

111TH CONGRESS
1ST SESSION

H. R. 2718

To amend title XVIII of the Social Security Act to create a sensible infrastructure for delivery system reform by renaming the Medicare Payment Advisory Commission, making the Commission an executive branch agency, and providing the Commission new resources and authority to implement Medicare payment policy.

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2009

Mr. COOPER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 create a sensible infrastructure for delivery system reform by renaming the Medicare Payment Advisory Commission, making the Commission an executive branch agency, and providing the Commission new resources and authority to implement Medicare payment policy.

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 “Medicare Payment Ad-
3 visory Commission (MedPAC) Reform Act of 2009”.

4 **SEC. 2. RENAMING AND REFORMING THE MEDICARE PAY-**
5 **MENT ADVISORY COMMISSION.**

6 (a) AMENDMENT TO TITLE.—

7 (1) IN GENERAL.—Section 1805 of the Social
8 Security Act (42 U.S.C. 1395b–6) is amended—

9 (A) in the heading, by striking “**MEDI-**
10 **CARE PAYMENT ADVISORY COMMISSION**”
11 and inserting “**MEDICARE PAYMENT AND**
12 **ACCESS COMMISSION**”; and

13 (B) in subsection (a), by striking “Medi-
14 care Payment Advisory Commission” and in-
15 serting “Medicare Payment and Access Com-
16 mission (or ‘MedPAC’)”.

17 (2) REFERENCES.—Any reference to the Medi-
18 care Payment Advisory Commission shall be deemed
19 a reference to the Medicare Payment and Access
20 Commission.

21 (b) ESTABLISHMENT AS EXECUTIVE AGENCY.—Sec-
22 tion 1805 of the Social Security Act (42 U.S.C. 1395b–
23 6) is amended—

24 (1) in the heading, by striking “ADVISORY”;

25 (2) in subsection (a)—

26 (A) by striking “Advisory”; and

1 (B) by striking “agency of Congress” and
2 inserting “independent establishment (as de-
3 fined in section 104 of title 5, United States
4 Code)”;

5 (3) in subsection (c)—

6 (A) in paragraph (1)—

7 (i) by striking “APPOINTMENT.—The
8 Commission” and inserting “APPOINT-
9 MENT.—

10 “(A) IN GENERAL.—The Commission”;

11 (ii) in subparagraph (A), as inserted
12 by clause (i)—

13 (I) by striking “17” and insert-
14 ing “11”;

15 (II) by inserting “the Secretary
16 and the Administrator of the Centers
17 for Medicare & Medicaid Services,
18 who shall each serve as non-voting
19 members of the Commission, and”
20 after “composed of”; and

21 (III) by striking “Comptroller
22 General” and inserting “President, by
23 and with the advice and consent of
24 the Senate”; and

1 (iii) by adding at the end the fol-
2 lowing new subparagraphs:

3 “(B) LIMITATION ON NUMBER OF TERMS
4 SERVED.—An individual may not be appointed
5 as a member of the Commission for more than
6 2 consecutive terms.

7 “(C) MEMBERS CURRENTLY APPOINTED.—

8 “(i) IN GENERAL.—Any individual
9 serving as a member of the Commission as
10 of the date of enactment of the Medicare
11 Payment Advisory Commission (MedPAC)
12 Reform Act of 2009 may continue to serve
13 as a member until the earlier of—

14 “(I) the remainder of the term
15 for which the member was appointed;

16 or

17 “(II) April 30, 2010.

18 “(ii) CLARIFICATION REGARDING VA-
19 CANCIES.—Any vacancy in the Commission
20 on or after such date of enactment shall be
21 filled as provided in accordance with sub-
22 paragraph (A).”; and

23 (B) in paragraph (2), by striking subpara-
24 graph (D) and inserting the following new sub-
25 paragraph:

1 “(D) ADDITIONAL QUALIFICATIONS.—In
2 addition to the qualifications described in the
3 succeeding provisions of this paragraph, the
4 President shall consider the political balance of
5 the membership of the Commission and the
6 needs of individuals entitled to (or enrolled for)
7 benefits under part A or enrolled under part B
8 who are entitled to medical assistance under a
9 State plan under title XIX.”.

10 (C) in paragraph (3)—

11 (i) by amending subparagraph (A) to
12 read as follows:

13 “(A) IN GENERAL.—The terms of mem-
14 bers of the Commission shall be for 6 years ex-
15 cept that, of the members first appointed—

16 “(i) four shall be appointed for terms
17 of 5 years;

18 “(ii) four shall be appointed for terms
19 of 3 years; and

20 “(iii) three shall be appointed for
21 terms of 1 year.”; and

22 (ii) in subparagraph (B), in the third
23 sentence, by striking “A vacancy” and in-
24 serting “Except as provided in paragraph
25 (1)(C), a vacancy”;

1 (D) by amending paragraph (4) to read as
2 follows:

3 “(4) COMPENSATION.—Membership in the
4 Commission shall be a full-time position. A member
5 of the Commission shall be entitled to compensation
6 at the rate payable for level IV of the Executive
7 Schedule under section 5316 of title 5, United
8 States Code.”.

9 (E) by amending paragraph (5) to read as
10 follows:

11 “(5) CHAIRMAN; VICE CHAIRMAN.—The Presi-
12 dent shall designate a member of the Commission, at
13 the time of appointment of the member by and with
14 the advice and consent of the Senate, as Chairman
15 and a member of the Commission, at the time of ap-
16 pointment of the member by and with the advice and
17 consent of the Senate, as Vice Chairman, except that
18 in the case where the Chairman or the Vice Chair-
19 man is not able to be present (including in the case
20 of vacancy), a majority of the Commission may des-
21 ignate another member for the period of such ab-
22 sence.”;

23 (4) in subsection (d), in the matter preceding
24 paragraph (1), by striking “Subject to such review
25 as the Comptroller General deems necessary to as-

1 sure the efficient administration of the Commission,
2 the Commission” and inserting “The Commission”;

3 (5) by amending subsection (f) to read as fol-
4 lows:

5 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated such sums as may be
7 necessary to carry out the provisions of this section. Sixty
8 percent of such appropriations shall be payable from the
9 Federal Hospital Insurance Trust Fund, and 40 percent
10 of such appropriation shall be payable from the Federal
11 Supplementary Medical Insurance Trust Fund.”; and

12 (6) by adding at the end the following new sub-
13 section:

14 “(g) REFERENCES.—Any reference to the Medicare
15 Payment Advisory Commission or MedPAC shall be
16 deemed a reference to the Medicare Payment and Access
17 Commission.”.

18 (c) AUTHORITY TO DETERMINE PAYMENT RATES
19 AND ROUTINE EVALUATION OF PAYMENT RATES UNDER
20 THE MEDICARE PROGRAM.—

21 (1) IN GENERAL.—Section 1805(b) of the So-
22 cial Security Act (42 U.S.C. 1395b–6(b)) is amend-
23 ed—

24 (A) in paragraph (1)(B), by inserting “and
25 determine payment rates for items and services

1 furnished under this title in accordance with
2 paragraph (9)” before the semicolon at the end;
3 and

4 (B) by adding at the end the following new
5 paragraphs:

6 “(9) AUTHORITY TO DETERMINE PAYMENT
7 RATES UNDER THIS TITLE.—

8 “(A) DETERMINATION OF PAYMENT
9 RATES.—

10 “(i) IN GENERAL.—Notwithstanding
11 any other provision of law, the Commission
12 shall determine payment rates for items
13 and services furnished under this title. In
14 determining such payment rates, the Com-
15 mission shall do so in a manner that is
16 consistent with the provisions of sections
17 1801 and 1802.

18 “(ii) TIMELINE FOR DETERMINATIONS
19 WITH RESPECT TO PAYMENT POLICIES FOR
20 PHYSICIANS AND HOSPITALS.—The Com-
21 mission shall make a determination under
22 this subparagraph with respect to payment
23 policies—

24 “(I) for physicians (as defined in
25 section 1861(r)(1)), not later than

1 December 1 of each year (beginning
2 with 2012); and

3 “(II) for hospitals, not later than
4 March 1 of each year (beginning with
5 2013).

6 “(B) IMPLEMENTATION OF PAYMENT
7 RATES.—

8 “(i) AUTHORITY OF SECRETARY.—
9 Notwithstanding any other provision of
10 law, the Secretary shall promulgate regula-
11 tions to implement any payment rates de-
12 termined by the Commission under sub-
13 paragraph (A).

14 “(ii) PAYMENT RATES AND REGULA-
15 TIONS CURRENTLY IN EFFECT.—Any pay-
16 ment rate for items and services furnished
17 under this title as of the date of enactment
18 of the Medicare Payment Advisory Com-
19 mission (MedPAC) Reform Act of 2009 or
20 regulation promulgated by the Secretary
21 relating to such payments prior to such
22 date of enactment shall remain in effect
23 until the Secretary promulgates regulations
24 under clause (ii) to implement a payment

1 rate determined by the Commission with
2 respect to the item or service.

3 “(C) LIMITATION ON JUDICIAL REVIEW.—
4 Any determination of the Commission relating
5 to payment rates for items and services fur-
6 nished under this title shall be a final agency
7 action of the Commission and shall not be sub-
8 ject to judicial review.

9 “(D) ANNUAL REPORT.—Not later than
10 March 15 of each year (beginning with 2012),
11 the Commission shall submit to Congress a re-
12 port on any payment rates determined under
13 subparagraph (A) during the preceding year,
14 including the performance of the Secretary in
15 implementing such payment rates by promul-
16 gating regulations under subparagraph (B).

17 “(10) ROUTINE EVALUATION OF PAYMENT
18 RATES.—The Commission shall review the payment
19 rate for each item and service furnished under this
20 title not less frequently than every 5 years in order
21 to determine whether the Commission should make
22 a determination under paragraph (9) to update such
23 payment rate.”.

1 (2) GAO STUDY AND ANNUAL REPORT ON DE-
2 TERMINATION AND IMPLEMENTATION OF PAYMENT
3 RATES.—

4 (A) STUDY.—The Comptroller General of
5 the United States shall conduct a study on
6 changes to payment policies under the Medicare
7 program under title XVIII of the Social Secu-
8 rity Act as a result of the amendments made by
9 this subsection, including an analysis of—

10 (i) any determinations made by the
11 Medicare Payment and Access Commission
12 under subparagraph (A) of section
13 1805(b)(9) of such Act, as added by para-
14 graph (1), during the preceding year;

15 (ii) any regulations promulgated by
16 the Secretary of Health and Human Serv-
17 ices under subparagraph (B) of such sec-
18 tion during the preceding year;

19 (iii) the process for—

20 (I) making such determinations
21 (including the evidence to support any
22 such determination);

23 (II) promulgating such regula-
24 tions (including the capacity of the
25 Secretary of Health and Human Serv-

1 ices to promulgate such regulations);
2 and
3 (iv) the ability of the Centers for
4 Medicare & Medicaid Services to fulfill its
5 responsibilities in carrying out such regula-
6 tions.

7 (B) REPORT.—Not later than December
8 31 of each year (beginning with 2012), the
9 Comptroller General shall submit to Congress a
10 report containing the results of the study con-
11 ducted under subparagraph (A), together with
12 recommendations for such legislation and ad-
13 ministrative action as the Secretary determines
14 appropriate.

15 (d) CONGRESSIONAL ACTION.—Section 1805 of the
16 Social Security Act (42 U.S.C. 1395b–6), as amended by
17 subsection (b), is amended—

18 (1) by redesignating subsections (f) and (g), re-
19 spectively, as subsections (g) and (h); and

20 (2) by inserting after subsection (e) the fol-
21 lowing new subsection:

22 “(f) CONGRESSIONAL ACTION.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of law, it shall only be in order in the Sen-
25 ate or the House of Representatives to consider any

1 measure that would overrule a determination of the
2 Commission with respect to payments for items and
3 services furnished under this title if $\frac{3}{5}$ of the Mem-
4 bers, duly chosen and sworn, of the Senate or the
5 House of Representatives agree to such consider-
6 ation.

7 “(2) RULES OF THE SENATE AND HOUSE OF
8 REPRESENTATIVES.—This subsection is enacted by
9 Congress—

10 “(A) as an exercise of the rulemaking
11 power of the Senate and House of Representa-
12 tives, respectively, and is deemed to be part of
13 the rules of each House, respectively, but appli-
14 cable only with respect to the procedure to be
15 followed in that House in the case of a measure
16 described in paragraph (1), and it supersedes
17 other rules only to the extent that it is incon-
18 sistent with such rules; and

19 “(B) with full recognition of the constitu-
20 tional right of either House to change the rules
21 (so far as they relate to the procedure of that
22 House) at any time, in the same manner, and
23 to the same extent as in the case of any other
24 rule of that House.”.

1 (e) RESEARCH, INFORMATION ACCESS, AND DEM-
2 ONSTRATION PROJECTS.—Section 1805(e) of the Social
3 Security Act (42 U.S.C. 1395b–6(e)) is amended by add-
4 ing at the end the following new paragraphs:

5 “(5) AUTHORITY TO INFORM RESEARCH PRIOR-
6 ITIES FOR DATA COLLECTION.—The Commission
7 may advise the Secretary (through the Director of
8 the Agency for Healthcare Research and Quality and
9 the Director of the National Institutes of Health) on
10 priorities for health services research, particularly as
11 such priorities pertain to necessary changes and
12 issues regarding payment reforms under this title.

13 “(6) EXPANDED AUTHORITY TO ACCESS FED-
14 ERAL DATA AND REPORTS.—In addition to data ob-
15 tained under paragraph (1), the Commission shall
16 have priority access to all raw data and research
17 conducted or funded by the Federal Government, in-
18 cluding data and research produced by the Centers
19 for Medicare & Medicaid Services, the National In-
20 stitutes of Health, and the Agency for Healthcare
21 Research and Quality.

22 “(7) ELECTRONIC ACCESS.—The National Di-
23 rector for Health Information Technology, in coordi-
24 nation with the Secretary, the Administrator of the
25 Centers for Medicare & Medicaid Services, and the

1 Commission, shall establish a direct electronic link
2 for raw data, including claims data under this title,
3 to be accessed by the Commission for the purposes
4 of evaluating and determining recommendations
5 under this title, in accordance with applicable pri-
6 vacy laws and data use agreements.

7 “(8) ACCESS TO BIENNIAL REPORTS.—Not less
8 frequently than on a biannual basis, the National In-
9 stitutes of Health and the Agency for Healthcare
10 Research and Quality shall submit to the Commis-
11 sion a report containing information on any research
12 conducted by the National Institutes of Health and
13 the Agency for Healthcare Research and Quality, re-
14 spectively, which has relevance for the determina-
15 tions and recommendations being considered by the
16 Commission. Such information shall be provided to
17 the Commission in electronic form.

18 “(9) REVISIONS TO PROCESS FOR CONDUCT OF
19 DEMONSTRATION PROJECTS RELATING TO PAY-
20 MENTS UNDER THIS TITLE.—Effective beginning
21 January 1, 2011, the Commission shall have sole au-
22 thority to design and evaluate demonstration
23 projects relating to payments under this title which
24 are authorized by section 402 of the Social Security
25 Amendments of 1967 or under a waiver under sec-

1 tion 1115. The Secretary shall maintain all responsi-
2 bility for implementing such demonstration projects,
3 including for implementing the process through
4 which providers are reimbursed for items and serv-
5 ices furnished under the demonstration projects.
6 Nothing in this paragraph shall affect the authority
7 of the Secretary with respect to demonstration
8 projects under this title not relating to such pay-
9 ments.”.

10 (f) ADDITIONAL RESOURCES TO CARRY OUT DU-
11 TIES.—

12 (1) IN GENERAL.—Section 1805(d) of the So-
13 cial Security Act (42 U.S.C. 1395b–6(d)) is amend-
14 ed—

15 (A) in paragraph (1), by inserting “(in-
16 cluding an attorney)” after “such other per-
17 sonnel”; and

18 (B) in paragraph (5), by striking “and” at
19 the end;

20 (C) in paragraph (6), by striking the pe-
21 riod at the end and inserting “; and”; and

22 (D) by adding at the end the following new
23 paragraph:

24 “(7) establish a public affairs office.”.

1 (2) OFFICE OF THE OMBUDSMAN.—Section
2 1805(e) of the Social Security Act (42 U.S.C.
3 1395b–6(e)), as amended by subsection (e), is
4 amended by adding at the end the following new
5 paragraph:

6 “(10) OFFICE OF THE OMBUDSMAN.—

7 “(A) IN GENERAL.—The Commission shall
8 establish an office of the ombudsman to handle
9 complaints regarding the implementation of
10 regulations under subsection (a)(9)(B).

11 “(B) DUTIES.—The office of the ombuds-
12 man shall—

13 “(i) act as a liaison between the Com-
14 mission and any entity or individual af-
15 fected by the implementation of such a
16 regulation; and

17 “(ii) ensure that the Commission has
18 established safeguards—

19 “(I) to encourage such entities
20 and individuals to submit complaints
21 to the office of the ombudsman; and

22 “(II) to protect the confiden-
23 tiality of any entity or individual who
24 submits such a complaint.”.

1 (g) USE OF FUNDING.—Section 1805(g) of the Social
2 Security Act (42 U.S.C. 1395b–6(g)), as amended by sub-
3 section (b) and redesignated by subsection (d), is amended
4 by adding at the end the following new sentence: “Out
5 of amounts appropriated under the preceding sentence,
6 the Commission may use not more than \$500,000,000
7 each fiscal year to test new methods of reimbursement
8 under this title.”.

9 (h) MACPAC TECHNICAL AMENDMENTS.—Section
10 1900(b) of the Social Security Act (42 U.S.C. 1396) is
11 amended—

12 (1) in paragraph (1)(D), by striking “June 1”
13 and inserting “June 15”; and

14 (2) by adding at the end the following:

15 “(10) CONSULTATION WITH MEDPAC.—
16 MACPAC shall regularly consult with the Medicare
17 Payment and Access Commission (in this paragraph
18 referred to as ‘MedPAC’) established under section
19 1805 in carrying out its duties under this section.”.

20 (i) LOBBYING COOLING-OFF PERIOD FOR MEMBERS
21 OF THE MEDICARE PAYMENT ADVISORY COMMISSION.—
22 Section 207(c) of title 18, United States Code, is amended
23 by inserting at the end the following:

24 “(3) MEMBERS OF THE MEDICARE PAYMENT
25 ADVISORY COMMISSION.—

1 “(A) IN GENERAL.—Paragraph (1) shall
2 apply to a member of the Medicare Payment
3 Advisory Commission who was appointed to
4 such Commission as of the day before the date
5 of enactment of the Medicare Payment Advisory
6 Commission (MedPAC) Reform Act of 2009.

7 “(B) AGENCIES AND CONGRESS.—For pur-
8 poses of paragraph (1), the agency in which the
9 individual described in subparagraph (A) served
10 shall be considered to be the Medicare Payment
11 and Access Commission established under sec-
12 tion 1805 of the Social Security Act, the De-
13 partment of Health and Human Services, and
14 the relevant committees of jurisdiction of Con-
15 gress.”.

16 **SEC. 3. ESTABLISHMENT OF COUNCIL OF HEALTH AND**
17 **ECONOMIC ADVISERS, CONSUMER ADVISORY**
18 **COUNCIL, AND FEDERAL HEALTH ADVISORY**
19 **COUNCIL.**

20 Section 1805(b) of the Social Security Act (42 U.S.C.
21 1395b–6(b)), as amended by section 2(c), is amended by
22 adding at the end the following new paragraph:

23 “(11) COUNCIL OF HEALTH AND ECONOMIC AD-
24 VISERS, CONSUMER ADVISORY COUNCIL, AND FED-
25 ERAL HEALTH ADVISORY COUNCIL.—

1 “(A) COUNCIL OF HEALTH AND ECONOMIC
2 ADVISERS.—

3 “(i) IN GENERAL.—The Commission
4 shall establish a council of health and eco-
5 nomic advisers to advise the Commission
6 on its development, analyses, and imple-
7 mentation of payment policies under this
8 title.

9 “(ii) MEMBERSHIP.—

10 “(I) IN GENERAL.—The council
11 of health and economic advisers shall
12 be composed of acknowledged experts
13 in health care and economics selected
14 by the Commission.

15 “(II) INITIAL INCLUSION OF
16 FORMER MEMBERS OF MEDICARE PAY-
17 MENT ADVISORY COMMISSION.—The
18 members initially selected for the
19 council of health and economic advis-
20 ers under subclause (I) shall include
21 those individuals who were members
22 of the Medicare Payment Advisory
23 Commission as of the day before the
24 date of enactment of the Medicare

1 Payment Advisory Commission
2 (MedPAC) Reform Act of 2009.

3 “(B) CONSUMER ADVISORY COUNCIL.—

4 “(i) IN GENERAL.—There is estab-
5 lished a consumer advisory council to ad-
6 vise the Commission on the impact of pay-
7 ment policies under this title on con-
8 sumers.

9 “(ii) MEMBERSHIP.—

10 “(I) NUMBER AND APPOINT-
11 MENT.—The consumer advisory coun-
12 cil shall be composed of 10 consumer
13 representatives appointed by the
14 Comptroller General of the United
15 States, 1 from among each of the 10
16 regions established by the Secretary
17 as of the date of enactment of the
18 Medicare Payment Advisory Commis-
19 sion (MedPAC) Reform Act of 2009.

20 “(II) QUALIFICATIONS.—The
21 membership of the council shall rep-
22 resent the interests of consumers and
23 particular communities.

24 “(iii) DUTIES.—The consumer advi-
25 sory council shall, subject to the call of the

1 Commission, meet not less frequently than
2 times each year in the District of Colum-
3 bia.

4 “(iv) OPEN MEETINGS.—Meetings of
5 the consumer advisory council shall be
6 open to the public.

7 “(v) ELECTION OF OFFICERS.—Mem-
8 bers of the consumer advisory council shall
9 elect their own officers.

10 “(C) FEDERAL HEALTH ADVISORY COUN-
11 CIL.—

12 “(i) IN GENERAL.—There is estab-
13 lished a Federal health advisory council to
14 consult with and provide advice to the
15 Commission on all matters within the ju-
16 risdiction of the Commission.

17 “(ii) MEMBERSHIP.—The Federal
18 health advisory council shall be composed
19 of 10 representatives from the health care
20 industry appointed by the Comptroller
21 General of the United States, 1 from
22 among each of the 10 regions established
23 by the Secretary as of the date of enact-
24 ment of the Medicare Payment Advisory

1 Commission (MedPAC) Reform Act of
2 2009.

3 “(iii) TERMS.—

4 “(I) IN GENERAL.—The terms of
5 members of the Federal health advi-
6 sory council shall be for 1 year.

7 “(II) LIMITATION ON NUMBER
8 OF TERMS SERVED.—An individual
9 may not be appointed as a member of
10 the Federal health advisory council for
11 more than 3 terms.

12 “(iv) DUTIES.—The Federal health
13 advisory council shall, subject to the call of
14 the Commission, meet not less frequently
15 than 2 times each year in the District of
16 Columbia.

17 “(v) OPEN MEETINGS.—Meetings of
18 the Federal health advisory council shall be
19 open to the public.

20 “(vi) ELECTION OF OFFICERS.—Mem-
21 bers of the Federal health advisory council
22 shall elect their own officers.

23 “(D) LIMITATION ON FUNDING.—Out of
24 amounts appropriated under subsection (g), the

1 Commission may use not more than \$300,000
2 each fiscal year to carry out this paragraph.”.

○