

111TH CONGRESS  
1ST SESSION

# H. R. 1188

To amend title XVIII of the Social Security Act to improve access to emergency medical services and the quality and efficiency 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 establishing a Centers for Medicare & Medicaid Services Working Group, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2009

Mr. GORDON of Tennessee (for himself, Mr. SESSIONS, Mr. MCGOVERN, Mr. THOMPSON of California, Mr. GRAVES, Mr. WILSON of Ohio, Mr. LANGEVIN, Mr. HOLT, Mr. RYAN of Ohio, Mr. FRELINGHUYSEN, Mr. HINOJOSA, Mr. SCHIFF, Ms. DELAURO, Mr. FARR, Mr. CHANDLER, Mr. LOBIONDO, Mr. MCCAUL, Mr. ROGERS of Michigan, Mrs. BLACKBURN, Mr. KLEIN of Florida, Mr. DENT, Mr. KUCINICH, Mr. CARSON of Indiana, Mr. KENNEDY, Mr. BOUSTANY, Mr. SIRES, Mr. LARSON of Connecticut, Mr. CAPUANO, Mr. SENSENBRENNER, Mr. MARCHANT, Mr. GERLACH, Mr. COURTNEY, Mr. SOUDER, Ms. ZOE LOFGREN of California, Mr. MASSA, Ms. MCCOLLUM, Mr. HARE, Ms. SCHWARTZ, Mr. BISHOP of New York, Mr. HINCHEY, Mr. BURGESS, Mrs. BACHMANN, Mr. LANCE, Mr. GENE GREEN of Texas, Mr. PRICE of North Carolina, Mr. PASCRELL, Mr. CASTLE, Mr. KILDEE, Mr. WILSON of South Carolina, Mr. WU, Mr. SMITH of New Jersey, and Mr. PLATTS) 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 improve

access to emergency medical services and the quality and efficiency 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 establishing a Centers for Medicare & Medicaid Services Working Group, 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 2009”.

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—CENTERS FOR MEDICARE & MEDICAID SERVICES  
 WORKING GROUP TO IMPROVE EMERGENCY CARE EFFICIENCY

Sec. 301. Centers for Medicare & Medicaid Services Working Group to improve  
 emergency care efficiency.

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.

14 (4) The most efficient and effective manner of  
15 coordinating State, local, and Federal programs for  
16 responding to disasters and emergencies, with re-  
17 spect to the delivery of emergency medical services.

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

19 (1) HOSPITAL.—The term “hospital” means a  
20 hospital (as defined in subsection (e) of section 1861  
21 of the Social Security Act (42 U.S.C. 1395x)) and  
22 a critical access hospital (as defined in subsection  
23 (mm) of such section).

1           (2) EMTALA.—The term “EMTALA” means  
2           section 1867 of the Social Security Act (42 U.S.C.  
3           1395dd).

4 **SEC. 103. MEMBERSHIP.**

5           (a) APPOINTMENT.—

6           (1) The Commission shall be composed of 24  
7           members, who shall be appointed not later than the  
8           date that is 60 days after the date of the enactment  
9           of this Act and in accordance with paragraph (2), as  
10          follows:

11                   (A) The President shall appoint 8 mem-  
12                   bers of the Commission.

13                   (B) The Speaker of the House of Rep-  
14                   resentatives, after consultation with the minor-  
15                   ity leader of the House of Representatives, shall  
16                   appoint 8 members of the Commission.

17                   (C) The majority leader of the Senate,  
18                   after consultation with the minority leader of  
19                   the Senate, shall appoint 8 members of the  
20                   Commission.

21           (2) Of the members appointed under paragraph  
22           (1), the President, the Speaker of the House of Rep-  
23           resentatives, and the majority leader of the Senate  
24           shall each appoint as members of the commission—

1 (A) two individuals who represent emer-  
2 gency physicians, emergency nurses, and other  
3 health care professionals who provide emer-  
4 gency medical services;

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

9 (C) two health care consumer advocates;  
10 and

11 (D) two individuals who represent hos-  
12 pitals and health systems that provide emer-  
13 gency medical services.

14 (b) CHAIRPERSON AND VICE CHAIRPERSON.—The  
15 Commission shall elect a chairperson and 4 vice chair-  
16 persons from among its members.

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

19 (d) VACANCIES.—Any member appointed to fill a va-  
20 cancy occurring before the expiration of the term for which  
21 the member's predecessor was appointed shall be ap-  
22 pointed only for the remainder of that term. A member  
23 may serve after the expiration of that member's term until  
24 a successor has taken office. Any vacancy in the member-  
25 ship of the Commission shall be filled in the manner in

1 which the original appointment was made and shall not  
2 affect the power of the remaining members to execute the  
3 duties of the Commission.

4 (e) COMPENSATION.—

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

7 (2) TRAVEL EXPENSES.—All members of the  
8 Commission shall be reimbursed for travel and per  
9 diem in lieu of subsistence expenses during the per-  
10 formance of duties of the Commission while away  
11 from their homes or regular places of business, in  
12 accordance with subchapter I of chapter 57 of title  
13 5, United States Code.

14 (f) QUORUM.—A quorum shall consist of 9 members  
15 of the Commission, except that 6 or more members may  
16 conduct a hearing under section 105(a).

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

19 **SEC. 104. STAFF AND CONSULTANTS.**

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

1 provisions of chapter 51 and subchapter III of chapter 53  
2 of such title that relate to classifications and the General  
3 Schedule pay rates.

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

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

20 **SEC. 105. POWERS.**

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

1 administer oaths or affirmations to witnesses appearing  
2 before 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 Chairperson of  
14 the Commission, the head of such agency shall furnish  
15 such 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 and the Secretary of Health and  
9 Human Services a report containing its findings and rec-  
10 ommendations described in section 102(a), including rec-  
11 ommendations to remove any identified barriers to the ef-  
12 fective delivery of emergency medical services in the  
13 United States and detailed recommendations for appro-  
14 priate legislative initiatives to remove such barriers.

15 **SEC. 107. TERMINATION.**

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

18 **SEC. 108. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated such sums  
20 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 “(x) ADDITIONAL PAYMENT FOR PHYSICIANS’ SERV-  
10 ICES FURNISHED PURSUANT TO EMTALA.—In the case  
11 of physicians’ services furnished in the emergency depart-  
12 ment of a hospital (as defined in subsection (e)(5) of sec-  
13 tion 1867) pursuant to such section to an individual cov-  
14 ered under the insurance program established under this  
15 part, in addition to the amount of payment that will other-  
16 wise be made for such services under this part, there shall  
17 also be paid to the physician or other person involved (or  
18 in the cases described in subparagraph (A) of section  
19 1842(b)(6), to an employer or other entity involved) from  
20 the Federal Supplementary Trust Fund an amount equal  
21 to 10 percent of the payment amount for the services  
22 under this part (determined without regard to any addi-  
23 tional amounts 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 the date of the enactment of this Act.

4 **TITLE III—CENTERS FOR MEDI-**  
5 **CARE & MEDICAID SERVICES**  
6 **WORKING GROUP TO IM-**  
7 **PROVE EMERGENCY CARE EF-**  
8 **FICIENCY**

9 **SEC. 301. CENTERS FOR MEDICARE & MEDICAID SERVICES**  
10 **WORKING GROUP TO IMPROVE EMERGENCY**  
11 **CARE EFFICIENCY.**

12 (a) WORKING GROUP.—

13 (1) IN GENERAL.—The Secretary of Health and  
14 Human Services, acting through the Administrator  
15 of the Centers for Medicare & Medicaid Services,  
16 shall convene a working group (in this section re-  
17 ferred to as the “CMS working group”) that in-  
18 cludes experts in emergency care, inpatient critical  
19 care, hospital operations management, nursing, and  
20 other relevant disciplines. The members of the CMS  
21 working group shall be appointed by the Adminis-  
22 trator.

23 (2) DUTIES.—

24 (A) DEVELOPMENT OF STANDARDS,  
25 GUIDELINES, MEASURES, AND INCENTIVES.—

1           The CMS working group shall develop boarding  
2           and diversion standards, guidelines, measures,  
3           and incentives for hospitals, and, with respect  
4           to the development of measures, the CMS work-  
5           ing group shall consider measures developed or  
6           under development by other entities. The CMS  
7           working group shall send any measures devel-  
8           oped under this subparagraph to the entity with  
9           a contract under section 1890(a) of the Social  
10          Security Act (42 U.S.C. 1395aaa(a)) for con-  
11          sideration, and shall take into account whether  
12          such measures have been recommended or  
13          adopted for use by a relevant quality alliance  
14          identified by the Secretary (such as the Hos-  
15          pital Quality Alliance).

16                 (B) IDENTIFICATION OF BARRIERS.—The  
17          CMS working group shall identify barriers con-  
18          tributing to delays in timely processing of pa-  
19          tients requiring admission as an inpatient of a  
20          hospital who initially sought care through the  
21          emergency department of the hospital.

22                 (C) IDENTIFICATION OF BEST PRAC-  
23          TICES.—The CMS working group shall identify  
24          best practices to improve patient flow within  
25          hospitals. In order to carry out the preceding

1 sentence, the Agency for Healthcare Research  
2 and Quality shall examine available evidence of  
3 best practices to improve patient flow within  
4 hospitals and transmit any findings from that  
5 examination to the CMS working group. The  
6 CMS working group shall take into account the  
7 findings of the Agency in identifying such best  
8 practices under this subparagraph.

9 (D) REPORT.—Not later than the date  
10 that is 1 year after the date of the enactment  
11 of this Act, the CMS working group shall sub-  
12 mit to Congress and the Secretary of Health  
13 and Human Services a report containing a de-  
14 tailed description of the standards, guidelines,  
15 measures, and incentives developed under sub-  
16 paragraph (A), the barriers identified under  
17 subparagraph (B), and the best practices iden-  
18 tified under subparagraph (C), together with  
19 recommendations for such legislative and ad-  
20 ministrative actions as the CMS working group  
21 considers appropriate.

22 (3) INFORMATION.—In carrying out its duties  
23 under paragraph (2), the CMS working group may  
24 request such information from hospitals that the  
25 CMS working group considers appropriate.

1           (4) TERMINATION.—The CMS working group  
2           shall terminate 30 days after the date of submission  
3           of the report required in paragraph (2)(D).

4           (b) DISCLOSURE OF FAILURE TO REPORT.—The  
5           Secretary of Health and Human Services shall establish  
6           a mechanism (such as publication on an Internet website  
7           or in the Federal Register, or both) to disclose to the pub-  
8           lic information regarding any hospital that fails to report  
9           information requested by the CMS working group under  
10          subsection (a)(3) and the type of information the hospital  
11          failed to report.

12          (c) HOSPITAL DEFINED.—In this section, the term  
13          “hospital” means a hospital (as defined in subsection (e)  
14          of section 1861 of the Social Security Act (42 U.S.C.  
15          1395x)) and a critical access hospital (as defined in sub-  
16          section (mm) of such section).

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