

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2750

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

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IN THE SENATE OF THE UNITED STATES

MAY 4, 2006

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

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## 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 2006”.

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)(A), the  
21 Secretary may deem a physician who is an on-  
22 call physician (as defined in subparagraph (D))  
23 of an entity described in subparagraph (B)(i) to  
24 be an employee of the Public Health Service for  
25 purposes of this section if the physician pro-

1           vides services described in subclause (II) for the  
2           entity pursuant to an arrangement other than  
3           under a contract with the entity;

4           “(II) notwithstanding paragraph (1)(B),  
5           the deeming of any entity described in subpara-  
6           graph (B), or of an officer, governing board  
7           member, employee, contractor, or on-call physi-  
8           cian of such an entity, to be an employee of the  
9           Public Health Service for purposes of this sec-  
10          tion shall apply only with respect to items and  
11          services that are furnished to an uninsured in-  
12          dividual (as defined in subparagraph (C)) pur-  
13          suant to section 1867 of the Social Security Act  
14          and to post-stabilization services (as defined in  
15          subparagraph (E)) furnished to such an indi-  
16          vidual;

17          “(III) nothing in paragraph (1)(D) shall  
18          be construed as preventing a physician or physi-  
19          cian group described in subparagraph (B)(ii)  
20          from making the application referred to in such  
21          paragraph or as conditioning the deeming of a  
22          physician or physician group that makes such  
23          an application upon receipt by the Secretary of  
24          an application from the hospital or emergency  
25          department for which such physician or physi-

1           cian group provides services described in sub-  
2           clause (II);

3           “(IV) notwithstanding paragraph (3), this  
4           paragraph shall apply only with respect to  
5           causes of action arising from acts or omissions  
6           that occur on or after January 1, 2005;

7           “(V) paragraph (5) shall not apply to a  
8           physician or physician group described in sub-  
9           paragraph (B)(ii);

10          “(VI) the Attorney General, in consultation  
11          with the Secretary, shall make separate esti-  
12          mates under subsection (k)(1) with respect to  
13          entities described in subparagraph (B) and enti-  
14          ties described in paragraph (4) (other than  
15          those described in subparagraph (B)), and the  
16          Secretary shall establish separate funds under  
17          subsection (k)(2) with respect to such groups of  
18          entities, and any appropriations under this sub-  
19          section for entities described in subparagraph  
20          (B) shall be separate from the amounts author-  
21          ized by subsection (k)(2);

22          “(VII) notwithstanding subsection (k)(2),  
23          the amount of the fund established by the Sec-  
24          retary under such subsection with respect to en-  
25          ties described in subparagraph (B) may ex-

1           ceed a total of \$10,000,000 for a fiscal year;  
2           and

3                   “(VIII) subsection (m) shall not apply to  
4           entities described in subparagraph (B).

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

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

9                   “(ii) a physician or physician group that pro-  
10          vides services described in subparagraph (A)(ii)(II)  
11          for such hospital or department.

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

17                   “(i) does not have coverage under—

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

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

22                           “(III) a State plan under title XIX of such  
23                           Act; and

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

4           “(D) For purposes of this paragraph, the term ‘on-  
5           call physician’ means a physician who is on the list of phy-  
6           sicians that is maintained by an entity described in sub-  
7           paragraph (B)(i) pursuant to section 1866(a)(1)(I) of the  
8           Social Security Act.

9           “(E) For purposes of this paragraph, the term ‘post-  
10           stabilization services’ means, with respect to an individual  
11           who has been treated by an entity described in subpara-  
12           graph (B) for purposes of complying with section 1867  
13           of the Social Security Act, services that are—

14           “(i) related to the condition that was so treated;  
15           and

16           “(ii) provided after the individual is stabilized  
17           in order to maintain the stabilized condition or to  
18           improve or resolve the individual’s condition.

19           “(F)(i) Nothing in this paragraph (or in any other  
20           provision of this section as such provision applies to enti-  
21           ties described in subparagraph (B) by operation of sub-  
22           paragraph (A)) shall be construed as authorizing or re-  
23           quiring the Secretary to make payments to such entities,  
24           the budget authority for which is not provided in advance  
25           by appropriation Acts.

1       “(ii) The Secretary shall limit the total amount of  
2 payments under this paragraph for a fiscal year to the  
3 total amount appropriated in advance by appropriation  
4 Acts for such purpose for such fiscal year. If the total  
5 amount of payments that would otherwise be made under  
6 this paragraph for a fiscal year exceeds such total amount  
7 appropriated, the Secretary shall take such steps as may  
8 be necessary to ensure that the total amount of payments  
9 under this paragraph for such fiscal year does not exceed  
10 such total amount appropriated.

11       “(F) The Secretary may deem a physician who is an  
12 on-call physician of an entity described in subparagraph  
13 (B) as an employee of the Public Health Service for pur-  
14 poses of this section, if the physician was providing items  
15 or services described in subparagraph (D) for the entity  
16 pursuant to an arrangement other than a contract with  
17 the entity.”.

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;”.

○