

119TH CONGRESS
2D SESSION

H. R. 7863

To amend title XVIII of the Social Security Act to align payment under Medicare for specified surgical procedures with high-cost supplies furnished in office-based facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2026

Mr. BILIRAKIS (for himself, Mr. RUIZ, Mr. MURPHY, and Mr. DAVIS of Illinois) 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

A BILL

To amend title XVIII of the Social Security Act to align payment under Medicare for specified surgical procedures with high-cost supplies furnished in office-based facilities, 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.**

4 This Act may be cited as the “Promoting Fairness
5 for Medicare Providers Act of 2026”.

1 **SEC. 2. ALIGNING PAYMENT UNDER MEDICARE FOR SPECI-**
2 **FIED HIGH SUPPLY COST SURGICAL PROCE-**
3 **DURES FURNISHED IN OFFICE-BASED FACILI-**
4 **TIES.**

5 (a) COVERAGE OF FACILITY SERVICES.—Section
6 1832(a)(2)(F) of the Social Security Act (42 U.S.C.
7 1395k(a)(2)(F)) is amended—

8 (1) in the matter preceding clause (i), by strik-
9 ing “specified by the Secretary”;

10 (2) in clause (i)—

11 (A) by inserting “specified by the Sec-
12 retary” before “pursuant”; and

13 (B) at the end, by striking “or”;

14 (3) in clause (ii)—

15 (A) by inserting “specified by the Sec-
16 retary” before “pursuant”; and

17 (B) at the end, by striking the semicolon
18 and inserting “, or”; and

19 (4) by adding at the end the following new
20 clause:

21 “(iii) that are specified high supply
22 cost surgical procedures (as defined in sec-
23 tion 1834(bb)(4) with respect to a year
24 (beginning with 2027) and furnished dur-
25 ing such year in an office-based facility (as
26 defined in section 1834(bb)(5));”.

1 (b) PAYMENT RULES.—

2 (1) PAYMENT FOR FACILITY SERVICES.—Sec-
3 tion 1833(a)(1) of the Social Security Act (42
4 U.S.C. 1395l(a)) is amended—

5 (A) by striking “and (HH)” and inserting
6 “(HH)”; and

7 (B) by inserting before the semicolon at
8 the end the following “, and (II) with respect
9 to facility services furnished in connection with
10 a specified high supply cost surgical procedure
11 (as defined in section 1834(bb)(4)) with respect
12 to a year (beginning with 2027) furnished to an
13 individual in an office-based facility (as defined
14 in section 1834(bb)(5)) during such year, the
15 amounts paid shall be, subject to section
16 1834(bb)(3), 80 percent of the payment amount
17 determined under section 1834(bb) for such fa-
18 cility services furnished in connection with such
19 procedure at such office-based facility”.

20 (2) PAYMENT DETERMINATION FOR SPECIFIED
21 HIGH SUPPLY COST SURGICAL PROCEDURES FUR-
22 NISHED IN OFFICE-BASED FACILITIES.—Section
23 1834 of the Social Security Act (42 U.S.C.
24 1395l(a)) is amended by adding at the end the fol-
25 lowing new subsection:

1 “(bb) PAYMENT FOR SPECIFIED HIGH SUPPLY COST
2 SURGICAL PROCEDURES FURNISHED IN OFFICE-BASED
3 FACILITIES.—

4 “(1) IN GENERAL.—In the case of a specified
5 high supply cost surgical procedure furnished in an
6 office-based facility during 2027 or a subsequent
7 year, subject to paragraphs (2) and (3), payment for
8 such procedure shall be determined under this part
9 in the same manner as payment would be deter-
10 mined under this part if such procedure had been
11 furnished in an ambulatory surgical center and not
12 considered office-based under section 1833(i)(1)(B),
13 except that payment for facility services furnished in
14 connection with such procedure shall be equal to 90
15 percent of the amount that would be payable for fa-
16 cility services furnished in connection with such pro-
17 cedure under section 1833(i) for such year if such
18 procedure had been furnished in an ambulatory sur-
19 gical center and treated as a service commonly fur-
20 nished in such a center.

21 “(2) APPLICATION IN CASE OF DEVICE-INTEN-
22 SIVE PROCEDURES.—In applying paragraph (1) in
23 the case of a specified high supply cost surgical pro-
24 cedure that is a device-intensive procedure (as de-
25 scribed in section 416.171(b)(2) of title 42, Code of

1 Federal Regulations (or any successor regulation)),
2 instead of the payment amount applied under such
3 paragraph, the payment amount for the facility serv-
4 ices with respect to such procedure shall be the
5 amount that would be calculated under section
6 416.172(h)(2)(ii) of title 42, Code of Federal Regu-
7 lations (or any successor regulation) with respect to
8 a procedure that has been assigned device-intensive
9 status, except that in applying such calculation the
10 non-device portion described in paragraph (B) of
11 such section shall be equal to 90 percent of the
12 amount that would otherwise be calculated for such
13 portion.

14 “(3) LIMITATION ON COPAYMENT AMOUNT TO
15 INPATIENT HOSPITAL DEDUCTIBLE AMOUNT.—

16 “(A) IN GENERAL.—In no case shall the
17 amount of coinsurance for facility services fur-
18 nished in connection with a specified high sup-
19 ply cost surgical procedure in an office-based
20 facility during a year exceed the amount of the
21 inpatient hospital deductible established under
22 section 1813(b) for that year.

23 “(B) MAINTAINING PAYMENT TO PRO-
24 VIDER.—In the case that an individual enrolled
25 under this part would, without application of

1 subparagraph (A), be subject to an amount of
2 coinsurance for facility services furnished in
3 connection with a specified high supply cost
4 surgical procedure in an office-based facility
5 during a year that exceeds the amount of the
6 inpatient hospital deductible established under
7 section 1813(b) for that year, the Secretary
8 shall increase the amount paid to the office-
9 based facility as specified under section
10 1833(a)(1)(II) for such facility services by the
11 amount by which—

12 “(i) the coinsurance payable by the in-
13 dividual for such facility services without
14 application of this paragraph; exceeds

15 “(ii) the coinsurance payable by the
16 individual for such facility services with ap-
17 plication of this paragraph.

18 “(4) SPECIFIED HIGH SUPPLY COST SURGICAL
19 PROCEDURE DEFINED.—

20 “(A) IN GENERAL.—For purposes of this
21 part, subject to subparagraphs (B) and (C), the
22 term ‘specified high supply cost surgical proce-
23 dure’ means a surgical procedure that as of
24 2023—

1 “(i) when performed in an ambulatory
2 surgical center, was payable under section
3 1833(i); and

4 “(ii) when performed in a physician’s
5 office—

6 “(I) was payable under section
7 1848 at the practice expense relative
8 value unit-based amount for non-facil-
9 ity sites of service; and

10 “(II) included a HCPCS code
11 with a supply item for which the price
12 input for such supply item, used for
13 determining the practice expense rel-
14 ative value units for such code, was
15 greater than \$500.

16 “(B) REVIEW AND REVISIONS TO SPECI-
17 FIED SERVICES.—

18 “(i) IN GENERAL.—For each year (be-
19 ginning with 2028), the Secretary shall re-
20 view the procedures included in the defini-
21 tion of specified high supply cost surgical
22 procedures under this paragraph and,
23 based on such review and through rule-
24 making—

“(I) shall add a surgical procedure (not described in subparagraph (A)) for inclusion in such definition if the procedure, with respect to such year, satisfies the criteria specified in clause (ii); and

“(II) may remove a surgical procedure from inclusion in such definition if the procedure, with respect to such year, satisfies the criteria specified in clause (iii).

“(ii) CRITERIA FOR REQUIRED INCLUSION.—For purposes of clause (i)(I), a surgical procedure satisfies the criteria specified in this clause, with respect to a year, if—

“(I) when performed in an ambulatory surgical center, the procedure is payable under section 1833(i); and

“(II) when performed in a physician’s office, the procedure—

“(aa) would be, without application of this subsection or section 1833(a)(i)(II), payable under section 1848 at the prac-

1 tice expense relative value unit-
2 based amount for non-facility
3 sites of services; and

4 “(bb) includes a HCPCS
5 code with a supply item for which
6 the price input for such supply
7 item, used for determining the
8 practice expense relative value
9 units for such code, is greater
10 than the threshold specified in
11 clause (iv) for such year.

12 “(iii) CRITERIA FOR PERMISSIVE RE-
13 MOVAL.—For purposes of clause (i)(II), a
14 surgical procedure satisfies the criteria de-
15 scribed in this clause, with respect to a
16 year, if, when performed in a physician’s
17 office, the procedure includes a HCPCS
18 code with a supply item for which the price
19 input for such supply item, used for deter-
20 mining the practice expense relative value
21 units for such code, does not exceed the
22 amount equal to 80 percent of the thresh-
23 old specified in clause (iv) for such year.

24 “(iv) DOLLAR AMOUNT THRESHOLD
25 SPECIFIED.—For purposes of clauses (ii)

1 and (iii), the threshold specified in this
2 clause is—

3 “(I) with respect to 2028, the
4 dollar amount specified in subpara-
5 graph (A)(ii), reduced by the percent-
6 age increase in the MEI (as defined in
7 section 1842(i)(3)) over the 3-year pe-
8 riod ending with 2028; or

9 “(II) with respect to a subse-
10 quent year, the amount specified in
11 this clause for the preceding year re-
12 duced by the percentage increase in
13 the MEI (as defined in section
14 1842(i)(3)) for such subsequent year.

15 “(C) SPECIAL RULE FOR USE OF MORE
16 THAN ONE OF THE SAME SUPPLY ITEM IN A
17 PROCEDURE.—In the case of a surgical proce-
18 dure that requires the use of more than one of
19 the same supply item in such procedure—

20 “(i) in applying subparagraph
21 (A)(ii)(II), if as of 2023 the sum of the
22 price inputs described in such subpara-
23 graph of all of such same supply items ex-
24 ceeds the dollar amount specified in such
25 subparagraph, then the procedure shall be

1 treated as satisfying the requirement of
2 such subparagraph; and

3 “(ii) in applying subparagraph (B),
4 with respect to 2028 or a subsequent
5 year—

6 “(I) if the sum of the price in-
7 puts described in clause (ii)(II)(bb) of
8 such subparagraph of all of such same
9 supply items exceeds the threshold
10 specified in clause (iv) of such sub-
11 paragraph for such year, then the pro-
12 cedure shall be treated as satisfying
13 the criterion described in such clause
14 (ii)(II)(bb) with respect to such year;
15 and

16 “(II) if the sum of the price in-
17 puts described in clause (iii) of such
18 subparagraph of all of such same sup-
19 ply items does not exceed the amount
20 described in such clause for such year,
21 then the procedure shall be treated as
22 satisfying the criteria described in
23 such clause with respect to such year.

24 “(5) OFFICE-BASED FACILITY DEFINED.—For
25 purposes of this part, the term ‘office-based facility’

1 means a physician’s office that, with respect to facil-
 2 ity services furnished in connection with specified
 3 high supply cost surgical procedures—

4 “(A) meets health, safety, and other stand-
 5 ards specified by the Secretary in regulations;
 6 and

7 “(B) has entered into an agreement with
 8 the Secretary under which the physician’s of-
 9 fice—

10 “(i) accepts the payment amount de-
 11 termined under this subsection as full pay-
 12 ment for such facility services;

13 “(ii) accepts an assignment described
 14 in section 1842(b)(3)(B)(ii) with respect to
 15 payment for all such facility services fur-
 16 nished by the office to individuals enrolled
 17 under this part; and

18 “(iii) participates under this part and
 19 is paid as an office-based facility with re-
 20 spect to all such procedures.”.

21 (3) CONFORMING AMENDMENTS.—

22 (A) FOR SERVICES FURNISHED IN AN AM-
 23 BULATORY SURGICAL CENTER.—Section
 24 1833(i)(2) of the Social Security Act (42

1 U.S.C. 1395l(i)(2)) is amended by adding at
2 the end the following new subparagraph:

3 “(F) For purposes of determining payment
4 under this subsection for a specified high sup-
5 ply cost surgical procedure (as defined in sec-
6 tion 1834(bb)(4) with respect to a year (begin-
7 ning with 2027)) furnished in an ambulatory
8 surgical center during such year, such proce-
9 dure shall be treated as a service commonly fur-
10 nished in an ambulatory surgical center.”.

11 (B) FOR SERVICES FURNISHED IN AN OFF-
12 CAMPUS OUTPATIENT DEPARTMENT OF A PRO-
13 VIDER.—Section 1833(t)(21)(C) of the Social
14 Security Act (42 U.S.C. 1395l(t)(21)(C)) is
15 amended by adding at the end the following
16 new sentence: “In applying the previous sen-
17 tence in the case of a specified high supply cost
18 surgical procedure (as defined in section
19 1834(bb)(4) with respect to a year) furnished
20 by an off-campus outpatient department of a
21 provider, payment shall be determined under
22 section 1834(bb).”.

23 (C) FOR CLARIFICATION ON APPLICABLE
24 PAYMENT FOR OBF FACILITY SERVICES.—Sec-
25 tion 1833(a)(4) of the Social Security Act (42

1 U.S.C. 1395l(a)(4)) is amended by inserting
2 “(other than in clause (iii) of such section)”
3 after “section 1832(a)(2)(F)”.

4 (c) PROVIDER AGREEMENT AND MEDICARE ENROLL-
5 MENT.—

6 (1) IN GENERAL.—Section 1866(e) of the So-
7 cial Security Act (42 U.S.C. 1395cc(e)) is amend-
8 ed—

9 (A) in paragraph (2), by striking at the
10 end “and”;

11 (B) in paragraph (3), at the end, by strik-
12 ing the period and adding “; and”; and

13 (C) by adding at the end the following new
14 paragraph:

15 “(4) an office-based facility (as defined in para-
16 graph (5) of section 1834(bb)), but only with respect
17 to the furnishing during a year of specified high
18 supply cost surgical procedures (as defined in para-
19 graph (4) of such section with respect to such
20 year).”.

21 (2) CONSULTATION WITH STATE AGENCIES RE-
22 GARDING CONDITIONS OF PARTICIPATION.—Section
23 1863 of the Social Security Act (42 U.S.C. 1395z)
24 is amended by striking “or by ambulatory surgical
25 centers under section 1832(a)(2)(F)(i)” and insert-

ing “by ambulatory surgical centers under section 1832(a)(2)(F)(i), or by office-based facilities (as defined in section 1834(bb)(5)) with respect to furnishing specified high supply cost surgical procedures (as defined in section 1834(bb)(4))”.

(3) USE OF STATE AGENCIES TO DETERMINE COMPLIANCE WITH CONDITIONS OF PARTICIPATION.—Section 1864(a) of the Social Security Act (42 U.S.C. 1395aa(a)) is amended—

(A) in the first sentence, by inserting “or whether a physician’s office is an office-based facility (as defined in section 1834(bb)(5),” after “standards specified under section 1832(a)(2)(F)(i),”; and

(B) in the fifth sentence, by inserting “office-based facility (as defined in section 1834(bb)(5)) with respect to furnishing ambulatory high supply cost surgical procedures (as defined in section 1834(bb)(4)),” after each occurrence of “ambulatory surgical center,”.

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