

111TH CONGRESS
1ST SESSION

S. 1380

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 SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Payment Ad-
5 visory Commission (MedPAC) Reform Act of 2009”.

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

3 (a) AMENDMENT TO TITLE.—

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

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

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

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

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

21 (1) in subsection (a)—

22 (A) by striking “ESTABLISHMENT.—There
 23 is” and inserting “ESTABLISHMENT.—

24 “(i) IN GENERAL.—There is”;

25 (B) in clause (i), as added by subpara-
 26 graph (A), by striking “agency of Congress”

and inserting “independent establishment (as defined in section 104 of title 5, United States Code)”; and

(C) by adding at the end the following new clause:

“(ii) PURPOSE.—

“(I) IN GENERAL.—The purpose of the Commission is to act as the regulatory authority for payment and coverage policies under the program under this title and to implement policies that improve health outcomes, promote greater quality and efficiency, improve beneficiary access to necessary and evidence-based items and services, maintain coverage affordability, and improve the long-term solvency of the program under this title.

“(II) SPECIFIC RESPONSIBILITIES.—The specific responsibilities of the Commission fall into the following 3 categories:

“(aa) REIMBURSEMENT POLICY.—The Commission shall determine payment policies,

1 methodologies, and rates under
2 this title, including units of pay-
3 ment and the amount of pay-
4 ment, so as to ensure maximum
5 efficiency and quality and in a
6 manner that is financially sus-
7 tainable.

8 “(bb) COVERAGE POLICY.—
9 The Commission shall determine
10 coverage policies and methodolo-
11 gies, including national coverage
12 determinations (as defined in sec-
13 tion 1869(f)(1)(B)), in a manner
14 that provides stable premiums
15 and maximum beneficiary access
16 to medically necessary and appro-
17 priate care in the appropriate
18 setting at the appropriate time.

19 “(cc) FINANCIAL STA-
20 BILITY.—The Commission shall
21 improve the overall financial sta-
22 bility of the program under this
23 title, by using payment policies,
24 methodologies, and rates and cov-
25 erage policies and methodologies

to reasonably reduce the growth
in expenditures under this title
without sacrificing current or fu-
ture beneficiary access to medi-
cally necessary and appropriate
care in the appropriate setting at
the appropriate time.

“(III) CARRYING OUT RESPON-
SIBILITIES.—In carrying out its re-
sponsibilities under this section, the
Commission shall do so in a manner
that serves the interests of current
and future beneficiaries.”;

(2) in subsection (c)—

(A) in paragraph (1)—

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

“(A) IN GENERAL.—The Commission”;

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

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

(II) by inserting “the Secretary
and the Administrator of the Centers

for Medicare & Medicaid Services,
 who shall each serve as non-voting
 members of the Commission, and”
 after “composed of”; and

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

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

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

“(C) MEMBERS CURRENTLY APPOINTED.—

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

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

“(II) April 30, 2010.

1 “(ii) CLARIFICATION REGARDING VA-
 2 CANCIES.—Any vacancy in the Commission
 3 on or after such date of enactment shall be
 4 filled as provided in accordance with sub-
 5 paragraph (A).”; and

6 (B) in paragraph (2), by striking subpara-
 7 graph (D) and inserting the following new sub-
 8 paragraph:

9 “(D) ADDITIONAL QUALIFICATIONS.—In
 10 addition to the qualifications described in the
 11 succeeding provisions of this paragraph, the
 12 President shall consider the political balance of
 13 the membership of the Commission and the
 14 needs of individuals entitled to (or enrolled for)
 15 benefits under part A or enrolled under part B
 16 who are entitled to medical assistance under a
 17 State plan under title XIX.”.

18 (C) in paragraph (3)—

19 (i) by amending subparagraph (A) to
 20 read as follows:

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

24 “(i) four shall be appointed for terms
 25 of 5 years;

1 “(ii) four shall be appointed for terms
2 of 3 years; and

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

5 (ii) in subparagraph (B), in the third
6 sentence, by striking “A vacancy” and in-
7 serting “Except as provided in paragraph
8 (1)(C), a vacancy”;

9 (D) by amending paragraph (4) to read as
10 follows:

11 “(4) COMPENSATION.—Membership in the
12 Commission shall be a full-time position. A member
13 of the Commission shall be entitled to compensation
14 at the rate payable for level IV of the Executive
15 Schedule under section 5316 of title 5, United
16 States Code. The Commission shall determine and
17 prescribe the manner in which its obligations shall
18 be incurred and its disbursements and expenses al-
19 lowed and paid and the salaries of its members and
20 employees, whose employment, compensation, leave,
21 and expenses shall be governed solely by the provi-
22 sions of this section and rules and regulations of the
23 Commission not inconsistent therewith.”;

24 (E) by amending paragraph (5) to read as
25 follows:

1 “(5) CHAIRMAN; VICE CHAIRMAN.—The Presi-
 2 dent shall designate a member of the Commission, at
 3 the time of appointment of the member by and with
 4 the advice and consent of the Senate, as Chairman
 5 and a member of the Commission, at the time of ap-
 6 pointment of the member by and with the advice and
 7 consent of the Senate, as Vice Chairman, except that
 8 in the case where the Chairman or the Vice Chair-
 9 man is not able to be present (including in the case
 10 of vacancy), a majority of the Commission may des-
 11 ignate another member for the period of such ab-
 12 sence.”; and

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

15 “(7) NONAPPLICABILITY OF FEDERAL ADVI-
 16 SORY COMMITTEE ACT.—The Federal Advisory Com-
 17 mittee Act (5 U.S.C. App.) shall not apply to any
 18 advisory committee established or utilized by the
 19 Commission.”;

20 (3) in subsection (d), in the matter preceding
 21 paragraph (1), by striking “Subject to such review
 22 as the Comptroller General deems necessary to as-
 23 sure the efficient administration of the Commission,
 24 the Commission” and inserting “The Commission”;

1 (4) by amending subsection (f) to read as fol-
2 lows:

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

10 (5) by adding at the end the following new sub-
11 section:

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

16 (c) AUTHORITY TO DETERMINE PAYMENT AND COV-
17 ERAGE AND ROUTINE EVALUATION OF PAYMENT RATES
18 UNDER THE MEDICARE PROGRAM.—

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

22 (A) in paragraph (1)(B), by inserting “,
23 determine payment policies, methodologies, and
24 rates under this title in accordance with para-
25 graph (9)(A), and determine coverage policies

1 and methodologies under this title in accord-
 2 ance with paragraph (9)(B)” before the semi-
 3 colon at the end; and

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

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

8 “(A) DETERMINATION OF PAYMENT POLI-
 9 CIES, METHODOLOGIES, AND RATES.—

10 “(i) IN GENERAL.—Notwithstanding
 11 any other provision of law, subject to sub-
 12 paragraph (C), the Commission shall de-
 13 termine payment policies, methodologies,
 14 and rates for items and services, providers
 15 of services, and suppliers under this title.

16 “(ii) TIMELINE FOR DETERMINATIONS
 17 WITH RESPECT TO PAYMENT POLICIES,
 18 METHODOLOGIES, AND RATES FOR PHYSI-
 19 CIANS AND HOSPITALS.—The Commission
 20 shall make a determination under this sub-
 21 paragraph with respect to payment poli-
 22 cies, methodologies, and rates—

23 “(I) for physicians (as defined in
 24 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 “(iii) IMPLEMENTATION OF PAYMENT
7 POLICIES, METHODOLOGIES, AND RATES.—

8 “(I) AUTHORITY OF SEC-
9 RETARY.—Notwithstanding any other
10 provision of law, the Secretary shall
11 promulgate regulations to implement
12 any payment policy, methodology, or
13 rate determined by the Commission
14 under this subparagraph.

15 “(II) REGULATIONS CURRENTLY
16 IN EFFECT.—Any payment policies,
17 methodologies, and rates for items
18 and services, providers of services, or
19 suppliers under this title as of the
20 date of enactment of the Medicare
21 Payment Advisory Commission
22 (MedPAC) Reform Act of 2009 or
23 regulation promulgated by the Sec-
24 retary relating to such payment poli-
25 cies, methodologies, and rates prior to

1 such date of enactment shall remain
2 in effect until the Secretary promul-
3 gates regulations under subclause (I)
4 to implement a payment policy, meth-
5 odology, or rate determined by the
6 Commission with respect to the item
7 or service, provider of services, or sup-
8 plier.

9 “(B) DETERMINATION OF COVERAGE POLI-
10 CIES AND METHODOLOGIES.—

11 “(i) IN GENERAL.—Notwithstanding
12 any other provision of law, subject to sub-
13 paragraph (C), the Commission shall de-
14 termine coverage policies and methodolo-
15 gies for items and services furnished under
16 this title.

17 “(ii) IMPLEMENTATION OF COVERAGE
18 POLICIES AND METHODOLOGIES.—

19 “(I) AUTHORITY OF SEC-
20 RETARY.—Notwithstanding any other
21 provision of law, the Secretary shall
22 promulgate regulations to implement
23 any coverage policies and methodolo-
24 gies determined by the Commission
25 under this subparagraph.

1 “(II) REGULATIONS CURRENTLY
2 IN EFFECT.—Any coverage policy or
3 methodology for items and services
4 furnished under this title as of the
5 date of enactment of the Medicare
6 Payment Advisory Commission
7 (MedPAC) Reform Act of 2009 or
8 regulation promulgated by the Sec-
9 retary relating to such coverage policy
10 or methodology prior to such date of
11 enactment shall remain in effect until
12 the Secretary promulgates regulations
13 under subclause (I) to implement a
14 coverage policy or methodology deter-
15 mined by the Commission with respect
16 to the item or service.

17 “(C) USE OF AUTHORITY.—

18 “(i) IN GENERAL.—In making a de-
19 termination under subparagraph (A) or
20 (B), the Commission shall do so in a man-
21 ner that—

22 “(I) is consistent with the provi-
23 sions of sections 1801 and 1802;

1 “(II) is in the best interest of
2 beneficiaries, including improving ben-
3 eficiary access to care; and

4 “(III) improves the future viabil-
5 ity of the program under this title, in-
6 cluding protecting the short-term and
7 long-term solvency of the program
8 under this title.

9 “(ii) LIMITATION.—A determination
10 under subparagraph (A) or (B) shall not
11 limit beneficiary access under this title to
12 items and services that are medically nec-
13 essary.

14 “(D) LIMITATION ON JUDICIAL REVIEW.—
15 Any determination of the Commission under
16 subparagraph (A) or (B) shall be a final agency
17 action of the Commission and shall not be sub-
18 ject to judicial review.

19 “(E) ANNUAL REPORT.—Not later than
20 March 15 of each year (beginning with 2012),
21 the Commission shall submit to Congress a re-
22 port on any determinations made under sub-
23 paragraph (A) or (B) during the preceding
24 year, including the performance of the Sec-
25 retary in implementing such determinations by

1 promulgating regulations under subparagraph
 2 (A)(iii) or (B)(ii) and any changes in coverage
 3 policies or methodologies, including any na-
 4 tional coverage determinations (as defined in
 5 section 1869(f)(1)(B)) made during the pre-
 6 ceding year.

7 “(F) DEFINITIONS.—

8 “(i) COVERAGE POLICIES AND METH-
 9 ODOLOGIES.—In this section, the term
 10 ‘coverage policies and methodologies’
 11 means the application of any requirements
 12 for coverage of items and services under
 13 this title, including the determination of
 14 the most appropriate way to provide and
 15 pay for such items and services consistent
 16 with the requirements of this title, the ap-
 17 plication of any exclusion from coverage
 18 under this title (including whether an item
 19 or service is reasonable and necessary for
 20 purposes of section 1862(a)(1)(A)) and na-
 21 tional coverage determinations (as defined
 22 in section 1869(f)(1)(B)).

23 “(ii) PAYMENT POLICIES, METH-
 24 ODOLOGIES, AND RATES.—In this section,
 25 the term ‘payment policies, methodologies,

1 and rates’ means the application of any re-
 2 quirements for payment for items and
 3 services furnished under this title, includ-
 4 ing the amount of such payment and the
 5 methodology for determining such payment
 6 amount, including any annual updates to
 7 such payment under this title.

8 “(G) CLARIFICATION.—Nothing in this
 9 paragraph shall affect any requirement under
 10 this title to cover an item or service.

11 “(10) ROUTINE EVALUATION OF PAYMENT
 12 POLICIES, METHODOLOGIES, AND RATES.—The
 13 Commission shall review the payment policies, meth-
 14 odologies, and rates for each item and service, pro-
 15 vider of services, and supplier under this title not
 16 less frequently than every 5 years in order to deter-
 17 mine whether the Commission should make a deter-
 18 mination under paragraph (9)(A) to update such
 19 payment policy, methodology, or rate.”.

20 (2) GAO STUDY AND ANNUAL REPORT ON DE-
 21 TERMINATION AND IMPLEMENTATION OF PAYMENT
 22 AND COVERAGE POLICIES UNDER THE MEDICARE
 23 PROGRAM.—

24 (A) STUDY.—The Comptroller General of
 25 the United States shall conduct a study on

1 changes to payment policies, methodologies, and
2 rates and coverage policies and methodologies
3 under the Medicare Program under title XVIII
4 of the Social Security Act as a result of the
5 amendments made by this subsection, including
6 an analysis of—

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

12 (ii) any regulations promulgated by
13 the Secretary of Health and Human Serv-
14 ices under subparagraph (A)(iii) or (B)(ii)
15 of such section during the preceding year;

16 (iii) the process for—

17 (I) making such determinations
18 (including the evidence to support any
19 such determination);

20 (II) promulgating such regula-
21 tions (including the capacity of the
22 Secretary of Health and Human Serv-
23 ices to promulgate such regulations);
24 and

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

5 (B) REPORT.—Not later than December
 6 31 of each year (beginning with 2012), the
 7 Comptroller General shall submit to Congress a
 8 report containing the results of the study con-
 9 ducted under subparagraph (A), together with
 10 recommendations for such legislation and ad-
 11 ministrative action as the Secretary determines
 12 appropriate.

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

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

18 (2) by inserting after subsection (e) the fol-
 19 lowing new subsection:

20 “(f) CONGRESSIONAL ACTION.—

21 “(1) IN GENERAL.—Notwithstanding any other
 22 provision of law, it shall only be in order in the Sen-
 23 ate or the House of Representatives to consider any
 24 measure that would overrule a determination of the
 25 Commission under subparagraph (A) or (B) of sub-

1 section (d)(9) if $\frac{3}{5}$ of the Members, duly chosen and
 2 sworn, of the Senate or the House of Representa-
 3 tives agree to such consideration.

4 “(2) RULES OF THE SENATE AND HOUSE OF
 5 REPRESENTATIVES.—This subsection is enacted by
 6 Congress—

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

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

22 (e) RESEARCH AND INFORMATION ACCESS.—Section
 23 1805(e) of the Social Security Act (42 U.S.C. 1395b–6(e))
 24 is amended by adding at the end the following new para-
 25 graphs:

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

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

18 “(7) ELECTRONIC ACCESS.—The National Di-
19 rector for Health Information Technology, in coordi-
20 nation with the Secretary, the Administrator of the
21 Centers for Medicare & Medicaid Services, and the
22 Commission, shall establish a direct electronic link
23 for raw data, including claims data under this title,
24 to be accessed by the Commission for the purposes
25 of evaluating and determining recommendations

1 under this title, in accordance with applicable pri-
 2 vacy laws and data use agreements.

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

14 (f) ADDITIONAL RESOURCES TO CARRY OUT DU-
 15 TIES.—

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

19 (A) in paragraph (1), by inserting “(in-
 20 cluding an attorney)” after “such other per-
 21 sonnel”; and

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

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

1 (D) by adding at the end the following new
2 paragraph:

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

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

9 “(10) OFFICE OF THE OMBUDSMAN.—

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

14 “(B) DUTIES.—The office of the ombuds-
15 man shall—

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

20 “(ii) ensure that the Commission has
21 established safeguards—

22 “(I) to encourage such entities
23 and individuals to submit complaints
24 to the office of the ombudsman; and

1 “(II) to protect the confiden-
2 tiality of any entity or individual who
3 submits such a complaint.”.

4 (g) MACPAC TECHNICAL AMENDMENTS.—Section
5 1900(b) of the Social Security Act (42 U.S.C. 1396) is
6 amended—

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

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

10 “(10) CONSULTATION WITH MEDPAC.—
11 MACPAC shall regularly consult with the Medicare
12 Payment and Access Commission (in this paragraph
13 referred to as ‘MedPAC’) established under section
14 1805 in carrying out its duties under this section.”.

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

19 “(3) MEMBERS OF THE MEDICARE PAYMENT
20 ADVISORY COMMISSION.—

21 “(A) IN GENERAL.—Paragraph (1) shall
22 apply to a member of the Medicare Payment
23 Advisory Commission who was appointed to
24 such Commission as of the date of enactment of

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

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

12 **SEC. 3. ESTABLISHMENT OF COUNCIL OF HEALTH AND**
 13 **ECONOMIC ADVISERS, CONSUMER ADVISORY**
 14 **COUNCIL, AND FEDERAL HEALTH ADVISORY**
 15 **COUNCIL.**

16 Section 1805(b) of the Social Security Act (42 U.S.C.
 17 1395b–6(b)), as amended by section 2(c), is amended by
 18 adding at the end the following new paragraph:

19 “(11) COUNCIL OF HEALTH AND ECONOMIC AD-
 20 VISERS, CONSUMER ADVISORY COUNCIL, AND FED-
 21 ERAL HEALTH ADVISORY COUNCIL.—

22 “(A) COUNCIL OF HEALTH AND ECONOMIC
 23 ADVISERS.—

24 “(i) IN GENERAL.—The Commission
 25 shall establish a council of health and eco-

1 nomic advisers to advise the Commission
 2 on its development, analyses, and imple-
 3 mentation of payment policies under this
 4 title.

5 “(ii) MEMBERSHIP.—

6 “(I) IN GENERAL.—The council
 7 of health and economic advisers shall
 8 be composed of acknowledged experts
 9 in health care and economics selected
 10 by the Commission.

11 “(II) INITIAL INCLUSION OF
 12 FORMER MEMBERS OF MEDICARE PAY-
 13 MENT ADVISORY COMMISSION.—The
 14 members initially selected for the
 15 council of health and economic advis-
 16 ers under subclause (I) shall include
 17 those individuals who were members
 18 of the Medicare Payment Advisory
 19 Commission as of the day before the
 20 date of enactment of the Medicare
 21 Payment Advisory Commission
 22 (MedPAC) Reform Act of 2009.

23 “(B) CONSUMER ADVISORY COUNCIL.—

24 “(i) IN GENERAL.—There is estab-
 25 lished a consumer advisory council to ad-

1 vise the Commission on the impact of pay-
2 ment policies under this title on con-
3 sumers.

4 “(ii) MEMBERSHIP.—

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

15 “(II) QUALIFICATIONS.—The
16 membership of the council shall rep-
17 resent the interests of consumers and
18 particular communities.

19 “(iii) DUTIES.—The consumer advi-
20 sory council shall, subject to the call of the
21 Commission, meet not less frequently than
22 2 times each year in the District of Colum-
23 bia.

1 “(iv) OPEN MEETINGS.—Meetings of
2 the consumer advisory council shall be
3 open to the public.

4 “(v) ELECTION OF OFFICERS.—Mem-
5 bers of the consumer advisory council shall
6 elect their own officers.

7 “(C) FEDERAL HEALTH ADVISORY COUN-
8 CIL.—

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

14 “(ii) MEMBERSHIP.—The Federal
15 health advisory council shall be composed
16 of 10 representatives from the health care
17 industry appointed by the Comptroller
18 General of the United States, 1 from
19 among each of the 10 regions established
20 by the Secretary as of the date of enact-
21 ment of the Medicare Payment Advisory
22 Commission (MedPAC) Reform Act of
23 2009.

24 “(iii) TERMS.—

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

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

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

14 “(v) OPEN MEETINGS.—Meetings of
15 the Federal health advisory council shall be
16 open to the public.

17 “(vi) ELECTION OF OFFICERS.—Mem-
18 bers of the Federal health advisory council
19 shall elect their own officers.

20 “(D) LIMITATION ON FUNDING.—Out of
21 amounts appropriated under subsection (g), the
22 Commission may use not more than \$300,000
23 each fiscal year to carry out this paragraph.”.

1 **SEC. 4. COST CONTAINMENT IN MEDICARE.**

2 Section 1805(b) of the Social Security Act (42 U.S.C.
3 1395b–6(b)), as amended by section 3, is amended by add-
4 ing at the end the following new paragraph:

5 “(12) SPENDING REDUCTIONS.—

6 “(A) IN GENERAL.—

7 “(i) IMPLEMENTATION BY THE COM-
8 MISSION.—Notwithstanding any other pro-
9 vision of law, effective beginning on Janu-
10 ary 1, 2012, subject to clause (ii) and the
11 succeeding provisions of this paragraph,
12 the Commission shall implement payment
13 policies, methodologies, and rates and cov-
14 erage policies and methodologies which are
15 estimated to reduce expenditures under
16 this title by not less than 1.5 percent an-
17 nually.

18 “(ii) FAIL SAFE MECHANISM.—Not-
19 withstanding any other provision of law,
20 effective beginning on January 1, 2013,
21 subject to the succeeding provisions of this
22 paragraph, in the case where the Chief Ac-
23 tuary of the Centers for Medicare & Med-
24 icaid Services finds that the payment poli-
25 cies, methodologies, and rates and coverage
26 policies and methodologies implemented

under clause (i) for a given year will not reduce annual expenditures under this title by not less than 1.5 percent, the Secretary shall implement an automatic reduction in reimbursement for providers of services and suppliers under the original Medicare fee-for-service program under parts A and B in order to achieve such 1.5 percent reduction. Such reduction shall be cumulative, may vary depending on the provider of services or supplier involved, and may be zero based on initiatives implemented by the Secretary for including no reduction.

“(B) REQUIREMENTS.—In carrying out subparagraph (A), the following requirements shall apply:

“(i) Any reductions in reimbursement for items and services furnished under this title which are subject to a competitive bidding process shall apply in the year following the year in which the Commission or the Secretary determines that such reduction shall be implemented.

“(ii) Any reductions in reimbursement to a Medicare Advantage organization of-

1 fering a Medicare Advantage plan under
2 part C shall be reflected in the MA area-
3 specific non-drug monthly benchmark
4 amount computed under section 1853(j)
5 for months in the year following the year
6 in which the Commission or the Secretary
7 determines that such reduction shall be im-
8 plemented.

9 “(iii) The amount of a reduction in
10 reimbursement to a provider of services or
11 a supplier under this title during a year
12 shall not be greater than 5 percent of the
13 amount of payment that would otherwise
14 apply under this title.

15 “(iv) In the case where the amount of
16 any savings to the program under this title
17 during a year as a result of the provisions
18 of subparagraph (A) exceeds 1.5 percent of
19 the amount of expenditures that would
20 otherwise be made under this title, the
21 amount of such excess shall be deposited,
22 in such proportion as the Commission de-
23 termines appropriate, in the Federal Hos-
24 pital Insurance Trust Fund established
25 under section 1817 and the Federal Sup-

1 plementary Medical Insurance Trust Fund
2 established under section 1841.

3 “(C) ANALYSIS.—The Chief Actuary of the
4 Centers for Medicare & Medicaid Services
5 shall—

6 “(i) analyze such payment policies,
7 methodologies, and rates and coverage poli-
8 cies and methodologies prospectively, in
9 order to determine the amount of such es-
10 timated reduction in expenditures for a
11 year; and

12 “(ii) include such analysis in the an-
13 nual report of the Boards of Trustees of
14 the Federal Hospital Insurance Trust
15 Fund and Federal Supplementary Medical
16 Insurance Trust Funds for the year.

17 “(D) THIRD PARTY VERIFICATION.—The
18 analysis under subparagraph (C) shall be
19 verified by an independent, third party actuary.

20 “(E) GAO AUDIT AND ANNUAL REPORT.—

21 “(i) AUDIT.—The Comptroller Gen-
22 eral of the United States shall audit the
23 procedures used to determine such esti-
24 mated reduction in expenditures.

1 “(ii) ANNUAL REPORT.—The Comp-
 2 troller General shall submit to Congress an
 3 annual report containing the results of the
 4 audit conducted under clause (i).

5 “(F) INCLUSION OF INTERIM PAYMENT
 6 AND COVERAGE POLICIES.—Any savings or ad-
 7 ditional expenditures as a result of payment
 8 policies, methodologies, and rates and coverage
 9 policies and methodologies under any health re-
 10 form legislation enacted on or after the date of
 11 enactment of the Medicare Payment Advisory
 12 Commission (MedPAC) Reform Act of 2009
 13 shall be included in the determination of wheth-
 14 er expenditures under this title have been re-
 15 duced by not less than 1.5 percent for a year.

16 “(G) NON-APPLICATION DURING YEARS
 17 WHEN SOLVENCY HAS BEEN DETERMINED.—
 18 This paragraph shall not apply for a year in the
 19 case where the Chief Actuary of the Centers for
 20 Medicare & Medicaid Services determines, as
 21 part of the annual report of the Boards of
 22 Trustees of the Federal Hospital Insurance
 23 Trust Fund and Federal Supplementary Med-
 24 ical Insurance Trust Funds for the preceding
 25 year, that the program under this title is sol-

1 vent, according to the short range test for fi-
2 nancial adequacy of the Chief Actuary of the
3 Centers for Medicare & Medicaid Services.”.

4 **SEC. 5. ESTABLISHMENT OF JOINT COMMITTEE ON MEDI-**
5 **CARE.**

6 (a) IN GENERAL.—There is hereby established the
7 Joint Committee on Medicare (in this section referred to
8 as the “Joint Committee”).

9 (b) MEMBERSHIP.—The Joint Committee shall be
10 composed of 11 members appointed as follows:

11 (1) 5 members shall be appointed by the Presi-
12 dent pro tempore of the Senate, on the recommenda-
13 tion of the majority and minority leaders of the Sen-
14 ate, from among the members of the Committee on
15 Finance of the Senate, 3 of whom shall be from the
16 majority on the Committee and 2 of whom shall be
17 from the minority on the Committee; and

18 (2) 6 members shall be appointed by the Speak-
19 er of the House of Representatives, in consultation
20 with the minority leader of the House of Representa-
21 tives—

22 (A) 3 from among the members of the
23 Committee on Ways and Means of the House of
24 Representatives, 2 of whom shall be from the

1 majority on the Committee and 1 of whom shall
2 be from the minority on the Committee; and

3 (B) 3 from among the members of the
4 Committee on Energy and Commerce of the
5 House of Representatives, 2 of whom shall be
6 from the majority on the Committee and 1 of
7 whom shall be from the minority on the Com-
8 mittee.

9 (c) DUTIES.—The Joint Committee shall—

10 (1) study the operation and effects of any
11 changes proposed by Congress to the Medicare Pro-
12 gram under title XVIII of the Social Security Act,
13 and other matters relating to the Medicare Program
14 that the Joint Committee determines appropriate;

15 (2) submit reports to the Committee on Fi-
16 nance of the Senate and the Committee on Ways
17 and Means and the Committee on Energy and Com-
18 merce of the House of Representatives containing
19 the results of any studies conducted under para-
20 graph (1), including recommendations for such legis-
21 lation and administrative action as the Joint Com-
22 mittee determines appropriate;

23 (3) prepare pamphlets for hearings conducted
24 by such Committees, reports of such Committees,
25 and conference reports accompanying any legislation

1 enacted by Congress relating to the Medicare Pro-
2 gram;

3 (4) assist members of Congress in drafting leg-
4 islative language relating to the Medicare Program;

5 (5) assist members of Congress with the devel-
6 opment and analysis of proposed legislation relating
7 to the Medicare Program; and

8 (6) prepare impact estimates of all legislation
9 relating to the Medicare Program that is considered
10 by Congress.

11 (d) HEARINGS.—

12 (1) IN GENERAL.—The Joint Committee or, at
13 the direction of the Joint Committee, any sub-
14 committee or member of the Joint Committee, may,
15 for the purpose of carrying out this Act—

16 (A) hold such hearings, meet and act at
17 such times and places, take such testimony, re-
18 ceive such evidence, and administer such oaths;
19 and

20 (B) require, by subpoena or otherwise, the
21 attendance and testimony of such witnesses and
22 the production of such books, records, cor-
23 respondence, memoranda, papers, documents,
24 tapes, and materials;

1 as the Joint Committee or such subcommittee or
2 member considers advisable.

3 (2) ISSUANCE AND ENFORCEMENT OF SUB-
4 POENAS.—

5 (A) ISSUANCE.—A subpoena issued under
6 paragraph (1) shall—

7 (i) bear the signature of the Chair-
8 person of the Joint Committee; and

9 (ii) be served by any person or class
10 of persons designated by the Chairperson
11 for that purpose.

12 (B) ENFORCEMENT.—In the case of contu-
13 macy or failure to obey a subpoena issued
14 under paragraph (1)(B), the United States dis-
15 trict court for the district in which the subpoe-
16 naed person resides, is served, or may be found
17 may issue an order requiring the person to ap-
18 pear at any designated place to testify or to
19 produce documentary or other evidence.

20 (C) NONCOMPLIANCE.—Any failure to
21 obey the order of the court may be punished by
22 the court as a contempt of court.

23 (3) WITNESS ALLOWANCES AND FEES.—

24 (A) IN GENERAL.—Section 1821 of title
25 28, United States Code, shall apply to a witness

1 requested or subpoenaed to appear at a hearing
2 of the Joint Committee.

3 (B) EXPENSES.—The per diem and mile-
4 age allowances for a witness shall be paid from
5 funds available to pay the expenses of the Joint
6 Committee.

7 (e) INFORMATION FROM FEDERAL AGENCIES.—

8 (1) IN GENERAL.—The Joint Committee may
9 secure directly from a Federal agency such informa-
10 tion as the Joint Committee considers necessary to
11 carry out this Act, including any data relating to the
12 Medicare Program (including Medicare claims data).

13 (2) PROVISION OF INFORMATION.—On request
14 of the Joint Committee, the head of the agency shall
15 provide the information to the Joint Committee.

16 (f) POSTAL SERVICES.—The Joint Committee may
17 use the United States mails in the same manner and
18 under the same conditions as other agencies of the Federal
19 Government.

20 (g) PRINTING AND BINDING, OTHER NECESSARY
21 EXPENDITURES.—The Joint Committee may make nec-
22 essary expenditures, including the procurement of printing
23 and binding services, as the Joint Committee determines
24 appropriate.

25 (h) JOINT COMMITTEE PERSONNEL MATTERS.—

1 (1) COMPENSATION OF MEMBERS.—A member
2 of the Joint Committee shall serve without com-
3 pensation in addition to the compensation received
4 for the services of the member as an officer or em-
5 ployee of the Federal Government.

6 (2) TRAVEL EXPENSES.—A member of the
7 Joint Committee shall be allowed travel expenses, in-
8 cluding per diem in lieu of subsistence, at rates au-
9 thorized for an employee of an agency under sub-
10 chapter I of chapter 57 of title 5, United States
11 Code, while away from the home or regular place of
12 business of the member in the performance of the
13 duties of the Joint Committee.

14 (3) STAFF.—

15 (A) IN GENERAL.—The Chairperson of the
16 Joint Committee may, without regard to the
17 civil service laws (including regulations), ap-
18 point and terminate an executive director and
19 such other additional personnel as are necessary
20 to enable the Joint Committee to perform the
21 duties of the Joint Committee.

22 (B) CONFIRMATION OF EXECUTIVE DIREC-
23 TOR.—The employment of an executive director
24 shall be subject to confirmation by the Joint
25 Committee.

1 (C) COMPENSATION.—

2 (i) IN GENERAL.—Except as provided
3 in subparagraph (B), the Chairperson of
4 the Joint Committee may fix the com-
5 pensation of the executive director and
6 other personnel without regard to the pro-
7 visions of chapter 51 and subchapter III of
8 chapter 53 of title 5, United States Code,
9 relating to classification of positions and
10 General Schedule pay rates.

11 (ii) MAXIMUM RATE OF PAY.—The
12 rate of pay for the executive director and
13 other personnel shall not exceed the rate
14 payable for level V of the Executive Sched-
15 ule under section 5316 of title 5, United
16 States Code.

17 (4) DETAIL OF FEDERAL GOVERNMENT EM-
18 PLOYEES.—

19 (A) IN GENERAL.—An employee of the
20 Federal Government may be detailed to the
21 Joint Committee without reimbursement.

22 (B) CIVIL SERVICE STATUS.—The detail of
23 the employee shall be without interruption or
24 loss of civil service status or privilege.

1 (5) PROCUREMENT OF TEMPORARY AND INTER-
2 MITTENT SERVICES.—The Chairperson of the Joint
3 Committee may procure temporary and intermittent
4 services in accordance with section 3109(b) of title
5 5, United States Code, at rates for individuals that
6 do not exceed the daily equivalent of the annual rate
7 of basic pay prescribed for level V of the Executive
8 Schedule under section 5316 of that title.

9 (6) NONPARTISAN STAFF.—Personnel of the
10 Joint Committee shall provide objective and con-
11 fidential technical analysis and assistance on legisla-
12 tion relating to the Medicare Program. Such per-
13 sonnel—

14 (A) shall not operate as personnel solely
15 for the majority or the minority in Congress;

16 (B) shall not be responsible for rep-
17 resenting a particular point of view on any
18 issue relating to the Medicare Program; and

19 (C) shall examine critically policies under
20 the Medicare Program, including the long-range
21 effects of such policies.

1 **SEC. 6. REVISIONS TO PROCESS FOR CONDUCT OF DEM-**
 2 **ONSTRATION PROJECTS.**

3 (a) IN GENERAL.—Title XVIII of the Social Security
 4 Act (42 U.S.C. 1395 et seq.) is amended by adding at
 5 the end the following new section:

6 **“SEC. 1899. CONDUCT OF DEMONSTRATION PROJECTS.**

7 “(a) IN GENERAL.—

8 “(1) RENAMING AND TRANSFER OF OFFICE OF
 9 RESEARCH, DEVELOPMENT AND INFORMATION.—Ef-
 10 fective beginning January 1, 2011, the Office of Re-
 11 search, Development and Information shall be—

12 “(A) transferred from the Administrator of
 13 the Centers for Medicare & Medicaid Services
 14 to the Assistant Secretary for Planning and
 15 Evaluation of the Department of Health and
 16 Human Services; and

17 “(B) renamed the Office of Research, De-
 18 velopment and Information of the Department
 19 of Health and Human Services.

20 “(2) AUTHORITY TO DESIGN AND EVALUATE
 21 DEMONSTRATION PROJECTS.—The Office of Re-
 22 search, Development and Information of the Depart-
 23 ment of Health and Human Services (in this section
 24 referred to as the ‘Office’) shall have sole authority
 25 to design and evaluate demonstration projects under
 26 this title, including demonstration projects to test

1 new and innovative methods of reimbursement under
2 the Medicare program to improve the quality and ef-
3 ficiency of health care and reduce costs under the
4 Medicare program.

5 “(3) IMPLEMENTATION.—The Secretary of
6 Health and Human Services (in this section referred
7 to as the ‘Secretary’) shall maintain all responsibility
8 for implementing demonstration projects under this
9 title, including for implementing the process through
10 which providers of services and suppliers are reim-
11 bursed for items and services furnished under the
12 demonstration projects.

13 “(4) AUTHORITY TO EXPAND SUCCESSFUL
14 DEMONSTRATION PROJECTS.—

15 “(A) EXPANSION.—Notwithstanding any
16 other provision of law, the Secretary may ex-
17 pand the duration and scope of a demonstration
18 project under this title, to an extent determined
19 appropriate by the Secretary, if the Secretary
20 determines that such expansion is appropriate.

21 “(B) AUDITS AND REPORTS.—

22 “(i) AUDITS.—The Inspector General
23 of the Department of Health and Human
24 Services shall conduct an annual audit of
25 any expansion under subparagraph (A) to

1 determine whether the funding of and
2 process for such expansion is consistent
3 with Congressional intent and serves the
4 best interest of beneficiaries.

5 “(ii) REPORTS.—The Inspector Gen-
6 eral shall submit to Congress an annual re-
7 port containing the results of any audits
8 conducted under clause (i), together with
9 recommendations for such legislation and
10 administrative action as the Inspector Gen-
11 eral determines appropriate.

12 “(C) WEBSITE.—The Office shall establish
13 a publicly available Internet website that con-
14 tains current information regarding demonstra-
15 tion projects under this title, including a de-
16 scription of the demonstration projects and the
17 status, location, points of contact, and any mid-
18 term or final evaluation of the demonstration
19 projects.

20 “(b) ADVISORY COMMITTEE.—

21 “(1) ESTABLISHMENT.—There is hereby estab-
22 lished an advisory committee to consult with the Of-
23 fice on existing and proposed demonstration projects
24 under this title.

1 “(2) MEMBERSHIP.—The advisory committee
2 shall be composed of the following members:

3 “(A) The Chairman of the Medicare Pay-
4 ment and Access Commission established under
5 section 1805.

6 “(B) The Director of the Agency for
7 Healthcare Research and Quality.

8 “(C) The Administrator of the Centers for
9 Medicare & Medicaid Services.

10 “(D) The National Coordinator for Health
11 Information Technology.

12 “(E) The Director of the Office of Man-
13 agement and Budget.

14 “(3) DUTIES.—Not less frequently than 2 times
15 each year, the advisory committee shall meet with
16 the Office to consult on demonstration projects
17 under this title.

18 “(c) ELIMINATION OF BUDGET NEUTRAL IMPLE-
19 MENTATION REQUIREMENT FOR DEMONSTRATION
20 PROJECTS.—Notwithstanding any other provision of law,
21 the Secretary, in conducting a demonstration project
22 under this title, shall not be required to ensure that the
23 aggregate payments made by the Secretary under this title
24 do not exceed the amount which the Secretary would have

1 paid under this title if the demonstration project was not
2 implemented.

3 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as may be
5 necessary to carry out the provisions of this section. Sixty
6 percent of such appropriation shall be payable from the
7 Federal Hospital Insurance Trust Fund established under
8 section 1817 of the Social Security Act (42 U.S.C. 1395i),
9 and 40 percent of such appropriation shall be payable
10 from the Federal Supplementary Medical Insurance Trust
11 Fund established under section 1841 of such Act (42
12 U.S.C. 1395t). Out of amounts appropriated under the
13 preceding sentence, the Secretary may use not more than
14 \$500,000,000 each fiscal year to conduct demonstration
15 projects to test new and innovative methods of reimburse-
16 ment under the Medicare program that seek to improve
17 quality and efficiency of health care reduce costs under
18 the Medicare program.”.

19 (b) BIENNIAL COMMUNICATIONS BY MEDPAC TO
20 THE SECRETARY AND CONGRESS.—Section 1805(b) of the
21 Social Security Act (42 U.S.C. 1395b–6(b)), as amended
22 by section 4, is amended by adding at the end the fol-
23 lowing new paragraph:

24 “(13) Not later than 30 days after each meet-
25 ing of the advisory committee established under sec-

1 tion 1899(b), the Commission shall send a detailed
2 letter to the Secretary and to Congress providing
3 feedback on the following:

4 “(A) Recommendations for demonstration
5 projects being conducted under this title as of
6 the date of such biannual meeting that should
7 be expanded on a program-wide basis.

8 “(B) Recommendations for such dem-
9 onstration projects that should be eliminated.

10 “(C) Recommendations for potential
11 changes to improve, expand, or otherwise alter
12 such demonstration projects.

13 “(D) Recommendations for new ideas to
14 test through demonstration projects conducted
15 under this title.”.

○