

112TH CONGRESS  
1ST SESSION

# H. R. 1256

To amend title XVIII of the Social Security Act to require the use of analytic contractors in identifying and analyzing misvalued physician services under the Medicare physician fee schedule and an annual review of potentially misvalued codes under that fee schedule.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2011

Mr. McDERMOTT introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to require the use of analytic contractors in identifying and analyzing misvalued physician services under the Medicare physician fee schedule and an annual review of potentially misvalued codes under that fee schedule.

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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Physician Payment Transparency and Assess-  
6 ment Act of 2011”.

1 (b) FINDINGS.—Congress finds the following:

2 (1) The Centers for Medicare & Medicaid Serv-  
3 ices (CMS) has not had sufficient resources or com-  
4 mitment to undertake the needed surveys and ana-  
5 lytic research needed to keep the Medicare resource-  
6 based relative value scale (RBRVS) current with  
7 changes in medical, surgical, consultative, proce-  
8 dural, and diagnostic practices. For the last 20  
9 years, the American Medical Association has spon-  
10 sored the Specialty Society Relative Value Scale Up-  
11 date Committee (RUC) as a good faith effort to sup-  
12 port CMS in the task of developing the physician fee  
13 schedule but a more robust process is needed.

14 (2) CMS has depended on the AMA's RUC for  
15 recommendations as to the values assigned to Medi-  
16 care service codes for over 90 percent of all code  
17 changes over the last 19 years.

18 (3) Although primary care physicians provide  
19 about 44 percent of Medicare physician visits, they  
20 constitute only  $\frac{1}{6}$  to  $\frac{1}{13}$  of the membership of the  
21 RUC.

22 (4) The RUC lacks voting transparency and re-  
23 lies on self-reported and unrepresentative survey  
24 data that present serious conflict-of-interest con-  
25 cerns.

1           (5) The Medicare Payment Advisory Commis-  
2           sion has found that while the RUC tends to identify  
3           and correct undervalued codes, it does not have the  
4           same incentives to find and correct overvalued codes.  
5           Specialists, especially those who derive the majority  
6           of their income through procedural codes, have no  
7           incentive to reduce the value of potentially over-  
8           valued codes, even though the requirements for phy-  
9           sician work in many procedures should generally re-  
10          duce as time passes and proficiency increases.

11          (6) The assignment of relative values to the  
12          evaluation and management (E/M) codes was the  
13          most unsubstantiated component of the original  
14          RBRVS and has not been systematically and sci-  
15          entifically studied since the institutionalizing of  
16          RBRVS.

17          (7) The advent of electronic health records will  
18          require new methods to assess the intensity and  
19          work effort of the E/M codes.

20          (c) PURPOSE.—It is the purpose of this Act to re-  
21          quire the Secretary of Health and Human Services to con-  
22          sider the recommendations of independent, analytic con-  
23          tractors that are responsible for initially identifying and  
24          analyzing misvalued Medicare physician services and to re-

1 quire an annual review of potentially misvalued codes  
2 under the Medicare fee schedule.

3 **SEC. 2. REQUIRING USE OF ANALYTIC CONTRACTORS IN**  
4 **IDENTIFYING AND ANALYZING MISVALUED**  
5 **MEDICARE PHYSICIAN SERVICES AND AN-**  
6 **NUAL REVIEW OF POTENTIALLY MISVALUED**  
7 **CODES UNDER MEDICARE FEE SCHEDULE.**

8 Section 1848(c)(2)(K) of the Social Security Act (42  
9 U.S.C. 1395w-4(c)(2)(K)), as amended by section  
10 3134(a) of the Patient Protection and Affordable Care Act  
11 (Public Law 111-148), is amended—

12 (1) in clause (i), by striking “periodically” and  
13 inserting “annually”; and

14 (2) in clause (iii)—

15 (A) subclause (I), by inserting before the  
16 period at the end the following: “, but only to  
17 the extent consistent with the use of analytic  
18 contractors under subclause (III)”; and

19 (B) in subclause (III)—

20 (i) by striking “may use” and insert-  
21 ing “shall use”; and

22 (ii) by adding at the end the fol-  
23 lowing: “This subclause shall not be con-  
24 strued as prohibiting the Secretary from  
25 making modifications to one or more codes

1 under the fee schedule without use of the  
2 analytic contractors.”.

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