

118TH CONGRESS  
2D SESSION

# H. R. 10136

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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 2024

Mr. BILIRAKIS (for himself, Mr. DAVIS of Illinois, and Mr. MURPHY) 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 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 2024”.

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(aa)(4) with respect to a year  
24 (beginning with 2025) and furnished dur-  
25 ing such year in an office-based facility (as  
26 defined in section 1834(aa)(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(aa)(4)) with respect  
12 to a year (beginning with 2025) furnished to an  
13 individual in an office-based facility (as defined  
14 in section 1834(aa)(5)) during such year, the  
15 amounts paid shall be, subject to section  
16 1834(aa)(3), 80 percent of the payment amount  
17 determined under section 1834(aa) 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       “(aa) 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 2025 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 2026), 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—

1           “(I) shall add a surgical proce-  
2           dure (not described in subparagraph  
3           (A)) for inclusion in such definition if  
4           the procedure, with respect to such  
5           year, satisfies the criteria specified in  
6           clause (ii); and

7           “(II) may remove a surgical pro-  
8           cedure from inclusion in such defini-  
9           tion if the procedure, with respect to  
10          such year, satisfies the criteria speci-  
11          fied in clause (iii).

12          “(ii) CRITERIA FOR REQUIRED INCLU-  
13          SION.—For purposes of clause (i)(I), a sur-  
14          gical procedure satisfies the criteria speci-  
15          fied in this clause, with respect to a year,  
16          if—

17                 “(I) when performed in an ambu-  
18                 latory surgical center, the procedure is  
19                 payable under section 1833(i); and

20                 “(II) when performed in a physi-  
21                 cian’s office, the procedure—

22                         “(aa) would be, without ap-  
23                         plication of this subsection or  
24                         section 1833(a)(i)(II), payable  
25                         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 2026, the  
4 dollar amount specified in subpara-  
5 graph (A)(ii), increased by the per-  
6 centage increase in the MEI (as de-  
7 fined in section 1842(i)(3)) over the  
8 3-year period ending with 2026; or

9 “(II) with respect to a subse-  
10 quent year, the amount specified in  
11 this clause for the preceding year in-  
12 creased 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 2026 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(aa)(4) with respect to a year (begin-  
7 ning with 2025)) 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(aa)(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(aa).”.

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(aa)), 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-

1 ing “by ambulatory surgical centers under section  
2 1832(a)(2)(F)(i), or by office-based facilities (as de-  
3 fined in section 1834(aa)(5)) with respect to fur-  
4 nishing specified high supply cost surgical proce-  
5 dures (as defined in section 1834(aa)(4))”.

6 (3) USE OF STATE AGENCIES TO DETERMINE  
7 COMPLIANCE WITH CONDITIONS OF PARTICIPA-  
8 TION.—Section 1864(a) of the Social Security Act  
9 (42 U.S.C. 1395aa(a)) is amended—

10 (A) in the first sentence, by inserting “or  
11 whether a physician’s office is an office-based  
12 facility (as defined in section 1834(aa)(5),”  
13 after “standards specified under section  
14 1832(a)(2)(F)(i),”; and

15 (B) in the fifth sentence, by inserting “of-  
16 fice-based facility (as defined in section  
17 1834(aa)(5)) with respect to furnishing ambula-  
18 tory high supply cost surgical procedures (as  
19 defined in section 1834(aa)(4)),” after each oc-  
20 currence of “ambulatory surgical center,”.

○