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 SENATE OF THE UNITED STATES

Mrs. CAPITO introduced the following bill; which was read twice and referred to the Committee on __________________

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. 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, 2022, and before January 1, 2027, 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, reduce, or avoid opioid use or the quantity of opioids prescribed in a clinical trial or through data published in a peer-reviewed journal.”.

(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, 2022, and 
before January 1, 2027, the payment sys-
tem described in clause (i) shall provide, in 
a budget-neutral manner, for a separate 
payment for a non-opioid treatment (as de-
finite in clause (iii) of subsection 
(t)(16)(G)) furnished as part of such serv-
ices 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 Medi-
care & 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).