

109TH CONGRESS
1ST SESSION

H. R. 3875

To improve access to emergency medical services through medical liability reform and additional Medicare payments.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2005

Mr. GORDON (for himself and Mr. SESSIONS) 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

A BILL

To improve access to emergency medical services through medical liability reform and additional Medicare payments.

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 “Access to Emergency
5 Medical Services Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) Emergency medical care is an essential ele-
9 ment of the health care safety net.

1 (2) Emergency departments are critical in ad-
2 dressing public health issues such as emerging and
3 reemerging infections diseases, bioterrorism, and
4 mass casualty incidences.

5 (3) The Emergency Medical Treatment and
6 Labor Act (“EMTALA”) requires that all patients
7 who come to an emergency department be evaluated
8 and their emergency medical conditions be stabilized,
9 regardless of the patient’s ability to pay.

10 (4) The emergency department is a critical site
11 of service for indigent patients who otherwise do not
12 have access to health care services.

13 (5) Estimates indicate that 45,000,000 Ameri-
14 cans lack health coverage of any kind for an entire
15 year and that tens of millions more Americans go
16 without health coverage for shorter periods of time.

17 (6) Nationally, more than 35 percent of emer-
18 gency department patients are uninsured or are
19 Medicaid or SCHIP enrollees.

20 (7) As a key part of the health care safety net,
21 emergency departments in many of the Nation’s
22 communities are under strain.

23 (8) Strain on emergency departments is due to
24 multiple factors, including the shortage of nurses, a
25 decrease in the total number of community hospitals,

1 and high levels of bad debt incurred as a result of
2 providing care to indigent patients.

3 (9) Current trends indicate that maintaining
4 access to high-quality emergency care across the na-
5 tion is at risk.

6 (10) Sufficient resources must be allocated to
7 emergency care providers to ensure that every Amer-
8 ican has access to high-quality emergency care.

9 (11) The Medicare program provides dispro-
10 portionate share payments for inpatient services to hos-
11 pitals that serve a disproportionate number of low
12 income and indigent patients.

13 (12) Providing additional payments for care
14 provided in an emergency department is critical in
15 ensuring beneficiaries have access to high quality
16 emergency services and specialist care in an emer-
17 gency department.

18 **TITLE I—MEDICAL LIABILITY**

19 **REFORMS**

20 **SEC. 101. CONSTITUTIONAL AUTHORITY.**

21 The constitutional authority upon which this title
22 rests is the power of the Congress to provide for the gen-
23 eral welfare, to regulate commerce, and to make all laws
24 which shall be necessary and proper for carrying into exe-

1 cution Federal powers, as enumerated in section 8 of arti-
2 cle I of the Constitution of the United States.

3 **SEC. 102. PROTECTION AGAINST LEGAL LIABILITY FOR**
4 **EMERGENCY AND RELATED SERVICES FUR-**
5 **NISHED TO UNINSURED INDIVIDUALS.**

6 Section 224(g) of the Public Health Service Act (42
7 U.S.C. 233(g)) is amended—

8 (1) in paragraph (4), by striking “An entity”
9 and inserting in lieu thereof “Subject to paragraph
10 (6), an entity”; and

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

12 “(6)(A) For purposes of this section—

13 “(i) an entity described in subparagraph (B)
14 shall be considered to be an entity described in para-
15 graph (4); and

16 “(ii) the provisions of this section shall apply to
17 an entity described in subparagraph (B) in the same
18 manner as such provisions apply to an entity de-
19 scribed in paragraph (4), except that—

20 “(I) notwithstanding paragraph (1)(B), the
21 deeming of any entity described in subpara-
22 graph (B), or of an officer, governing board
23 member, employee, or contractor of such an en-
24 tity, to be an employee of the Public Health
25 Service for purposes of this section shall apply

1 only with respect to items and services that are
2 furnished to an uninsured individual (as defined
3 in subparagraph (C)) pursuant to section 1867
4 of the Social Security Act and to post-stabiliza-
5 tion services (as defined in subparagraph (D))
6 furnished to such an individual;

7 “(II) nothing in paragraph (1)(D) shall be
8 construed as preventing a physician or physi-
9 cian group described in subparagraph (B)(ii)
10 from making the application referred to in such
11 paragraph or as conditioning the deeming of a
12 physician or physician group that makes such
13 an application upon receipt by the Secretary of
14 an application from the hospital or emergency
15 department that employs or contracts with the
16 physician or group;

17 “(III) notwithstanding paragraph (3), this
18 paragraph shall apply only with respect to
19 causes of action arising from acts or omissions
20 that occur on or after January 1, 2005;

21 “(IV) paragraph (5) shall not apply to a
22 physician or physician group described in sub-
23 paragraph (B)(ii);

24 “(V) the Attorney General, in consultation
25 with the Secretary, shall make separate esti-

1 mates under subsection (k)(1) with respect to
2 entities described in subparagraph (B) and enti-
3 ties described in paragraph (4) (other than
4 those described in subparagraph (B)), and the
5 Secretary shall establish separate funds under
6 subsection (k)(2) with respect to such groups of
7 entities, and any appropriations under this sub-
8 section for entities described in subparagraph
9 (B) shall be separate from the amounts author-
10 ized by subsection (k)(2);

11 “(VI) notwithstanding subsection (k)(2),
12 the amount of the fund established by the Sec-
13 retary under such subsection with respect to en-
14 tities described in subparagraph (B) may ex-
15 ceed a total of \$10,000,000 for a fiscal year;
16 and

17 “(VII) subsection (m) shall not apply to
18 entities described in subparagraph (B).

19 “(B) An entity described in this subparagraph is—

20 “(i) a hospital or an emergency department to
21 which section 1867 of the Social Security Act ap-
22 plies; and

23 “(ii) a physician or physician group that is em-
24 ployed by, or under contract with, such hospital or

1 department to furnish items and services to individ-
2 uals under such section.

3 “(C) For purposes of this paragraph, the term ‘unin-
4 sured individual’ means an individual who, at the time
5 treatment is provided by an entity described in subpara-
6 graph (B) for purposes of complying with section 1867
7 of the Social Security Act—

8 “(i) does not have coverage under—

9 “(I) a group health plan (as defined in sec-
10 tion 2791(a)(1));

11 “(II) part A, B, or (C) of title XVIII of
12 the Social Security Act; or

13 “(III) a State plan under title XIX of such
14 Act; and

15 “(ii) does not have health insurance coverage
16 (as defined in section 2791(b)(1)) from any other
17 source.

18 “(D) For purposes of this paragraph, the term ‘post-
19 stabilization services’ means, with respect to an individual
20 who has been treated by an entity described in subpara-
21 graph (B) for purposes of complying with section 1867
22 of the Social Security Act, services that are—

23 “(i) related to the condition that was so treated;
24 and

1 “(ii) provided after the individual is stabilized
2 in order to maintain the stabilized condition or to
3 improve or resolve the individual’s condition.

4 “(E)(i) Nothing in this paragraph (or in any other
5 provision of this section as such provision applies to enti-
6 ties described in subparagraph (B) by operation of sub-
7 paragraph (A)) shall be construed as authorizing or re-
8 quiring the Secretary to make payments to such entities,
9 the budget authority for which is not provided in advance
10 by appropriation Acts.

11 “(ii) The Secretary shall limit the total amount of
12 payments under this paragraph for a fiscal year to the
13 total amount appropriated in advance by appropriation
14 Acts for such purpose for such fiscal year. If the total
15 amount of payments that would otherwise be made under
16 this paragraph for a fiscal year exceeds such total amount
17 appropriated, the Secretary shall take such steps as may
18 be necessary to ensure that the total amount of payments
19 under this paragraph for such fiscal year does not exceed
20 such total amount appropriated.”.

1 **TITLE II—ADDITIONAL**
2 **MEDICARE PAYMENT**

3 **SEC. 201. ADDITIONAL PAYMENTS FOR PHYSICIANS' SERV-**
4 **ICES FURNISHED IN AN EMERGENCY DE-**
5 **PARTMENT OF A HOSPITAL OR CRITICAL AC-**
6 **CESS HOSPITAL.**

7 Section 1833 of the Social Security Act (42 U.S.C.
8 1395l) is amended by adding at the end the following new
9 subsection:

10 “(v) **ADDITIONAL PAYMENTS FOR PHYSICIANS’**
11 **SERVICES FURNISHED IN EMERGENCY DEPARTMENTS.—**
12 In the case of physicians’ services furnished on or after
13 January 1, 2006, in the emergency department of a hos-
14 pital or critical access hospital to an individual covered
15 under the insurance program established by this part, in
16 addition to the amount of payment that will otherwise be
17 made for such services under this part, there shall also
18 be paid to the physician or other person (or to an employer
19 or other entity in the cases described in clause (A) of sec-
20 tion 1842(b)(6)) from the Federal Supplementary Insur-
21 ance Trust Fund an amount equal to 10 percent of the
22 payment amount for the service under this part.”.

1 **SEC. 202. INCENTIVE PAYMENTS FOR HOSPITALS MEETING**
2 **STANDARDS FOR PROMPT ADMISSIONS OF**
3 **EMERGENCY DEPARTMENT PATIENTS RE-**
4 **QUIRING INPATIENT HOSPITAL SERVICES.**

5 (a) IN GENERAL.—

6 (1) INCENTIVE PAYMENTS.—Section 1833(t) of
7 the Social Security Act (42 U.S.C. 1395l(t)) is
8 amended by adding at the end the following:

9 “(15) INCENTIVE PAYMENTS FOR PROMPT AD-
10 MISSIONS OF CERTAIN EMERGENCY DEPARTMENT
11 PATIENTS.—

12 “(A) IN GENERAL.—

13 “(i) ADDITIONAL PAYMENT.—Subject
14 to subparagraph (C)(i), in the case of
15 emergency department visits furnished in a
16 calendar quarter beginning on or after
17 January 1, 2007, by a hospital that has
18 transmitted a certification pursuant to
19 clause (ii) for such quarter there shall be
20 paid to the hospital for such visits an
21 amount equal to—

22 “(I) 10 percent of the amount
23 otherwise payable under this sub-
24 section for such visits (which shall be
25 in addition to such payment amount);
26 or

1 “(II) in the case of visits for
2 which payment may not be made
3 under this subsection by reason of the
4 bundling requirements of section
5 1886(a)(4), 10 percent of the amount
6 that would have been paid for such
7 visits but for the admission of the pa-
8 tient involved for inpatient hospital
9 services.

10 “(ii) CERTIFICATION PROCESS.—In
11 order to qualify for additional payments
12 under this paragraph for a quarter, a hos-
13 pital shall transmit to the Secretary (at
14 such time before the beginning of such
15 quarter as the Secretary may require) a
16 certification that, for second preceding
17 quarter, the hospital met the standards es-
18 tablished under subparagraph (B).

19 “(iii) EMERGENCY DEPARTMENT VIS-
20 ITS.—For purposes of this paragraph, the
21 term ‘emergency department visits’ means
22 ambulatory patient classification groups
23 0600, 0601, 0602, 0610, 0611, 0612, and
24 0620 (and any successor groups as deter-
25 mined by the Secretary).

1 “(B) STANDARDS FOR PROMPT ADMIS-
2 SIONS.—

3 “(i) TIMING.—Not later than June
4 30, 2006, the Secretary shall promulgate
5 final regulations (after notice and an op-
6 portunity for public comment) establishing
7 standards for prompt admission by a hos-
8 pital of those individuals presenting to the
9 emergency department of the hospital who
10 are determined at the time an emergency
11 department visit to require inpatient hos-
12 pital services at the hospital (hereafter in
13 this paragraph referred to as ‘emergency
14 department patients requiring admission’
15 or ‘such patients’).

16 “(ii) REQUIREMENTS.—The standards
17 under clause (i) shall—

18 “(I) be designed to substantially
19 reduce or eliminate overcrowding and
20 boarding of patients in such depart-
21 ments and in other outpatient setting
22 adjacent to such departments;

23 “(II) be expressed as an average
24 of the time elapsed between the deci-
25 sion to admit such patients and the

1 arrival of such patients at their defini-
2 tive destination in the hospital (and
3 not in an area outside the emergency
4 department for holding such patients
5 before arrival at such definitive des-
6 tination);

7 “(III) be applied on a rolling
8 quarterly basis (consistent with the
9 certification process under subpara-
10 graph (A)(ii));

11 “(IV) provide that a hospital may
12 not, for purposes of compliance with
13 such standards, treat as an admission
14 a patient who is deemed to be admit-
15 ted under this title by reason of being
16 present in the hospital for two con-
17 secutive midnight patient censuses;

18 “(V) provide for exceptions for
19 extraordinary circumstances involving
20 mass casualties;

21 “(VI) apply to calendar quarters
22 beginning on or after July 1, 2006,
23 for purposes of determining eligibility
24 for additional payments under this
25 paragraph and to calendar quarters

1 beginning on or after January 1,
2 2007, for purposes of imposing civil
3 money penalties under paragraphs (8)
4 and (9) of section 1128A(a); and

5 “(VII) be revised from time to
6 time if the Secretary determines that
7 further reductions in such over-
8 crowding and boarding are necessary.

9 “(C) TREATMENT OF ADDITIONAL PAY-
10 MENTS.—The additional payments under this
11 paragraph—

12 “(i) shall be treated as conditional
13 payments that the Secretary may recover
14 through recoupment, offset, or other
15 means (in accordance with procedures and
16 requirements applicable to overpayments
17 under this title) if a hospital is found,
18 upon audit under subparagraph (D)(i), not
19 to meet such standards for a quarter to
20 which a certification relates;

21 “(ii) shall not be taken into account in
22 determining—

23 “(I) the copayment for which an
24 individual enrolled under this part is
25 liable under this subsection; or

1 “(II) any adjustment under sub-
2 paragraph (A) or (B) of paragraph
3 (9); and

4 “(iii) shall not be treated as an ad-
5 justment under paragraph (2)(E).

6 “(D) AUDITS OF CERTIFICATIONS; INVES-
7 TIGATION OF COMPLAINTS.—The Secretary
8 shall establish a process under which—

9 “(i) the Secretary, an agency with
10 which the Secretary has an agreement
11 under section 1864, or a national accred-
12 iting body for the accreditation of hospitals
13 that is recognized under section 1865 con-
14 ducts periodic audits of certifications made
15 by a hospital to determine whether such
16 hospital met the standards established
17 under subparagraph (B) for the quarter to
18 which a certification relates; and

19 “(ii) the Secretary or an agency with
20 which the Secretary has an agreement
21 under section 1864—

22 “(I) investigates complaints that
23 a hospital has engaged in a pattern or
24 practice of failing to comply with such
25 standards; and

1 “(II) investigates any hospital
2 that has failed to certify under sub-
3 paragraph (A)(ii) its compliance with
4 such standards for three consecutive
5 calendar quarters to determine wheth-
6 er such hospital has engaged on a
7 pattern or practice of failing to com-
8 ply with such standards (and for pur-
9 poses of this subclause, any certifi-
10 cation that is determined by an audit
11 under clause (i) to be false shall be
12 treated as a failure to certify for the
13 quarter involved).

14 Notwithstanding any other provision of
15 law, the identity of any person filing a
16 complaint under subclause (I) shall not be
17 disclosed unless the Secretary determines
18 that such complaint was filed in bad
19 faith.”.

20 (2) GAO REPORT.—Not later than 12 months
21 after the Secretary publishes a final rule establishing
22 or revising standards under subparagraph (B) of
23 section 1833(t)(15) of the Social Security Act (42
24 U.S.C. 1395l(t)(15)), as added by paragraph (1),
25 the Comptroller General shall submit to the Com-

1 mittee on Finance of the Senate and the Committees
2 on Ways and Means and Energy and Commerce of
3 the House of Representatives a report that—

4 (A) evaluates whether such standards will
5 achieve the objectives specified in such subpara-
6 graph; and

7 (B) makes recommendations for any
8 changes to such standards that are necessary to
9 achieve such objectives.

10 (b) CIVIL MONEY PENALTIES FOR PATTERN OR
11 PRACTICE OF VIOLATING STANDARDS.—Section
12 1128A(a) of the Social Security Act (42 U.S.C. 1320a-
13 7a(a)) is amended—

14 (1) by striking “or” at the end of paragraph
15 (6);

16 (2) by inserting after paragraph (7) the fol-
17 lowing:

18 “(8) makes a false certification under section
19 1833(t)(15)(A)(ii); or

20 “(9) engages in a pattern or practice of failing
21 to meet the standards established under
22 1833(t)(15)(B);” and

23 (3) in the matter after and below paragraph (9)
24 (as added by paragraph (2) of this subsection), by
25 inserting after “prohibited relationship occurs;” the

1 following: “in cases under paragraph (8), an amount
2 not to exceed three times the amount of additional
3 payments under section 1833(t)(15) that are attrib-
4 utable to the false certification; in cases under para-
5 graph (9), an amount not to exceed \$250,000 for
6 each quarter in which such pattern or practice is
7 found to exist;”.

○