

116TH CONGRESS  
1ST SESSION

# H. R. 3772

To amend title XVIII of the Social Security Act to ensure equitable payment for, and preserve Medicare beneficiary access to, diagnostic radiopharmaceuticals under the Medicare hospital outpatient prospective payment system.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2019

Mr. PETERS (for himself, Mr. RUSH, and Mr. HOLDING) 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 ensure equitable payment for, and preserve Medicare beneficiary access to, diagnostic radiopharmaceuticals under the Medicare hospital outpatient prospective payment system.

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 “Medicare Diagnostic  
5 Radiopharmaceutical Payment Equity Act of 2019”.

1 **SEC. 2. SEPARATE PAYMENT FOR CERTAIN DIAGNOSTIC**  
 2 **RADIOPHARMACEUTICALS.**

3 (a) IN GENERAL.—Section 1833(t)(16) of the Social  
 4 Security Act (42 U.S.C. 1395l(t)(16)) is amended by add-  
 5 ing at the end the following new subparagraph:

6 “(G) SEPARATE PAYMENT FOR CERTAIN  
 7 DIAGNOSTIC RADIOPHARMACEUTICALS.—

8 “(i) IN GENERAL.—Notwithstanding  
 9 any other provision of this subsection, with  
 10 respect to services furnished on or after  
 11 January 1, 2020, the Secretary shall not  
 12 package, and shall make a separate pay-  
 13 ment as specified in clause (ii) for, a diag-  
 14 nostic radiopharmaceutical defined in  
 15 clause (v) with an estimated mean per day  
 16 product cost equal to or exceeding the  
 17 threshold specified in clause (iii).

18 “(ii) SEPARATE PAYMENT.—For pur-  
 19 poses of clause (i), payment specified in  
 20 this clause for a diagnostic radiopharma-  
 21 ceutical described in clause (i) shall be  
 22 equal to—

23 “(I) the average sales price for  
 24 the drug established under section  
 25 1847A, to the extent the average sales  
 26 price is available, as calculated and

1 adjusted by the Secretary to the ex-  
2 tent such adjustment is adopted for  
3 other specified covered outpatient  
4 drugs under paragraph (14)(A); or

5 “(II) if the data necessary to cal-  
6 culate the average sales price for the  
7 drug in the year under the sections  
8 specified in subclause (I) is not avail-  
9 able, the wholesale acquisition cost as  
10 defined in subsection 1847A(c)(6)(B),  
11 or, if the wholesale acquisition cost is  
12 not available, the mean unit cost data  
13 derived from hospital claims data.

14 “(III) Nothing in this subpara-  
15 graph shall be construed as affecting  
16 eligibility of diagnostic radiopharma-  
17 ceuticals for pass-through payments  
18 under paragraph (6).

19 “(iii) THRESHOLD.—For purposes of  
20 this subparagraph, the threshold specified  
21 in this clause—

22 “(I) for 2020, is \$500; and

23 “(II) for subsequent years, is the  
24 amount specified in this clause for the  
25 preceding year increased by the per-

1                   centage of the OPD fee schedule in-  
2                   crease factor under paragraph  
3                   (3)(C)(iv) for the applicable year.

4                   “(iv) BUDGET NEUTRALITY.—The  
5                   Secretary shall make such adjustments as  
6                   are necessary under subparagraph 9(B) to  
7                   ensure that the amount of expenditures  
8                   under this subsection for such year with  
9                   application of this subparagraph is equal  
10                  to the amount of expenditures that would  
11                  be made under this subsection for such  
12                  year without application of this subpara-  
13                  graph.

14                  “(v) DEFINITION.—For purposes of  
15                  this subparagraph, a diagnostic radio-  
16                  pharmaceutical is a drug or biological that  
17                  is described in section 315.2(a) of title 21,  
18                  Code of Federal Regulations, or any suc-  
19                  cessor regulation, and is approved by the  
20                  Food and Drug Administration on or after  
21                  January 1, 2008.”.

22                  (b) NO IMPACT ON COPAYMENT.—Section 1833(t) of  
23                  the Social Security Act (42 U.S.C. 1395l(t)(8)(E)) is  
24                  amended by—

- 1           (1) inserting “AND SEPARATE PAYMENTS  
2       FOR CERTAIN DIAGNOSTIC RADIOPHARMA-  
3       CEUTICALS” after “PASS–THROUGH ADJUST-  
4       MENTS”; and
- 5           (2) inserting after “such adjustments)” the  
6       phrase “and subparagraph (16)(G)”.

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