

115TH CONGRESS
1ST SESSION

S. 196

To provide for a Public Health Emergency Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2017

Mr. CASSIDY (for himself, Mr. SCHATZ, Mr. RUBIO, Mr. DURBIN, Mr. NELSON, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for a Public Health Emergency Fund, 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 “Public Health Emer-
5 gency Response and Accountability Act”.

6 **SEC. 2. PUBLIC HEALTH EMERGENCIES.**

7 (a) IN GENERAL.—Section 319 of the Public Health
8 Service Act (42 U.S.C. 247d) is amended—

9 (1) in subsection (a), by striking “after con-
10 sultation” and inserting “in consultation with the

1 Assistant Secretary for Preparedness and Response
2 and”;

3 (2) by redesignating subsections (b) through (e)
4 as subsections (c) through (f), respectively;

5 (3) by inserting after subsection (a), the fol-
6 lowing:

7 “(b) REPORTING REQUIREMENTS.—

8 “(1) IN GENERAL.—Upon the determination of
9 a public health emergency under subsection (a), the
10 Secretary shall request the Assistant Secretary for
11 Preparedness and Response to convene a group of
12 Federal public health and other Federal officials
13 that shall prepare monthly reports related to such
14 emergency for the period described in paragraph (3)
15 and submit such reports to Congress.

16 “(2) CONTENTS.—The reports prepared under
17 paragraph (1) shall include—

18 “(A) in the first monthly report, the pro-
19 posed budget of the response to the emergency,
20 and, in each subsequent report, updates to such
21 budget;

22 “(B) a description of how the Secretary
23 plans to use best practices and lessons learned
24 from previous public health emergency re-
25 sponses;

1 “(C) a description of how collaboration
 2 among public health agencies and departments
 3 will be achieved, strategies for public commu-
 4 nication, and acquisition and distribution of
 5 supplies;

6 “(D) an identification of additional au-
 7 thorities needed, if any, to respond to the emer-
 8 gency; and

9 “(E) in the first monthly report, the jus-
 10 tification for triggering the public health emer-
 11 gency response.

12 “(3) PERIOD.—The period described in this
 13 paragraph is the period beginning not later than 30
 14 days after the determination of a public health emer-
 15 gency under subsection (a) and ending 30 days after
 16 the determination of the emergency terminates in
 17 accordance with such subsection.”; and

18 (4) in subsection (c) (as so redesignated)—

19 (A) in paragraph (2), by striking “Com-
 20 mittee on Commerce” and inserting “Com-
 21 mittee on Energy and Commerce”; and

22 (B) by adding at the end the following:

23 “(3) FUNDING.—

24 “(A) DEFINITIONS.—In this paragraph:

1 “(i) PUBLIC HEALTH EMERGENCY RE-
 2 LIEF.—The term ‘public health emergency
 3 relief’ means, for the purpose of clause (ii),
 4 the expenditures to address a public health
 5 emergency determined under subsection (a)
 6 from—

7 “(I) amounts made available by
 8 emergency supplemental appropria-
 9 tions to appropriations accounts of
 10 the Department of Health and
 11 Human Services to address a public
 12 health emergency (excluding funds
 13 transferred to the Department from
 14 the appropriations account for the
 15 ‘Federal Emergency Management
 16 Agency, Disaster Relief Fund’ or pur-
 17 suant to the Oil Pollution Act of
 18 1990); and

19 “(II) any amounts expended from
 20 the Public Health Emergency Fund
 21 under this subsection.

22 “(ii) TARGET AMOUNT.—The term
 23 ‘target amount’ means the amount that is
 24 the rolling annual average of expenditures
 25 for public health emergency relief over the

1 full 14 fiscal years immediately preceding
2 the fiscal year for which the determination
3 of a public health emergency is made
4 under subsection (a), excluding the highest
5 and lowest years.

6 “(B) APPROPRIATIONS.—

7 “(i) IN GENERAL.—Subject to clause
8 (iv), upon the determination of each public
9 health emergency under subsection (a),
10 there is appropriated to the Public Health
11 Emergency Fund, out of any money in the
12 Treasury not otherwise appropriated, for
13 the fiscal year of the determination, an
14 amount determined under subparagraph
15 (C), to remain available until expended,
16 which may be used in accordance with sub-
17 paragraph (D).

18 “(ii) REPORTING.—The reporting re-
19 quirements contained in subsection (b)
20 shall apply with respect to amounts appro-
21 priated under clause (i).

22 “(iii) EMERGENCY DESIGNATIONS.—

23 “(I) IN GENERAL.—Amounts ap-
24 propriated under clause (i) are des-
25 ignated as an emergency requirement

pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)).

“(II) DESIGNATION IN THE SENATE.—In the Senate, amounts appropriated under clause (i) are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

“(iv) LIMITATION.—Clause (i) shall not apply if the amount available for expenditure in the Public Health Emergency Fund, as of the date of the determination as a public health emergency under subsection (a), is equal to or greater than the target amount.

“(C) FORMULA.—

“(i) IN GENERAL.—Subject to clause (ii), the amount determined under this subparagraph shall be equal to the difference between the target amount and the amount available for expenditure in the Public Health Emergency Fund, as of the

1 date of the determination of the public
2 health emergency under subsection (a).

3 “(ii) REPORT BY OMB.—Not later
4 than 30 days after the date of enactment
5 of this paragraph, the Director of the Of-
6 fice of Management and Budget shall sub-
7 mit to the Committee on Appropriations
8 and the Committee on the Budget of the
9 Senate and the Committee on Appropria-
10 tions and the Committee on the Budget of
11 the House of Representatives, a report on
12 the rolling average calculated for purposes
13 of determining the target amount.

14 “(D) USE OF FUNDS.—

15 “(i) IN GENERAL.—Amounts appro-
16 priated to the Public Health Emergency
17 Fund under subparagraph (B) shall be
18 used by the Secretary in accordance with
19 the proposed budget described in sub-
20 section (b)(2) for any public health emer-
21 gency determined under subsection (a) that
22 has not terminated under such subsection.
23 Such funds shall be used—

24 “(I) to provide assistance for im-
25 mediate Federal, State, local, or inter-

1 national response needs with respect
2 to any public health emergency deter-
3 mined under subsection (a); and

4 “(II) for activities determined ap-
5 propriate by the Secretary to improve
6 preparedness and response to protect
7 human health for all populations in
8 any public health emergency deter-
9 mined under subsection (a).

10 “(ii) AVAILABILITY.—Amounts appro-
11 priated to the Public Health Emergency
12 Fund under subparagraph (B) shall re-
13 main available for the uses described in
14 this subparagraph so long as any public
15 health emergency is determined under sub-
16 section (a) and the determination for any
17 such emergency has not terminated under
18 such subsection.

19 “(iii) AUTHORITY.—In expending
20 funds appropriated under subparagraph
21 (B) and carrying out activities under this
22 subparagraph, the Secretary shall have the
23 authority to—

24 “(I) transfer funds and enter
25 into contracts;

1 “(II) utilize flexible hiring mech-
 2 anisms, including direct hiring author-
 3 ity and personal service contracts; ex-
 4 emptions from certain administrative
 5 restrictions (such as travel, informa-
 6 tion technology, printing and sup-
 7 plies); motor vehicle authority; and
 8 flexible compensation for responders,
 9 including overtime and danger pay;
 10 and

11 “(III) utilize flexible transaction
 12 mechanisms.”.

13 (b) EXEMPTION OF THE PUBLIC HEALTH EMER-
 14 GENCY FUND FROM SEQUESTRATION.—

15 (1) IN GENERAL.—Section 255(g)(1)(A) of the
 16 Balanced Budget and Emergency Deficit Control
 17 Act of 1985 is amended by inserting “Public Health
 18 Emergency Fund (009–91–9913).” after the item
 19 relating to “Postal Service Fund (18–4020–0–3–
 20 372).”.

21 (2) APPLICATION.—The amendment made by
 22 paragraph (1) shall apply to any sequestration order
 23 issued under such Act on or after the date of enact-
 24 ment of this section.

25 (c) GAO REPORTS.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Comp-
3 troller General of the United States, in consultation
4 with relevant Federal, State, and local government
5 entities, shall prepare and submit to the appropriate
6 committees of Congress, a report—

7 (A) reviewing the capacity of the United
8 States public health system, including the pub-
9 lic health workforce, to respond effectively to in-
10 fectious disease outbreaks;

11 (B) identifying areas of potential improve-
12 ment in coordination between Federal, State,
13 and local government entities to respond more
14 effectively to infectious disease outbreaks;

15 (C) making recommendations on how to
16 provide or allocate most effectively resources for
17 public health emergency response, specifically
18 considering how to utilize most effectively the
19 emergency fund established under section 319
20 of the Public Health Service Act (42 U.S.C.
21 247d); and

22 (D) containing an audit of how funds for
23 public health emergencies have been expended
24 within the 2 years preceding the date of the re-
25 port.

1 (2) POST-EMERGENCY REPORT.—

2 (A) IN GENERAL.—Not later than 6
3 months after the termination of a determination
4 of a public health emergency under section 319
5 of the Public Health Service Act (42 U.S.C.
6 247d), the Comptroller General of the United
7 States shall review response efforts by Federal,
8 State, and local government entities, as well as
9 any other relevant entities engaged in response
10 efforts, and submit a report to the appropriate
11 committees of Congress to determine—

12 (i) the compliance of such efforts with
13 best practices identified in the report
14 under paragraph (1);

15 (ii) the effectiveness of such best prac-
16 tices;

17 (iii) the cost of such efforts;

18 (iv) the areas of potential continued
19 improvement in coordination between Fed-
20 eral, State, and local government entities
21 to respond more effectively to infectious
22 disease outbreaks; and

23 (v) how to incorporate additional best
24 practices which may be incorporated in fu-
25 ture response efforts.

1 (B) AUDIT.—The report under subpara-
2 graph (A) shall include an audit indicating how
3 funds used for public health emergencies deter-
4 mined under section 319 of the Public Health
5 Service Act have been expended during the 2
6 years preceding the submission of the report
7 under such subparagraph.

8 **SEC. 3. APPLICABILITY.**

9 Nothing in this Act, or an amendment made by this
10 Act, shall affect the applicability of the Robert T. Stafford
11 Disaster Relief and Emergency Assistance Act (42 U.S.C.
12 5121 et seq.) or the Oil Pollution Act of 1990 (33 U.S.C.
13 2701 et seq.) in the case of a public health emergency.

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