

111TH CONGRESS
1ST SESSION

H. R. 1998

To improve access to emergency medical services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 2009

Mr. GORDON of Tennessee (for himself and Mr. DENT) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To improve access to emergency medical services, 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.**

4 This Act may be cited as the “Health Care Safety
5 Net Enhancement Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) As noted in the 2006 Institute of Medicine
9 report, “The Future of Emergency Care”, the avail-
10 ability of on-call specialists is an acute problem in
11 emergency departments and trauma centers requir-

1 ing attention to identified barriers such as liability
2 reform.

3 (2) Also acknowledged in the 2006 IOM report,
4 emergency and trauma care is delivered in an inher-
5 ently challenging environment, often requiring emer-
6 gency physicians and trauma surgeons to make life-
7 and-death decisions with little time or information or
8 without a standing relationship with the patient. For
9 these reasons, physicians providing emergency and
10 trauma care face extraordinary exposure to medical
11 liability claims, which are far higher than for those
12 physicians who do not provide such care.

13 (3) Younger surgeons, who often take the on-
14 call shifts at trauma centers, are leaving States with
15 the most severe liability problems. For example, ac-
16 cording to the Project on Medical Liability in Penn-
17 sylvania, funded by the Pew Charitable Trust, resi-
18 dent physicians in high-risk fields such as general
19 surgery and emergency medicine named malpractice
20 costs as the reason for leaving the State three times
21 more often than any other factor.

22 (4) Further, an American Hospital Association
23 study found that more than 50 percent of hospitals
24 in medical liability crisis States now have trouble re-
25 cruiting physicians, and 40 percent say the liability

1 situation has resulted in less physician coverage for
2 their emergency departments. The crisis has even
3 forced the closure of trauma centers in Florida, Mis-
4 sissippi, Nevada, Pennsylvania, and West Virginia at
5 various times in recent years.

6 (5) Specialties that have experienced particu-
7 larly high premium increases, including neuro-
8 surgery, orthopaedics, and general surgery, are also
9 among those services that emergency patients most
10 frequently require.

11 (6) According to a report from the General Ac-
12 countability Office, soaring medical liability pre-
13 miums have led specialists to reduce or stop on-call
14 services to hospital emergency departments, seri-
15 ously inhibiting patient access to emergency surgical
16 services.

17 (7) The Department of Health and Human
18 Services' congressionally created EMTALA technical
19 advisory group (TAG) recognized that professional
20 liability insurance is a concern for providers and
21 that having protections would increase coverage in
22 the emergency department. The TAG recommended
23 that the Department of Health and Human Services
24 act to support amending the EMTALA statute to in-
25 clude liability protection for hospitals, physicians,

1 and other licensed independent practitioners who
2 provide services to patients covered by EMTALA.

3 **SEC. 3. CONSTITUTIONAL AUTHORITY.**

4 The constitutional authority upon which this Act
5 rests is the power of the Congress to provide for the gen-
6 eral welfare, to regulate commerce, and to make all laws
7 which shall be necessary and proper for carrying into exe-
8 cution Federal powers, as enumerated in section 8 of arti-
9 cle I of the Constitution of the United States.

10 **SEC. 4. PROTECTION FOR EMERGENCY AND RELATED**
11 **SERVICES FURNISHED PURSUANT TO**
12 **EMTALA.**

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

15 (1) in paragraph (4), by striking “An entity”
16 and inserting “Subject to paragraph (6), an entity”;
17 and

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

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

20 “(i) an entity described in subparagraph
21 (B) shall be considered to be an entity de-
22 scribed in paragraph (4); and

23 “(ii) the provisions of this section shall
24 apply to an entity described in subparagraph
25 (B) in the same manner as such provisions

1 apply to an entity described in paragraph (4),
2 except that—

3 “(I) notwithstanding paragraph
4 (1)(B), the deeming of any entity described
5 in subparagraph (B), or of an officer, gov-
6 erning board member, employee, con-
7 tractor, or on-call provider of such an enti-
8 ty, to be an employee of the Public Health
9 Service for purposes of this section shall
10 apply only with respect to items and serv-
11 ices that are furnished to an individual
12 pursuant to section 1867 of the Social Se-
13 curity Act and to post stabilization services
14 (as defined in subparagraph (D)) furnished
15 to such an individual;

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

1 the physician or group, or enlists the phy-
2 sician or physician group as an on-call pro-
3 vider;

4 “(III) notwithstanding paragraph (3),
5 this paragraph shall apply only with re-
6 spect to causes of action arising from acts
7 or omissions that occur on or after Janu-
8 ary 1, 2010;

9 “(IV) paragraph (5) shall not apply to
10 a physician or physician group described in
11 subparagraph (B)(ii);

12 “(V) the Attorney General, in con-
13 sultation with the Secretary, shall make
14 separate estimates under subsection (k)(1)
15 with respect to entities described in sub-
16 paragraph (B) and entities described in
17 paragraph (4) (other than those described
18 in subparagraph (B)), and the Secretary
19 shall establish separate funds under sub-
20 section (k)(2) with respect to such groups
21 of entities, and any appropriations under
22 this subsection for entities described in
23 subparagraph (B) shall be separate from
24 the amounts authorized by subsection
25 (k)(2);

1 “(VI) notwithstanding subsection
2 (k)(2), the amount of the fund established
3 by the Secretary under such subsection
4 with respect to entities described in sub-
5 paragraph (B) may exceed a total of
6 \$10,000,000 for a fiscal year; and

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

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

11 “(i) a hospital or an emergency depart-
12 ment to which section 1867 of the Social Secu-
13 rity Act applies; and

14 “(ii) a physician or physician group that is
15 employed by, is under contract with, or is an
16 on-call provider of such hospital or emergency
17 department, to furnish items and services to in-
18 dividuals under such section.

19 “(C) For purposes of this paragraph, the term
20 ‘on-call provider’ means a physician or physician
21 group that—

22 “(i) has full, temporary, or locum tenens
23 staff privileges at a hospital or emergency de-
24 partment to which section 1867 of the Social
25 Security Act applies; and

1 “(ii) is not employed by or under contract
2 with such hospital or emergency department,
3 but agrees to be ready and available to provide
4 services pursuant to section 1867 of the Social
5 Security Act or post-stabilization services to in-
6 dividuals being treated in the hospital or emer-
7 gency department with or without compensation
8 from the hospital or emergency department.

9 “(D) For purposes of this paragraph, the term
10 ‘post stabilization services’ means, with respect to an
11 individual who has been treated by an entity de-
12 scribed in subparagraph (B) for purposes of com-
13 plying with section 1867 of the Social Security Act,
14 services that are—

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

17 “(ii) provided after the individual is sta-
18 bilized in order to maintain the stabilized condi-
19 tion or to improve or resolve the condition of
20 the individual.

21 “(E)(i) Nothing in this paragraph (or in any
22 other provision of this section as such provision ap-
23 plies to entities described in subparagraph (B) by
24 operation of subparagraph (A)) shall be construed as
25 authorizing or requiring the Secretary to make pay-

1 ments to such entities, the budget authority for
2 which is not provided in advance by appropriation
3 Acts.

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

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