associated with prescription opioid misuse exceeds $78 billion annually. These costs include those associated with healthcare, lost productivity, addiction treatment, and the criminal justice system.

(3) Certain non-opioid treatments and services can be successful in replacing, delaying, or reducing the use of opioids to treat postsurgical pain.

(4) The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act was enacted on October 24, 2018. This law requires that CMS review payments under Medicare's Outpatient Prospective Payment System (OPPS) and ASC Payment System with a goal of ensuring there are not financial incentives to use opioids instead of non-opioid alternatives. Additionally, the bill requires

CMS to ''consider the extent to which payment policy revisions (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.''

(5) Pursuant to section 319 of the Public Health Service Act, the Acting Secretary for the U.S. Department of Health & Human Services determined on October 26, 2017, that a public health emergency exists as a result of the consequences of the opioid crisis, and the Secretary renewed this determination on October 16, 2019.

(6) The President's Commission on Combating Drug Addiction and the Opioid Crisis was established on March 29, 2017. The Commission recommended that CMS examine payment policies for certain drugs that function specifically as non-opioid pain management treatments. According to the Commission's report, ''. . . the current CMS payment policy for 'supplies' related to surgical procedures creates unintended incentives to prescribe opioid medications to patients for postsurgical pain instead of administering non-opioid pain medica-

tions. Under current policies, CMS provides one all-inclusive bundled payment to hospitals for all 'surgical supplies,' which includes hospital administered drug products intended to manage patients' post-surgical pain. This policy results in the hospitals receiving the same fixed fee from Medicare whether the surgeon administers a non-opioid medication or not.''

(7) The Pain Management Best Practices Inter-Agency Task Force was authorized by section 101 of the Comprehensive Addiction and Recovery Act of 2016. The Task Force consisted of Federal agency representatives as well as experts and representatives from a broad group of invested stakeholders and was convened to issue recommendations for identifying and addressing gaps and inconsistencies for managing acute pain. In the Task Force's Final Report on Best Practices: Updates, Gaps, Inconsistencies and Recommendations, the following gap was identified: ''Multimodal, non-opioid therapies are underutilized in the perioperative, inflammatory, musculoskeletal, and neuropathic injury settings.'' The report also states that ''Non-opioids should be used as first-line therapy whenever clini-

cally appropriate in the inpatient and outpatient settings.''

(8) Research shows that despite ongoing efforts to end the opioid crisis, patients continue to receive large quantities of opioids to treat postsurgical pain. One 2018 study showed that 12 percent of patients who had a soft tissue or orthopedic operation in the year prior reported that they had become addicted or dependent on opioids. Further research shows that patients receiving an opioid prescription after short-stay surgeries have a 44 percent increased risk of opioid use.

(9) CMS has reiterated its position in rulemaking that it is appropriate to pay separately for certain non-opioid pain management treatments that function as surgical supplies in the ASC setting, it is clear that direction from Congress is necessary to modify Medicare's outpatient policies with the goal of encouraging access to non-opioid treatments and services to address the opioid crisis.

SEC. 3. ACCESS TO NON-OPIOID TREATMENTS FOR PAIN.

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

(1) in paragraph (2)(E), by inserting ''and separate payments for non-opioid treatments under

paragraph (16)(G),'' after ''payments under paragraph (6)''; and

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

''(G) ACCESS TO NON-OPIOID TREATMENTS FOR PAIN.—

''(i) IN GENERAL.—Notwithstanding any other provision of this subsection, with respect to a covered OPD service (or group of services) furnished on or after January 1, 2020, and before January 1, 2025, the Secretary shall not package, and shall make a separate payment as specified in clause (ii) for, a non-opioid treatment (as defined in clause (iii)) furnished as part of such service (or group of services).

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

''(I) a drug or biological product, the amount of payment for such drug or biological determined under section 1847A; or

''(II) a medical device, the amount of the hospital's charges for the device, adjusted to cost.

''(iii) DEFINITION OF NON-OPIOID TREATMENT.—A 'non-opioid treatment' means—

''(I) a drug or biological product that is indicated to produce analgesia without acting upon the body's opioid receptors; or

''(II) an implantable, reusable, or disposable medical device cleared or approved by the Administrator for Food and Drugs for the intended use of managing or treating pain;

that has demonstrated the ability to replace or reduce opioid consumption in a clinical trial or through clinical data published in a peer-reviewed journal, as determined by the Secretary.''.

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

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

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

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

''(vi) In the case of surgical services furnished on or after January 1, 2020, and before January 1, 2025, the payment system described in clause (i) shall provide for a separate payment for a non-opioid treatment (as defined in clause (iii) of subsection (t)(16)(G)) furnished as part of such services in the amount specified in clause (ii) of such subsection.''.

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

(1) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services (in this subsection referred to as the ''Secretary''), acting through the Administrator of the Centers for Medicare & Medicaid Services, shall submit to Congress a report identifying—

(A) limitations, gaps, barriers to access, or deficits in Medicare coverage or reimbursement for restorative therapies, behavioral approaches,

and complementary and integrative health services that are identified in the Pain Management Best Practices Inter-Agency Task Force Report and that have demonstrated the ability to replace or reduce opioid consumption; and

(B) recommendations to address the limitations, gaps, barriers to access, or deficits identified under subparagraph (A) to improve Medicare coverage and reimbursement for such therapies, approaches, and services.

(2) PUBLIC CONSULTATION.—In developing the report described in paragraph (1), the Secretary shall consult with relevant stakeholders as determined appropriate by the Secretary.

(3) EXCLUSIVE TREATMENT.—Any drug, biological product, or medical device that is a non-opioid treatment (as defined in section 1833(t)(16)(G)(iii) of the Social Security Act, as added by subsection (a)) shall not be considered a therapeutic service for the purpose of the report described in paragraph (1).

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