

110TH CONGRESS  
2D SESSION

# H. R. 6569

To amend the Public Health Service Act to ensure that victims of public health emergencies have meaningful and immediate access to medically necessary healthcare services.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2008

Mrs. CAPPS (for herself, Ms. MATSUI, and Mr. BUTTERFIELD) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Public Health Service Act to ensure that victims of public health emergencies have meaningful and immediate access to medically necessary healthcare services.

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; TABLE OF CONTENTS.**

4       This section may be cited as the “Public Health  
5       Emergency Response Act of 2008”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—Congress finds the following:

1           (1) Since 2000, the Secretary of Health and  
2           Human Services has declared that a public health  
3           emergency existed nationwide in response to the at-  
4           tacks of September 11th and in response to Hurri-  
5           canes Katrina and Rita.

6           (2) In the event of a public health emergency,  
7           compliance with recommendations to seek immediate  
8           care may be critical to containing the spread of an  
9           infectious disease outbreak or responding to a bio-  
10          terror attack.

11          (3) Nearly sixteen percent of Americans lack  
12          health insurance coverage.

13          (4) Fears of out-of-pocket expenses may cause  
14          individuals to delay seeking medical attention during  
15          a public health emergency.

16          (5) A public health emergency may disrupt  
17          healthcare assistance programs for individuals with  
18          chronic conditions, exacerbating the costs and risks  
19          to their health.

20          (6) The uninsured could place great financial  
21          strain on healthcare providers during a public health  
22          emergency.

23          (7) The Department of Health and Human  
24          Services Pandemic Influenza Plan projects that a  
25          pandemic influenza outbreak could result in 45 mil-

1 lion additional outpatient visits, with 865,000 to  
2 9,900,000 individuals requiring hospitalization, de-  
3 pending upon the severity of the pandemic.

4 (8) Hospitals in the United States could lose as  
5 much as \$3.9 billion in uncompensated care and  
6 cash flow losses in the event of a severe pandemic.

7 (9) Under current statute, no dedicated mecha-  
8 nism exists to reimburse providers for uncompen-  
9 sated care during a public health emergency.

10 (b) PURPOSES.—The purposes of this Act are—

11 (1) to provide temporary emergency healthcare  
12 coverage for uninsured and certain otherwise quali-  
13 fied individuals in the event of a public health emer-  
14 gency declared by the Secretary of Health and  
15 Human Services;

16 (2) to ensure that healthcare providers remain  
17 fiscally solvent and are not overburdened by the cost  
18 of uncompensated care during a public health emer-  
19 gency;

20 (3) to eliminate a primary disincentive for unin-  
21 sured and certain otherwise qualified individuals to  
22 promptly seek medical care during a public health  
23 emergency; and

24 (4) to minimize delays in the provision of emer-  
25 gency healthcare coverage by clarifying eligibility re-

1        requirements and the scope of such coverage and iden-  
2        tifying the funding mechanisms for emergency  
3        healthcare services.

4        **SEC. 3. EMERGENCY HEALTHCARE COVERAGE.**

5        (a) IN GENERAL.—Title III of the Public Health  
6        Service Act is amended by inserting after section 319K  
7        the following new section:

8        **“SEC. 319K-1. EMERGENCY HEALTHCARE COVERAGE.**

9               “(a) ACTIVATION AND TERMINATION OF EMER-  
10        GENCY HEALTHCARE COVERAGE.—

11                       “(1) BASED ON PUBLIC HEALTH EMER-  
12        GENCY.—

13                               “(A) IN GENERAL.—The Secretary may  
14                               activate the coverage of emergency healthcare  
15                               services under this section only if the Secretary  
16                               determines that there is a public health emer-  
17                               gency.

18                               “(B) DETERMINATION OF PUBLIC HEALTH  
19                               EMERGENCY.—For purposes of this section,  
20                               there is a ‘public health emergency’ only if a  
21                               public health emergency exists under section  
22                               319.

23                               “(2) CONSIDERATIONS.—In making a deter-  
24                               mination under paragraph (1), the Secretary shall  
25                               consider a range of factors including the following:

1           “(A) The degree to which the emergency is  
2 likely to overwhelm healthcare providers in the  
3 region.

4           “(B) The opportunity to minimize mor-  
5 bidity and mortality through intervention under  
6 this section.

7           “(C) The estimated number of direct cas-  
8 ualties of the emergency.

9           “(D) The potential number of casualties in  
10 the absence of intervention under this section  
11 (such as in the case of infectious disease).

12           “(E) The potential adverse financial im-  
13 pacts on local healthcare providers in the ab-  
14 sence of activation of this section.

15           “(F) The need for healthcare services is of  
16 sufficient severity and magnitude to warrant  
17 major assistance under this section above and  
18 beyond the emergency services otherwise avail-  
19 able from the Federal Government.

20           “(G) Such other factors as the Secretary  
21 may deem appropriate.

22           “(3) TERMINATION AND EXTENSION.—

23           “(A) IN GENERAL.—Coverage of emer-  
24 gency healthcare services under this section

1 shall terminate, subject to subsection (c)(2),  
2 upon the earlier of the following:

3 “(i) The Secretary’s determination  
4 that a public health emergency no longer  
5 exists.

6 “(ii) Subject to subparagraph (B), 90  
7 days after the initiation of coverage of  
8 emergency healthcare services.

9 “(B) EXTENSION AUTHORITY.—The Sec-  
10 retary may extend a public health emergency  
11 for a second 90-day period, but only if a report  
12 to Congress is made under paragraph (4) in  
13 conjunction with making such extension.

14 “(4) REPORT.—

15 “(A) IN GENERAL.—Prior to making an  
16 extension under paragraph (3)(B), the Sec-  
17 retary shall transmit a report to Congress that  
18 includes information on the nature of the public  
19 health emergency and the expected duration of  
20 the emergency. The Secretary shall include in  
21 such report recommendations, if deemed appro-  
22 priate, regarding requesting Congress to pro-  
23 vide a further extension of the public health  
24 emergency period beyond the second 90-day pe-  
25 riod.

1           “(B) REPORT CONTENTS.—A report under  
2           subparagraph (A) shall include a discussion of  
3           the healthcare needs of emergency victims and  
4           affected individuals including the likely need for  
5           follow-up care over a two-year period.

6           “(5) COORDINATION.—The Secretary shall en-  
7           sure that the activation, implementation, and termi-  
8           nation of emergency healthcare services under this  
9           section in response to a public health emergency is  
10          coordinated with all functions, personnel, and assets  
11          of the Federal, State, local, and tribal responses to  
12          the emergency.

13          “(6) MEDICAL MONITORING PROGRAM.—The  
14          Secretary shall establish a medical monitoring pro-  
15          gram for monitoring and reporting on healthcare  
16          needs of the affected population over time. At least  
17          annually during the 5-year period following the date  
18          of a public health emergency, the Secretary shall re-  
19          port to Congress on any continuing healthcare needs  
20          of the affected population related to the public  
21          health emergency. Such reports shall include rec-  
22          ommendations on how to ensure that emergency vic-  
23          tims and affected individuals have access to needed  
24          healthcare services.

1       “(b) ELIGIBILITY FOR COVERAGE OF EMERGENCY  
2 HEALTHCARE SERVICES.—

3               “(1) LIMITED ELIGIBILITY.—

4                       “(A) IN GENERAL.—Eligibility for cov-  
5 erage of emergency healthcare services under  
6 this section for a public health emergency is  
7 limited to individuals who—

8                               “(i) are emergency victims who are  
9 uninsured or otherwise qualified; or

10                               “(ii) are affected individuals who are  
11 uninsured.

12                       “(B) DEFINITIONS.—For purposes of this  
13 section with respect to a public health emer-  
14 gency:

15                               “(i) INSURED.—An individual is ‘in-  
16 sured’ if the individual has group or indi-  
17 vidual health insurance coverage or pub-  
18 licly financed health insurance (as defined  
19 by the Secretary).

20                               “(ii) OTHERWISE QUALIFIED.—An in-  
21 dividual is “otherwise qualified” if the in-  
22 dividual is insured but the Secretary deter-  
23 mines that the individual’s healthcare in-  
24 surance coverage is not at least actuarially-  
25 equivalent to benchmark coverage. In es-



1           tablishing such benchmark coverage, the  
2           Secretary shall consider the standard Blue  
3           Cross/Blue Shield preferred provider op-  
4           tion service benefit plan described in and  
5           offered under section 8903(1) of title 5,  
6           United States Code.

7           “(iii) UNINSURED.—An individual is  
8           ‘uninsured’ if the individual is not insured.

9           “(iv) EMERGENCY VICTIM.—An indi-  
10          vidual is an ‘emergency victim’ with re-  
11          spect to a public health emergency if the  
12          individual needs healthcare services due to  
13          injuries or disease resulting from the pub-  
14          lic health emergency.

15          “(v) AFFECTED INDIVIDUAL.—An in-  
16          dividual is an ‘affected individual’ with re-  
17          spect to a public health emergency if—

18               “(I) the individual resides in an  
19               assistance area designated for the  
20               emergency (or whose residence was  
21               displaced by the emergency) or, in the  
22               case of such an emergency consti-  
23               tuting a pandemic flu or other infec-  
24               tious disease outbreak, who resides in  
25               the area affected by the outbreak (or

1                   whose residence was displaced by the  
2                   emergency); and

3                   “(II) the individual’s ability to  
4                   access care or medicine is disrupted  
5                   as a result of the emergency.

6                   “(2) PROCESS.—The Secretary shall establish a  
7                   streamlined process for determining eligibility for  
8                   emergency healthcare services under this section. In  
9                   establishing such process—

10                   “(A) the Secretary shall recognize that in  
11                   the context of a public health emergency, indi-  
12                   viduals may be unable to provide identification  
13                   cards, healthcare insurance information, or  
14                   other documentation; and

15                   “(B) the primary method for determining  
16                   eligibility for such services shall be an attesta-  
17                   tion provided to the healthcare provider by the  
18                   recipient of the services that the recipient meets  
19                   the eligibility criteria established under para-  
20                   graph (1)(A), with a standard alternative for  
21                   unattended minors and adults without the ca-  
22                   pacity to sign such an attestation form.

23                   “(3) SERVICE DELIVERY.—Providers may com-  
24                   mence provision of emergency healthcare services for  
25                   an individual in the absence of any centralized en-

1 rollment process, if the provider has collected basic  
2 information, specified by the Secretary, including the  
3 individual's name, address, social security number,  
4 and existing health insurance coverage (if any), that  
5 establishes a prima facie basis for eligibility, except  
6 that such information shall not be required in cases  
7 where the individual is unable to provide the infor-  
8 mation due to disability or incapacitation.

9 “(c) EMERGENCY HEALTHCARE SERVICES.—

10 “(1) IN GENERAL.—For purposes of this sec-  
11 tion, the term ‘emergency healthcare services’—

12 “(A) means items and services for which  
13 payment may be made under parts A and B of  
14 the Medicare program;

15 “(B) includes prescription drugs (not cov-  
16 ered under such part B) specified by the Sec-  
17 retary under subsection (g), based on the  
18 formularies of the two or more prescription  
19 drug plans under part D of the Medicare pro-  
20 gram with the largest enrollment;

21 “(C) may include drugs, devices, biologics,  
22 and other healthcare products, if such products  
23 are authorized for use by the Food and Drug  
24 Administration pursuant to an alternate au-  
25 thority, including the emergency use authority

1 under section 564 of the Federal Food, Drug,  
2 and Cosmetic Act (21 U.S.C. 360bbb-3); and

3 “(D) for an affected individual, is limited  
4 to those items and services described under sub-  
5 paragraphs (A), (B) or (C) that a third-party  
6 payor, such as a government program or chari-  
7 table organization, reimbursed or otherwise pro-  
8 vided to an affected individual during the three  
9 months prior to the declaration of the public  
10 health emergency.

11 “(2) NOT MEDICARE, MEDICAID, OR SCHIP BEN-  
12 EFITS.—The emergency healthcare services provided  
13 under this section are not benefits under Medicare,  
14 Medicaid or SCHIP. Nothing in this section shall be  
15 interpreted as altering or otherwise conflicting with  
16 titles XVIII, XIX, or XXI of the Social Security  
17 Act.

18 “(3) COMPLETION OF TREATMENT FOR EMER-  
19 GENCY VICTIMS.—Notwithstanding termination of  
20 the coverage of emergency healthcare services pursu-  
21 ant to subsection (a)(4), the Secretary may identify  
22 a subgroup of emergency victims on a case-by-case  
23 basis or otherwise to continue receiving coverage of  
24 emergency healthcare services for up to an addi-  
25 tional 60 days. Such emergency healthcare services

1 provided after the termination date shall be limited  
2 to services and items that are medically necessary to  
3 treat an injury or disease resulting directly from the  
4 public health emergency involved.

5 “(d) COVERED PROVIDERS.—

6 “(1) IN GENERAL.—Subject to paragraph (2),  
7 healthcare services are not covered under this sec-  
8 tion unless they are furnished by a healthcare pro-  
9 vider that—

10 “(A) has a valid provider number under  
11 the Medicare program, the Medicaid program,  
12 or SCHIP;

13 “(B) is in good standing with such pro-  
14 gram; and

15 “(C) is not excluded from participation in  
16 a Federal healthcare program (as defined in  
17 section 1128B(f) of the Social Security Act, 42  
18 U.S.C. 1320a–7b(f)).

19 “(2) WAIVER AUTHORITY.—

20 “(A) IN GENERAL.—The Secretary may by  
21 regulation waive certain requirements for pro-  
22 vider enrollment that otherwise apply under the  
23 Medicare or Medicaid program or under SCHIP  
24 to ensure an adequate supply of healthcare pro-  
25 viders (such as nurses and other healthcare pro-

1           viders who do not typically participate in the  
2           Medicare or Medicaid program or SCHIP) and  
3           services in the case of a public health emer-  
4           gency. Such requirements may include the re-  
5           quirement that a licensed physician or other  
6           healthcare professional holds a license in the  
7           State in which the professional provides services  
8           or is otherwise authorized under State law to  
9           provide the services involved.

10           “(B) REPORT ON EMERGENCY SYSTEM  
11           FOR ADVANCE REGISTRATION OF VOLUNTEER  
12           HEALTH PROFESSIONALS (ESAR-VHP).—Not  
13           later than 180 days after the date of the enact-  
14           ment of this section, the Secretary shall submit  
15           to Congress a report on the number of volun-  
16           teers, by profession and credential level, en-  
17           rolled in the Emergency System for Advance  
18           Registration of Volunteer Health Professionals  
19           (ESAR-VHP) that will be available to each  
20           State in the event of a public health emergency.  
21           The Secretary shall determine if the number of  
22           such volunteers is adequate for interstate de-  
23           ployment in response to regional requests for  
24           volunteers and, if not, shall include in the re-  
25           port recommendations for actions to ensure an

1           adequate surge capacity for public health emer-  
2           gencies in defined geographic areas.

3           “(3) MEDICARE AND MEDICAID PROGRAMS AND  
4           SCHIP DEFINED.—For purposes of this section:

5                   “(A) The term ‘Medicare program’ means  
6                   the program under parts A, B, and D of title  
7                   XVIII of the Social Security.

8                   “(B) The term ‘Medicaid program’ means  
9                   the program of medical assistance under title  
10                  XIX of such Act.

11                  “(C) The term ‘SCHIP’ means the State  
12                  children’s health insurance program under title  
13                  XXI of such Act.

14           “(e) PAYMENTS AND CLAIMS ADMINISTRATION.—

15                   “(1) PAYMENT AMOUNT.—The amount of pay-  
16                   ment under this section to a provider for emergency  
17                   healthcare services shall be equal to 100 percent of  
18                   the payment rate for the corresponding service  
19                   under part A or B of the Medicare program, or, in  
20                   the case of prescription drugs and other items and  
21                   services not covered under either such part, such  
22                   amount as the Secretary may specify by rule. Such  
23                   a provider shall not be permitted to impose any cost-  
24                   sharing or to balance bill for services furnished  
25                   under this section.

1           “(2) USE OF MEDICARE CONTRACTORS.—The  
2 Secretary shall enter into arrangements with Medi-  
3 care administrative contractors under which they  
4 process claims for emergency healthcare services  
5 under this section using the claim forms, codes, and  
6 nomenclature in effect under the Medicare program.

7           “(3) APPLICATION OF SECONDARY PAYER  
8 RULES.—In the case of payment under this section  
9 for emergency healthcare services for otherwise  
10 qualified individuals who have some health insurance  
11 coverage with respect to such services, the adminis-  
12 trative contractors under paragraph (2) shall submit  
13 a claim to the entity offering such coverage to re-  
14 coup all or some of such payment, reflecting what-  
15 ever amount the entity would normally reimburse for  
16 each covered service. The provisions of section  
17 1862(b) of the Social Security Act (42 U.S.C.  
18 1395y(b)) shall apply to benefits provided under this  
19 section in the same manner as they apply to benefits  
20 provided under the Medicare program.

21           “(4) PAYMENTS FOR EMERGENCY HEALTHCARE  
22 SERVICES AND RELATED COSTS.—Payments to pro-  
23 vide, and costs to administer, emergency healthcare  
24 services under this section shall be made from the



1 Public Health Emergency Fund, as provided under  
2 subsection (f)(1).

3 “(5) ATTESTATION REQUIREMENT.—No pay-  
4 ment shall be made under this section to a provider  
5 for emergency healthcare services unless the provider  
6 has executed an attestation that—

7 “(A) the provider has notified the adminis-  
8 trative contractor of any third-party payment  
9 received or claims pending for such services;

10 “(B) the recipient of the services has exe-  
11 cuted an attestation or otherwise satisfies the  
12 eligibility criteria established under subsection  
13 (b); and

14 “(C) the services were medically necessary.

15 “(f) PUBLIC HEALTH EMERGENCY FUND; FRAUD  
16 AND ABUSE PROVISIONS.—

17 “(1) THE PUBLIC HEALTH EMERGENCY  
18 FUND.—There is authorized to be appropriated to  
19 the Public Health Emergency Fund (established  
20 under section 319(b)) such sums as may be nec-  
21 essary under this section for payments to provide  
22 emergency healthcare services and costs to admin-  
23 ister the services during a public health emergency.

1           “(2) NO USE OF MEDICARE FUNDS.—No funds  
2           under the Medicare program shall be available or  
3           used to make payments under this section.

4           “(3) FRAUD AND ABUSE PROVISIONS.—Pro-  
5           viders and recipients of emergency healthcare serv-  
6           ices under this section shall be subject to the Fed-  
7           eral fraud and abuse protections that apply to Fed-  
8           eral healthcare programs as defined in section  
9           1128B(f) of the Social Security Act.

10          “(g) RULEMAKING.—The Secretary may issue regu-  
11          lations to carry out this section and shall use a negotiated  
12          rulemaking process to advise the Secretary on key issues  
13          regarding the implementation of this section.

14          “(h) PUBLIC HEALTH EMERGENCY PLANNING AND  
15          THE EDUCATION OF HEALTHCARE PROVIDERS AND THE  
16          GENERAL POPULATION.—

17                 “(1) PLANNING FOR COVERAGE OF EMERGENCY  
18                 HEALTHCARE SERVICES IN PUBLIC HEALTH EMER-  
19                 GENCIES.—The Secretary shall, within 90 days after  
20                 the date of the enactment of this section, initiate  
21                 planning to carry out this section, including plan-  
22                 ning relating to implementation of the subsection (e)  
23                 in the event of activation of emergency healthcare  
24                 coverage.

1           “(2) OUTREACH AND PUBLIC EDUCATION CAM-  
2           PAIGN.—The Secretary shall conduct an outreach  
3           and public education campaign to inform healthcare  
4           providers and the general public about the avail-  
5           ability of emergency healthcare coverage under this  
6           section during the period of the emergency. Such  
7           campaign shall include—

8                   “(A) an explanation of the emergency  
9                   healthcare coverage program under this section;

10                   “(B) claim forms and instructions for  
11                   healthcare providers to use when providing cov-  
12                   ered services during the emergency period; and

13                   “(C) special outreach initiatives to vulner-  
14                   able and hard-to-reach populations.

15           “(3) AUTHORIZATION OF APPROPRIATIONS.—  
16           There is authorized to be appropriated for each fis-  
17           cal year (beginning with fiscal year 2009)  
18           \$7,000,000 to carry out paragraphs (1) and (2) dur-  
19           ing the fiscal year.

20           “(i) APPLICATION OF POLICIES UNDER OTHER FED-  
21           ERAL HEALTHCARE PROGRAMS.—As specified in sub-  
22           sections (c) through (e), the Secretary may adopt in whole  
23           or in part the coverage, reimbursement, provider enroll-  
24           ment, and other policies used under the Medicare program  
25           and other Federal healthcare programs in administering

1 emergency healthcare services under this section to the ex-  
2 tent consistent with this section.”.

3 (b) APPLICATION OF PUBLIC HEALTH EMERGENCY  
4 FUND.—Section 319(b)(1) of such Act (42 U.S.C.  
5 247d(b)(1)) is amended—

6 (1) by inserting “and section 319K–1” after  
7 “subsection (a)”; and

8 (2) by striking “such subsection” and inserting  
9 “subsection (a)”.

○