

118TH CONGRESS  
1ST SESSION

# H. R. 1199

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

FEBRUARY 27, 2023

Mr. DUNN of Florida (for himself, Mr. MURPHY, Mr. PETERS, Ms. SEWELL, Mrs. TRAHAN, Ms. BLUNT ROCHESTER, Mrs. MILLER-MEEKS, Mr. AUCHINCLOSS, Mr. TONKO, Mr. JOYCE of Pennsylvania, Mrs. WATSON COLEMAN, Ms. KUSTER, Mr. PAPPAS, Mr. RESCHENTHALER, Mr. MCGOVERN, and Mr. BUCSHON) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Facilitating Innovative  
3 Nuclear Diagnostics Act of 2023”.

4 **SEC. 2. SEPARATE PAYMENT FOR CERTAIN DIAGNOSTIC**  
5 **RADIOPHARMACEUTICALS.**

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

9 “(H) SEPARATE PAYMENT FOR CERTAIN  
10 DIAGNOSTIC RADIOPHARMACEUTICALS.—

11 “(i) IN GENERAL.—Notwithstanding  
12 any other provision of this subsection, with  
13 respect to services furnished on or after  
14 January 1, 2024, the Secretary shall not  
15 package, and shall make a separate pay-  
16 ment as specified in clause (ii) for a diag-  
17 nostic radiopharmaceutical (as defined in  
18 clause (v)) with an estimated mean per day  
19 product cost equal to or exceeding the  
20 threshold specified in clause (iii).

21 “(ii) SEPARATE PAYMENT.—For pur-  
22 poses of clause (i), the separate payment  
23 specified in this subclause for a diagnostic  
24 radiopharmaceutical described in clause (i)  
25 shall be equal to—

1           “(I) the average sales price for  
2           the drug established under section  
3           1847A, to the extent the average sales  
4           price is available, as calculated and  
5           adjusted by the Secretary to the ex-  
6           tent such adjustment is adopted for  
7           other specified covered outpatient  
8           drugs under paragraph (14)(A); or

9           “(II) if the data necessary to cal-  
10          culate the average sales price for the  
11          drug in the year under the section  
12          and paragraph specified in subclause  
13          (I) is not available, the wholesale ac-  
14          quisition cost (as defined in subsection  
15          1847A(c)(6)(B)), as calculated and  
16          adjusted by the Secretary to the ex-  
17          tent such adjustment is adopted for  
18          other specified covered outpatient  
19          drugs under paragraph (14)(A), or, if  
20          the wholesale acquisition cost is not  
21          available, the mean unit cost data de-  
22          rived from hospital claims data.

23                 Nothing in this subparagraph shall be con-  
24                 strued as affecting eligibility of diagnostic

1 radiopharmaceuticals for pass-through pay-  
2 ments under paragraph (6).

3 “(iii) THRESHOLD.—For purposes of  
4 this subparagraph, the threshold specified  
5 in this clause—

6 “(I) for 2024, is \$500; and

7 “(II) for a subsequent year, is  
8 the amount specified in this clause for  
9 the preceding year increased by the  
10 OPD fee schedule increase factor  
11 under paragraph (3)(C)(iv) for the  
12 year.

13 “(iv) BUDGET NEUTRALITY.—The  
14 Secretary shall make such adjustments as  
15 are necessary under paragraph (9)(B) to  
16 ensure that the amount of expenditures  
17 under this subsection for a year with appli-  
18 cation of this subparagraph is equal to the  
19 amount of expenditures that would be  
20 made under this subsection for such year  
21 without application of this subparagraph.

22 “(v) DEFINITION OF DIAGNOSTIC  
23 RADIOPHARMACEUTICAL.—For purposes of  
24 this subparagraph, the term ‘diagnostic  
25 radiopharmaceutical’ means a drug or bio-

1                   logical that is described in section 315.2(a)  
2                   of title 21, Code of Federal Regulations, or  
3                   any successor regulation, and is approved  
4                   by the Food and Drug Administration on  
5                   or after January 1, 2008.”.

6           (b)   NO   IMPACT   ON   COPAYMENT.—Section  
7 1833(t)(8)(E) of the Social Security Act (42 U.S.C.  
8 1395l(t)(8)(E)) is amended—

9                   (1) in the heading, by inserting “AND SEPA-  
10                  RATE PAYMENTS FOR CERTAIN DIAGNOSTIC RADIO-  
11                  PHARMACEUTICALS” after “PASS-THROUGH ADJUST-  
12                  MENTS”; and

13                   (2) by inserting “and paragraph (16)(H)” after  
14                  “such adjustments”).

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