

110TH CONGRESS
1ST SESSION

H. R. 882

To amend title XVIII of the Social Security Act to improve access to emergency medical services and the quality of care furnished in emergency departments of hospitals and critical access hospitals by establishing a bipartisan commission to examine factors that affect the effective delivery of such services, by providing for additional payments for certain physician services furnished in such emergency departments, and by requiring reports on certain emergency department information as a condition of participation in the Medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2007

Mr. GORDON of Tennessee (for himself, Mr. SESSIONS, Mr. ALLEN, Ms. JACKSON-LEE of Texas, Mr. HAYES, Mr. ENGLISH of Pennsylvania, Mr. McNULTY, Mr. COHEN, Mrs. MCCARTHY of New York, Mrs. CAPPs, Mr. CHANDLER, Mr. SENSENBRENNER, Mr. LARSEN of Washington, Mr. HOLT, Mr. PRICE of Georgia, Mr. McCAUL of Texas, Mr. DENT, Mr. SOUDER, and Ms. ROYBAL-ALLARD) 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 amend title XVIII of the Social Security Act to improve access to emergency medical services and the quality of care furnished in emergency departments of hospitals and critical access hospitals by establishing a bipartisan commission to examine factors that affect the effective delivery of such services, by providing for additional pay-

ments for certain physician services furnished in such emergency departments, and by requiring reports on certain emergency department information as a condition of participation in the Medicare program, and for other purposes.

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 (a) IN GENERAL.—This Act may be cited as the “Ac-
 5 cess to Emergency Medical Services Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents of
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—BIPARTISAN COMMISSION ON ACCESS TO EMERGENCY
 MEDICAL SERVICES

Sec. 101. Establishment.

Sec. 102. Duties.

Sec. 103. Membership.

Sec. 104. Staff and consultants.

Sec. 105. Powers.

Sec. 106. Report on ways to promote the effective delivery of emergency med-
 ical services.

Sec. 107. Termination.

Sec. 108. Authorization of appropriations.

TITLE II—ADDITIONAL PAYMENTS FOR CERTAIN PHYSICIANS’
 SERVICES

Sec. 201. Additional payments for certain physicians’ services.

TITLE III—HOSPITAL AND CRITICAL ACCESS REPORTING ON
 CERTAIN EMERGENCY DEPARTMENT INFORMATION

Sec. 301. Requirement to report information on certain emergency department
 information as condition of Medicare participation.

1 **TITLE I—BIPARTISAN COMMIS-**
2 **SION ON ACCESS TO EMER-**
3 **GENCY MEDICAL SERVICES**

4 **SEC. 101. ESTABLISHMENT.**

5 There is established the United States Bipartisan
6 Commission on Access to Emergency Medical Services (in
7 this title referred to as the “Commission”).

8 **SEC. 102. DUTIES.**

9 (a) IN GENERAL.—The Commission shall perform
10 the following duties:

11 (1) Identify and examine factors (including fac-
12 tors described in subsection (b)) in the health care
13 delivery, financing, and legal systems that affect the
14 effective delivery of screening and stabilization serv-
15 ices furnished in hospitals that have emergency de-
16 partments pursuant to EMTALA.

17 (2) Make specific recommendations to Con-
18 gress, taking into account the considerations speci-
19 fied in subsection (c), with respect to Federal pro-
20 grams, policies, and financing needed to assure the
21 availability of such screening and stabilization serv-
22 ices and the coordination of State, local, and Federal
23 programs for responding to disasters and emer-
24 gencies.

1 (b) FACTORS CONSIDERED.—For purposes of sub-
2 section (a)(1), the Commission shall examine at least the
3 following factors, with respect to emergency departments
4 of hospitals:

5 (1) Crowded conditions in such emergency de-
6 partments and the practice of boarding patients who
7 require admission, or have already been admitted, to
8 a hospital for extended periods in such departments
9 and in the areas adjacent to such departments.

10 (2) With respect to individuals who present at
11 such emergency departments for the treatment of
12 emergency medical conditions, any barriers that im-
13 pede access within a reasonable period of time to
14 screening, stabilization services, and other appro-
15 priate consultations of physicians listed by the hos-
16 pital on its list of on-call physicians.

17 (3) The potential legal and financial liability of
18 health care professionals and providers with respect
19 to services required to be furnished to patients
20 under EMTALA, relating to the requirement of
21 emergency departments to screen and appropriately
22 treat or transfer individuals presenting themselves at
23 the departments with emergency medical conditions
24 and women in labor.

1 (c) CONSIDERATIONS IN RECOMMENDATIONS.—In
2 making recommendations under subsection (a)(2), the
3 Commission shall consider the following:

4 (1) Any changes in Federal law that would be
5 necessary to promote the effective delivery of emer-
6 gency medical services.

7 (2) The amount and sources of Federal funds
8 to finance such changes.

9 (3) The advantages and disadvantages of alter-
10 native approaches to protecting health care profes-
11 sionals and providers from legal and financial liabil-
12 ity with respect to services required to be furnished
13 to individuals under EMTALA, such as establishing
14 Federal limits on such liability—

15 (A) that would supersede any conflicting
16 State law related to such liability; and

17 (B) which may be the same as appropriate
18 limits on liability that are established for public
19 health professionals.

20 (4) The most efficient and effective manner of
21 coordinating State, local, and Federal programs for
22 responding to disasters and emergencies, with re-
23 spect to the delivery of emergency medical services.

24 (d) DEFINITIONS.—For purposes of this title:

1 (1) HOSPITAL.—The term “hospital” has the
2 meaning given such term in section 1867(e)(5) of
3 the Social Security Act (42 U.S.C. 1395dd).

4 (2) EMTALA.—The term “EMTALA” means
5 section 1867 of the Social Security Act (42 U.S.C.
6 1395dd).

7 **SEC. 103. MEMBERSHIP.**

8 (a) APPOINTMENT.—

9 (1) The Commission shall be composed of 18
10 members, who shall be appointed not later than the
11 date that is 60 days after the date of the enactment
12 of this Act and in accordance with paragraph (2), as
13 follows:

14 (A) The President shall appoint six mem-
15 bers of the Commission.

16 (B) The Speaker of the House of Rep-
17 resentatives, after consultation with the minor-
18 ity leader of the House of Representatives, shall
19 appoint six members of the Commission.

20 (C) The majority leader of the Senate,
21 after consultation with the minority leader of
22 the Senate, shall appoint six members of the
23 Commission.

24 (2) Of the members appointed under paragraph
25 (1), the President, the Speaker of the House of Rep-

1 representatives, and the majority leader of the Senate
2 shall each appoint as members of the commission—

3 (A) two individuals who represent physi-
4 cians and other health care professionals who
5 provide emergency medical services;

6 (B) two individuals who are elected or ap-
7 pointed Federal, State, or local officials and
8 who are involved in issues and programs related
9 to the provision of emergency medical services;
10 and

11 (C) two health care consumer advocates.

12 (b) CHAIRMAN AND VICE CHAIRMEN.—The Commis-
13 sion shall elect a chairman and four vice chairmen from
14 among its members.

15 (c) TERMS.—Each member shall be appointed for the
16 life of the Commission.

17 (d) VACANCIES.—Any member appointed to fill a va-
18 cancy occurring before the expiration of the term for which
19 the member's predecessor was appointed shall be ap-
20 pointed only for the remainder of that term. A member
21 may serve after the expiration of that member's term until
22 a successor has taken office. Any vacancy in the member-
23 ship of the Commission shall be filled in the manner in
24 which the original appointment was made and shall not

1 affect the power of the remaining members to execute the
2 duties of the Commission.

3 (e) COMPENSATION.—

4 (1) IN GENERAL.—Members of the Commission
5 shall serve without pay.

6 (2) TRAVEL EXPENSES.—All members of the
7 Commission shall be reimbursed for travel and per
8 diem in lieu of subsistence expenses during the per-
9 formance of duties of the Commission while away
10 from their homes or regular places of business, in
11 accordance with subchapter I of chapter 57 of title
12 5, United States Code.

13 (f) QUORUM.—A quorum shall consist of nine mem-
14 bers of the Commission, except that six or more members
15 may conduct a hearing under section 105(a).

16 (g) MEETINGS.—The Commission shall meet at the
17 call of its chairman or a majority of its members.

18 **SEC. 104. STAFF AND CONSULTANTS.**

19 (a) STAFF.—The Commission may appoint and de-
20 termine the compensation of such staff as may be nec-
21 essary to carry out the duties of the Commission. Such
22 appointments and compensation may be made without re-
23 gard to the provisions of title 5, United States Code, that
24 govern appointments in the competitive services, and the
25 provisions of chapter 51 and subchapter III of chapter 53

1 of such title that relate to classifications and the General
2 Schedule pay rates.

3 (b) CONSULTANTS.—The Commission may procure
4 such temporary and intermittent services of experts and
5 consultants as the Commission determines to be necessary
6 to carry out the duties of the Commission, in accordance
7 with section 3109(b) of title 5, United States Code, but
8 at rates for individuals not to exceed the daily equivalent
9 of the maximum annual rate of basic pay payable for
10 grade GS–15 of the General Schedule under section 5332
11 of such title.

12 (c) DETAIL OF FEDERAL EMPLOYEES.—Upon the
13 request of the Commission, the head of any Federal agen-
14 cy is authorized to detail, without reimbursement to the
15 agency, any of the personnel of such agency to the Com-
16 mission to assist the Commission in carrying out its du-
17 ties. Any such detail shall not interrupt or otherwise affect
18 the civil service status or privileges of such personnel.

19 **SEC. 105. POWERS.**

20 (a) HEARINGS AND OTHER ACTIVITIES.—The Com-
21 mission may, for the purpose of carrying out this Act, hold
22 hearings, sit and act at times and places, take testimony,
23 and receive evidence as the Commission determines nec-
24 essary to carry out its duties. The Commission may ad-

1 minister oaths or affirmations to witnesses appearing be-
2 fore it.

3 (b) STUDIES BY GOVERNMENT ACCOUNTABILITY OF-
4 FICE.—Upon the request of the Commission, the Comp-
5 troller General shall conduct such studies or investigations
6 as the Commission determines to be necessary to carry
7 out its duties.

8 (c) COST ESTIMATES BY CONGRESSIONAL BUDGET
9 OFFICE.—

10 (1) DUTY TO PROVIDE REQUESTED ESTI-
11 MATES.—Upon the request of the Commission, the
12 Director of the Congressional Budget Office shall
13 provide to the Commission such cost estimates as
14 the Commission determines to be necessary to carry
15 out its duties.

16 (2) REIMBURSEMENT FOR DEVELOPMENT OF
17 COST ESTIMATES.—The Commission shall reimburse
18 the Director of the Congressional Budget Office for
19 expenses relating to the employment in the office of
20 the Director of such additional staff as may be nec-
21 essary for the Director to comply with requests by
22 the Commission under paragraph (1).

23 (d) TECHNICAL ASSISTANCE.—Upon the request of
24 the Commission, the head of a Federal agency shall pro-
25 vide such technical assistance to the Commission as the

1 Commission determines to be necessary to carry out its
2 duties.

3 (e) USE OF MAILS.—The Commission may use the
4 United States mails in the same manner and under the
5 same conditions as Federal agencies, and shall, for pur-
6 poses of the frank, be considered a commission of Con-
7 gress as described in section 3215 of title 39, United
8 States Code.

9 (f) OBTAINING INFORMATION.—The Commission
10 may secure directly from any Federal agency information
11 necessary to enable it to carry out its duties, if the infor-
12 mation may be disclosed under section 552 of title 5,
13 United States Code. Upon request of the Chairman of the
14 Commission, the head of such agency shall furnish such
15 information to the Commission.

16 (g) ADMINISTRATIVE SUPPORT SERVICES.—Upon
17 the request of the Commission, the Administrator of Gen-
18 eral Services shall provide to the Commission on a reim-
19 bursable basis such administrative support services as the
20 Commission may request.

21 (h) ACCEPTANCE OF DONATIONS.—The Commission
22 may accept, use, and dispose of gifts and donations of
23 services or property.

24 (i) PRINTING.—For purposes of costs relating to
25 printing and binding, including the costs of personnel de-

1 tailed from the Government Printing Office, the Commis-
2 sion shall be deemed to be a committee of the Congress.

3 **SEC. 106. REPORT ON WAYS TO PROMOTE THE EFFECTIVE**
4 **DELIVERY OF EMERGENCY MEDICAL SERV-**
5 **ICES.**

6 Not later than the date that is 18 months after the
7 date of the enactment of this Act, the Commission shall
8 submit to Congress a report containing its findings and
9 recommendations described in section 102(a), including
10 recommendations to remove any identified barriers to the
11 effective delivery of emergency medical services in the
12 United States and detailed recommendations for appro-
13 priate legislative initiatives to remove such barriers.

14 **SEC. 107. TERMINATION.**

15 The Commission shall terminate 30 days after the
16 date of submission of the report required in section 106.

17 **SEC. 108. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums
19 as may be necessary to carry out this title.

1 **TITLE II—ADDITIONAL PAY-**
2 **MENTS FOR CERTAIN PHYSI-**
3 **CIANS’ SERVICES**

4 **SEC. 201. ADDITIONAL PAYMENTS FOR CERTAIN PHYSI-**
5 **CIANS’ SERVICES.**

6 (a) IN GENERAL.— Section 1833 of the Social Secu-
7 rity Act (42 U.S.C. 1395l) is amended by adding at the
8 end the following new subsection:

9 “(v) ADDITIONAL PAYMENT FOR PHYSICIANS’ SERV-
10 ICES FURNISHED PURSUANT TO EMTALA.—In the case
11 of physicians’ services furnished on or after January 1,
12 2008, in the emergency department of a hospital (as de-
13 fined in subsection (e)(5) of section 1867) pursuant to
14 such section to an individual covered under the insurance
15 program established under this part, in addition to the
16 amount of payment that will otherwise be made for such
17 services under this part, there shall also be paid to the
18 physician or other person involved (or in the cases de-
19 scribed in subparagraph (A) of section 1842(b)(6), to an
20 employer or other entity involved) from the Federal Sup-
21 plementary Trust Fund an amount equal to 10 percent
22 of the payment amount for the services under this part
23 (determined without regard to any additional amounts
24 paid under subsection (m) or (u)).”

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to services furnished on or after
3 January 1, 2008.

4 **TITLE III—HOSPITAL AND CRIT-**
5 **ICAL ACCESS REPORTING ON**
6 **CERTAIN EMERGENCY DE-**
7 **PARTMENT INFORMATION**

8 **SEC. 301. REQUIREMENT TO REPORT INFORMATION ON**
9 **CERTAIN EMERGENCY DEPARTMENT INFOR-**
10 **MATION AS CONDITION OF MEDICARE PAR-**
11 **TICIPATION.**

12 (a) REQUIREMENT.—Section 1866(a)(1) of the Social
13 Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

14 (1) by striking “and” at the end of subpara-
15 graph (U);

16 (2) by striking the period at the end of sub-
17 paragraph (V) and inserting “, and”; and

18 (3) by inserting after subparagraph (V) the fol-
19 lowing new subparagraph:

20 “(W) in the case of a hospital (as defined
21 in section 1867(e)(5)) that has an emergency
22 department, to report to the Secretary informa-
23 tion in accordance with subsection (k)(1).”.

24 (b) REPORTING BY HOSPITALS AND CRITICAL AC-
25 CESS HOSPITALS OF EMERGENCY DEPARTMENT INFOR-

1 MATION AND PUBLIC DISCLOSURE OF SUCH INFORMA-
2 TION.—Section 1866 of such Act (42 U.S.C. 1395cc) is
3 further amended by adding at the end the following new
4 subsection:

5 “(k) REPORTING BY HOSPITALS OF EMERGENCY DE-
6 PARTMENT INFORMATION AND PUBLIC DISCLOSURE OF
7 SUCH INFORMATION.—

8 “(1) ANNUAL REPORTING REQUIREMENT.—

9 “(A) IN GENERAL.—For purposes of sub-
10 section (a)(1)(W), a hospital (as defined in sec-
11 tion 1867(e)(5)) that has an emergency depart-
12 ment shall annually submit to the Secretary a
13 report (beginning for 2008) on the average ad-
14 mission period described in subparagraph (B)
15 at such hospital for such year.

16 “(B) ADMISSION PERIOD DESCRIBED.—
17 The admission period described in this subpara-
18 graph, with respect to a hospital (as so defined)
19 that has an emergency department, is the pe-
20 riod beginning at the time of admission to the
21 hospital of a patient who presents to such de-
22 partment and ending at the time at which such
23 patient arrives at the patient’s definitive inpa-
24 tient destination in the hospital, which may not
25 be an area immediately outside of the emer-

1 agency department used to temporarily hold such
2 patient until such patient arrives at the defini-
3 tive inpatient destination.

4 “(C) ADMINISTRATION.—Each report sub-
5 mitted under subparagraph (A) shall be in such
6 form and manner and at such time as the Sec-
7 retary specifies.

8 “(2) PUBLIC DISCLOSURE OF INFORMATION.—
9 The Secretary shall promptly post, on the official
10 public Internet site of the Department of Health and
11 Human Services, the information reported under
12 paragraph (1)(A). Such information shall be set
13 forth in a manner that promotes comparison of such
14 information among hospitals.”.

15 (c) DESIGNATION OF EMERGENCY DEPARTMENT
16 QUALITY MEASURE.—

17 (1) IN GENERAL.—Not later than January 1,
18 2010, based on information reported under section
19 1866(k)(1)(A) of the Social Security Act for 2008
20 and after consultation with experts in emergency
21 care, inpatient critical care, hospital operations man-
22 agement, nursing, and other relevant disciplines, the
23 Secretary of Health and Human Services shall—

24 (A) determine whether or not a quality
25 measure described in paragraph (2) should be

1 developed for purposes of inclusion as a per-
2 formance measure required to be reported by
3 hospitals under section 1886(b)(3)(B)(viii) of
4 the Social Security Act (42 U.S.C.
5 1395ww(b)(3)(B)(viii)) or section 1833(t)(17)
6 of such Act (42 U.S.C. 1395l(t)(17)), as added
7 by section 109(a)(1)(B) of the Medicare Im-
8 provements and Extension Act of 2006 (division
9 B of Public Law 109–432), as appropriate, to
10 improve the quality of health care delivery; and

11 (B) in the case that the Secretary deter-
12 mines under subparagraph (A) that such a
13 quality measure should be developed for such
14 inclusion, develop such a quality measure and
15 specify the date on which such quality measure
16 will be so included for purposes of such sec-
17 tions.

18 (2) QUALITY MEASURE DESCRIBED.—The qual-
19 ity measure described in this paragraph, with re-
20 spect to a hospital for a year, is a measure with re-
21 spect to the average admission period described in
22 section 1866(k)(1)(B) of the Social Security Act, as
23 added by subsection (b) at such hospital for such
24 year.

○