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

MAY 20, 2009

Mr. Reid (for 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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

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SEC. 2. RENAMING AND REFORMING THE MEDICARE PAYMENT ADVISORY COMMISSION.

(a) Amendment to Title.—

(1) In general.—Section 1805 of the Social Security Act (42 U.S.C. 1395b–6) is amended—

(A) in the heading, by striking “MEDICARE PAYMENT ADVISORY COMMISSION” and inserting “MEDICARE PAYMENT AND ACCESS COMMISSION”; and

(B) in subsection (a), by striking “Medicare Payment Advisory Commission” and inserting “Medicare Payment and Access Commission (or ‘MedPAC’)”.

(2) References.—Any reference to the Medicare Payment Advisory Commission shall be deemed a reference to the Medicare Payment and Access Commission.

(b) Establishment as Executive Agency.—Section 1805 of the Social Security Act (42 U.S.C. 1395b–6) is amended—

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

(2) in subsection (a)—

(A) by striking “Advisory”; and

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

(3) 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) CLARIFICATION REGARDING VAC-
cancies.—Any vacancy in the Commission
on or after such date of enactment shall be
filled as provided in accordance with sub-
paragraph (A).’’; and

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

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

(C) in paragraph (3)—

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

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

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

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

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

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

(D) by amending paragraph (4) to read as
follows:
“(4) COMPENSATION.—Membership in the Commission shall be a full-time position. A member of the Commission shall be entitled to compensation at the rate payable for level IV of the Executive Schedule under section 5316 of title 5, United States Code.”.

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

“(5) CHAIRMAN; VICE CHAIRMAN.—The President shall designate a member of the Commission, at the time of appointment of the member by and with the advice and consent of the Senate, as Chairman and a member of the Commission, at the time of appointment of the member by and with the advice and consent of the Senate, as Vice Chairman, except that in the case where the Chairman or the Vice Chairman is not able to be present (including in the case of vacancy), a majority of the Commission may designate another member for the period of such absence.”;

(4) in subsection (d), in the matter preceding paragraph (1), by striking “Subject to such review as the Comptroller General deems necessary to assure the efficient administration of the Commission, the Commission” and inserting “The Commission”;
(5) by amending subsection (f) to read as follows:

“(f) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Sixty percent of such appropriations shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.”; and

(6) by adding at the end the following new subsection:

“(g) References.—Any reference to the Medicare Payment Advisory Commission or MedPAC shall be deemed a reference to the Medicare Payment and Access Commission.”.

(e) Authority To Determine Payment Rates and Routine Evaluation of Payment Rates Under the Medicare Program.—

(1) In general.—Section 1805(b) of the Social Security Act (42 U.S.C. 1395b–6(b)) is amended—

(A) in paragraph (1)(B), by inserting “and determine payment rates for items and services furnished under this title in accordance with
paragraph (9)” before the semicolon at the end;

and

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

“(9) Authority to determine payment rates under this title.—

“(A) Determination of payment rates.—

“(i) In general.—Notwithstanding any other provision of law, the Commission shall determine payment rates for items and services furnished under this title. In determining such payment rates, the Commission shall do so in a manner that is consistent with the provisions of sections 1801 and 1802.

“(ii) Timeline for determinations with respect to payment policies for physicians and hospitals.—The Commission shall make a determination under this subparagraph with respect to payment policies—

“(I) for physicians (as defined in section 1861(r)(1)), not later than
December 1 of each year (beginning with 2012); and

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

“(B) IMPLEMENTATION OF PAYMENT RATES.—

“(i) AUTHORITY OF SECRETARY.— Notwithstanding any other provision of law, the Secretary shall promulgate regulations to implement any payment rates determined by the Commission under subparagraph (A).

“(ii) PAYMENT RATES AND REGULATIONS CURRENTLY IN EFFECT.—Any payment rate for items and services furnished under this title as of the date of enactment of the Medicare Payment Advisory Commission (MedPAC) Reform Act of 2009 or regulation promulgated by the Secretary relating to such payments prior to such date of enactment shall remain in effect until the Secretary promulgates regulations under clause (ii) to implement a payment
rate determined by the Commission with respect to the item or service.

“(C) LIMITATION ON JUDICIAL REVIEW.—
Any determination of the Commission relating to payment rates for items and services furnished under this title shall be a final agency action of the Commission and shall not be subject to judicial review.

“(D) ANNUAL REPORT.—Not later than March 15 of each year (beginning with 2012), the Commission shall submit to Congress a report on any payment rates determined under subparagraph (A) during the preceding year, including the performance of the Secretary in implementing such payment rates by promulgating regulations under subparagraph (B).

“(10) ROUTINE EVALUATION OF PAYMENT RATES.—The Commission shall review the payment rate for each item and service furnished under this title not less frequently than every 5 years in order to determine whether the Commission should make a determination under paragraph (9) to update such payment rate.”.
(2) GAO STUDY AND ANNUAL REPORT ON DETERMINATION AND IMPLEMENTATION OF PAYMENT RATES.—

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

(i) any determinations made by the Medicare Payment and Access Commission under subparagraph (A) of section 1805(b)(9) of such Act, as added by paragraph (1), during the preceding year;

(ii) any regulations promulgated by the Secretary of Health and Human Services under subparagraph (B) of such section during the preceding year;

(iii) the process for—

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

(II) promulgating such regulations (including the capacity of the Secretary of Health and Human Serv-
ices to promulgate such regulations);

and

(iv) the ability of the Centers for Medicare & Medicaid Services to fulfill its responsibilities in carrying out such regulations.

(B) REPORT.—Not later than December 31 of each year (beginning with 2012), the Comptroller General shall submit to Congress a report containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

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

(1) by redesignating subsections (f) and (g), respectively, as subsections (g) and (h); and

(2) by inserting after subsection (e) the following new subsection:

“(f) CONGRESSIONAL ACTION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, it shall only be in order in the Senate or the House of Representatives to consider any
measure that would overrule a determination of the Commission with respect to payments for items and services furnished under this title if \( \frac{3}{5} \) of the Members, duly chosen and sworn, of the Senate or the House of Representatives agree to such consideration.

“(2) Rules of the Senate and House of Representatives.—This subsection is enacted by Congress—

“(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a measure described in paragraph (1), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.”.
(e) Research, Information Access, and Demonstration Projects.—Section 1805(e) of the Social Security Act (42 U.S.C. 1395b–6(e)) is amended by adding at the end the following new paragraphs:

“(5) Authority to inform research priorities for data collection.—The Commission may advise the Secretary (through the Director of the Agency for Healthcare Research and Quality and the Director of the National Institutes of Health) on priorities for health services research, particularly as such priorities pertain to necessary changes and issues regarding payment reforms under this title.

“(6) Expanded authority to access federal data and reports.—In addition to data obtained under paragraph (1), the Commission shall have priority access to all raw data and research conducted or funded by the Federal government, including data and research produced by the Centers for Medicare & Medicaid Services, the National Institutes of Health, and the Agency for Healthcare Research and Quality.

“(7) Electronic access.—The National Director for Health Information Technology, in coordination with the Secretary, the Administrator of the Centers for Medicare & Medicaid Services, and the
Commission, shall establish a direct electronic link for raw data, including claims data under this title, to be accessed by the Commission for the purposes of evaluating and determining recommendations under this title, in accordance with applicable privacy laws and data use agreements.

“(8) ACCESS TO BIANNUAL REPORTS.—Not less frequently than on a biannual basis, the National Institutes of Health and the Agency for Healthcare Research and Quality shall submit to the Commission a report containing information on any research conducted by the National Institutes of Health and the Agency for Healthcare Research and Quality, respectively, which has relevance for the determinations and recommendations being considered by the Commission. Such information shall be provided to the Commission in electronic form.

“(9) REVISIONS TO PROCESS FOR CONDUCT OF DEMONSTRATION PROJECTS RELATING TO PAYMENTS UNDER THIS TITLE.—Effective beginning January 1, 2011, the Commission shall have sole authority to design and evaluate demonstration projects relating to payments under this title which are authorized by section 402 of the Social Security Amendments of 1967 or under a waiver under sec-
tion 1115. The Secretary shall maintain all responsibility for implementing such demonstration projects, including for implementing the process through which providers are reimbursed for items and services furnished under the demonstration projects. Nothing in this paragraph shall affect the authority of the Secretary with respect to demonstration projects under this title not relating to such payments.”.

(f) Additional Resources To Carry Out Duties.—

(1) In general.—Section 1805(d) of the Social Security Act (42 U.S.C. 1395b–6(d)) is amended—

(A) in paragraph (1), by inserting “(including an attorney)” after “such other personnel”; and

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

(C) in paragraph (6), by striking the period at the end and inserting “; and”; and

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

“(7) establish a public affairs office.”.
(2) Office of the ombudsman.—Section 1805(e) of the Social Security Act (42 U.S.C. 1395b–6(e)), as amended by subsection (e), is amended by adding at the end the following new paragraph:

“(10) Office of the ombudsman.—

“(A) In general.—The Commission shall establish an office of the ombudsman to handle complaints regarding the implementation of regulations under subsection (a)(9)(B).

“(B) Duties.—The office of the ombudsman shall—

“(i) act as a liaison between the Commission and any entity or individual affected by the implementation of such a regulation; and

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

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

“(II) to protect the confidentiality of any entity or individual who submits such a complaint.”.
(g) USE OF FUNDING.—Section 1805(g) of the Social Security Act (42 U.S.C. 1395b–6(g)), as amended by subsection (b) and redesignated by subsection (d), is amended by adding at the end the following new sentence: “Out of amounts appropriated under the preceding sentence, the Commission may use not more than $500,000,000 each fiscal year to test new methods of reimbursement under this title.”.

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

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

(2) by adding at the end the following:

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

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

“(3) MEMBERS OF THE MEDICARE PAYMENT ADVISORY COMMISSION.—
“(A) IN GENERAL.—Paragraph (1) shall apply to a member of the Medicare Payment Advisory Commission who was appointed to such Commission as of the day before the date of enactment of the Medicare Payment Advisory Commission (MedPAC) Reform Act of 2009.

“(B) AGENCIES AND CONGRESS.—For purposes of paragraph (1), the agency in which the individual described in subparagraph (A) served shall be considered to be the Medicare Payment and Access Commission established under section 1805 of the Social Security Act, the Department of Health and Human Services, and the relevant committees of jurisdiction of Congress.”.

SEC. 3. ESTABLISHMENT OF COUNCIL OF HEALTH AND ECONOMIC ADVISERS, CONSUMER ADVISORY COUNCIL, AND FEDERAL HEALTH ADVISORY COUNCIL.

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

“(11) COUNCIL OF HEALTH AND ECONOMIC ADVISERS, CONSUMER ADVISORY COUNCIL, AND FEDERAL HEALTH ADVISORY COUNCIL.—
“(A) COUNCIL OF HEALTH AND ECONOMIC
ADVISERS.—

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


nomic advisers to advise the Commission
on its development, analyses, and imple-

mentation of payment policies under this
title.

“(ii) MEMBERSHIP.—

“(I) IN GENERAL.—The council


of health and economic advisers shall
be composed of acknowledged experts
in health care and economics selected
by the Commission.

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


“(B) CONSUMER ADVISORY COUNCIL.—

“(i) IN GENERAL.—There is established a consumer advisory council to advise the Commission on the impact of payment policies under this title on consumers.

“(ii) MEMBERSHIP.—

“(I) NUMBER AND APPOINTMENT.—The consumer advisory council shall be composed of 10 consumer representatives appointed by the Comptroller General of the United States, 1 from among each of the 10 regions established by the Secretary as of the date of enactment of the Medicare Payment Advisory Commission (MedPAC) Reform Act of 2009.

“(II) QUALIFICATIONS.—The membership of the council shall represent the interests of consumers and particular communities.

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

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

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

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

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

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

“(iii) Terms.—

“(I) In general.—The terms of members of the Federal health advisory council shall be for 1 year.

“(II) Limitation on number of terms served.—An individual may not be appointed as a member of the Federal health advisory council for more than 3 terms.

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

“(v) Open meetings.—Meetings of the Federal health advisory council shall be open to the public.

“(vi) Election of officers.—Members of the Federal health advisory council shall elect their own officers.

“(D) Limitation on funding.—Out of amounts appropriated under subsection (g), the
Commission may use not more than $300,000 each fiscal year to carry out this paragraph.”.