

118TH CONGRESS  
2D SESSION

# S. 3832

To amend title XVIII of the Social Security Act to ensure appropriate access to non-opioid pain management drugs under part D of the Medicare program.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 29, 2024

Mr. TILLIS (for himself and Mr. KELLY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to ensure appropriate access to non-opioid pain management drugs under part D of the Medicare program.

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 “Alternatives to Prevent  
5 Addiction In the Nation Act” or the “Alternatives to  
6 PAIN Act”.

1 **SEC. 2. APPROPRIATE COST-SHARING FOR QUALIFYING**  
 2 **NON-OPIOID PAIN MANAGEMENT DRUGS**  
 3 **UNDER MEDICARE PART D.**

4 (a) MEDICARE PART D.—Section 1860D–2 of the  
 5 Social Security Act (42 U.S.C. 1395w–102) is amended—

6 (1) in subsection (b)—

7 (A) in paragraph (1)(A), in the matter  
 8 preceding clause (i), by striking “paragraphs  
 9 (8) and (9)” and inserting “paragraphs (8),  
 10 (9), and (10)”;

11 (B) in paragraph (2)(A), in the matter  
 12 preceding clause (i), by striking “paragraphs  
 13 (8) and (9)” and inserting “paragraphs (8),  
 14 (9), and (10)”;

15 (C) by adding at the end the following new  
 16 paragraph:

17 “(10) TREATMENT OF COST-SHARING FOR  
 18 QUALIFYING NON-OPIOID PAIN MANAGEMENT  
 19 DRUGS.—

20 “(A) IN GENERAL.—For plan years begin-  
 21 ning on or after January 1, 2025, with respect  
 22 to a covered part D drug that is a qualifying  
 23 non-opioid pain management drug (as defined  
 24 in subparagraph (B))—

25 “(i) the deductible under paragraph  
 26 (1) shall not apply; and

1           “(ii) such drug shall be placed on the  
2           lowest cost-sharing tier, if any, for pur-  
3           poses of determining the maximum co-in-  
4           surance or other cost-sharing for such  
5           drug.

6           “(B) QUALIFYING NON-OPIOID PAIN MAN-  
7           AGEMENT DRUGS.—In this paragraph, the term  
8           ‘qualifying non-opioid pain management drug’  
9           means a drug or biological product—

10           “(i) that has a label indication ap-  
11           proved by the Food and Drug Administra-  
12           tion to reduce postoperative pain or any  
13           other form of acute pain;

14           “(ii) that does not act upon the body’s  
15           opioid receptors;

16           “(iii) for which there is no other drug  
17           or product that is—

18           “(I) rated as therapeutically  
19           equivalent (under the Food and Drug  
20           Administration’s most recent publica-  
21           tion of ‘Approved Drug Products with  
22           Therapeutic Equivalence Evalua-  
23           tions’); and

24           “(II) sold or marketed in the  
25           United States; and

1 “(iv) for which the wholesale acquisi-  
 2 tion cost (as defined in section  
 3 1847A(c)(6)(B)), for a monthly supply  
 4 does not exceed the monthly specialty-tier  
 5 cost threshold as determined by the Sec-  
 6 retary from time to time.”; and

7 (2) in subsection (c), by adding at the end the  
 8 following new paragraph:

9 “(7) TREATMENT OF COST-SHARING FOR  
 10 QUALIFYING NON-OPIOID PAIN MANAGEMENT  
 11 DRUGS.—The coverage is provided in accordance  
 12 with subsection (b)(10).”.

13 (b) CONFORMING AMENDMENTS TO COST-SHARING  
 14 FOR LOW-INCOME INDIVIDUALS.—Section 1860D–14(a)  
 15 of the Social Security Act (42 U.S.C. 1395w–114(a)) is  
 16 amended—

17 (1) in paragraph (1)(D), in each of the clauses  
 18 (ii) and (iii), by striking “Subject to paragraph (6)”  
 19 and inserting “Subject to paragraphs (6) and (7)”;  
 20 and

21 (2) by adding at the end the following new  
 22 paragraph:

23 “(7) TREATMENT OF COST-SHARING OR DE-  
 24 DUCTIBLE FOR QUALIFYING NON-OPIOID PAIN MAN-  
 25 AGEMENT DRUGS.—For plan years beginning on or

1 after January 1, 2025, with respect to a covered  
 2 part D drug that is a qualifying non-opioid pain  
 3 management drug (as defined in section 1860D–  
 4 2(b)(10)(B))—

5 “(A) the deductible under section 1860D–  
 6 2(b)(1) shall not apply; and

7 “(B) such drug shall be placed on the low-  
 8 est cost-sharing tier, if any, for purposes of de-  
 9 termining the maximum co-insurance or other  
 10 cost-sharing for such drug.”.

11 **SEC. 3. PROHIBITION ON THE USE OF STEP THERAPY AND**  
 12 **PRIOR AUTHORIZATION FOR QUALIFYING**  
 13 **NON-OPIOID PAIN MANAGEMENT DRUGS**  
 14 **UNDER MEDICARE PART D.**

15 Section 1860D–4(e) of the Social Security Act (42  
 16 U.S.C. 1395w–104) is amended—

17 (1) by redesignating paragraph (6), as added by  
 18 section 50354 of division E of the Bipartisan Budg-  
 19 et Act of 2018 (Public Law 115–123), as paragraph  
 20 (7); and

21 (2) by adding at the end the following para-  
 22 graph:

23 “(8) PROHIBITION ON USE OF STEP THERAPY  
 24 AND PRIOR AUTHORIZATION FOR QUALIFYING NON-  
 25 OPIOID PAIN MANAGEMENT DRUGS.—

1           “(A) IN GENERAL.—For plan years begin-  
 2           ning on or after January 1, 2025, a prescrip-  
 3           tion drug plan or an MA–PD plan may not,  
 4           with respect to a qualifying non-opioid pain  
 5           management drug (as defined in section  
 6           1860D–2(b)(10)(B)) for which coverage is pro-  
 7           vided under such plan, impose any—

8                   “(i) step therapy requirement under  
 9                   which an individual enrolled under such  
 10                  plan is required to use an opioid prior to  
 11                  receiving such drug; or

12                  “(ii) prior authorization requirement.

13           “(B) STEP THERAPY.—In this paragraph,  
 14           the term ‘step therapy’ means a drug therapy  
 15           utilization management protocol or program  
 16           that requires use of an alternative, preferred  
 17           prescription drug or drugs before the plan ap-  
 18           proves coverage for the non-preferred drug  
 19           therapy prescribed.

20           “(C) PRIOR AUTHORIZATION.—In this  
 21           paragraph, the term ‘prior authorization’ means  
 22           any requirement to obtain approval from a plan  
 23           prior to the furnishing of a drug.”.

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