H. R. 157

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. Sessions 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Health Care Safety Net Enhancement Act of 2011”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) As noted in the 2006 Institute of Medicine report, “The Future of Emergency Care”, the availability of on-call specialists is an acute problem in emergency departments and trauma centers requir-
ing attention to identified barriers such as liability reform.

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

(3) Younger surgeons, who often take the on-call shifts at trauma centers, are leaving States with the most severe liability problems. For example, according to the Project on Medical Liability in Pennsylvania, funded by the Pew Charitable Trust, resident physicians in high-risk fields such as general surgery and emergency medicine named malpractice costs as the reason for leaving the State three times more often than any other factor.

(4) Further, an American Hospital Association study found that more than 50 percent of hospitals in medical liability crisis States now have trouble recruiting physicians, and 40 percent say the liability
situation has resulted in less physician coverage for their emergency departments. The crisis has even forced the closure of trauma centers in Florida, Mississippi, Nevada, Pennsylvania, and West Virginia at various times in recent years.

(5) Specialties that have experienced particularly high premium increases, including neurosurgery, orthopaedics, and general surgery, are also among those services that emergency patients most frequently require.

(6) According to a report from the General Accountability Office, soaring medical liability premiums have led specialists to reduce or stop on-call services to hospital emergency departments, seriously inhibiting patient access to emergency surgical services.

(7) The Department of Health and Human Services’ congressionally created EMTALA technical advisory group (TAG) recognized that professional liability insurance is a concern for providers and that having protections would increase coverage in the emergency department. The TAG recommended that the Department of Health and Human Services act to support amending the EMTALA statute to include liability protection for hospitals, physicians,
and other licensed independent practitioners who
provide services to patients covered by EMTALA.

SEC. 3. CONSTITUTIONAL AUTHORITY.

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

SEC. 4. PROTECTION FOR EMERGENCY AND RELATED
SERVICES FURNISHED PURSUANT TO
EMTALA.

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

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

(2) by adding at the end the following:

“(6)(A) For purposes of this section—

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

“(ii) the provisions of this section shall
apply to an entity described in subparagraph
(B) in the same manner as such provisions
apply to an entity described in paragraph (4),
except that—

“(I) notwithstanding paragraph (1)(B), the deeming of any entity described in subparagraph (B), or of an officer, governing board member, employee, contractor, or on-call provider of such an entity, to be an employee of the Public Health Service for purposes of this section shall apply only with respect to items and services that are furnished to an individual pursuant to section 1867 of the Social Security Act and to post stabilization services (as defined in subparagraph (D)) furnished to such an individual;

“(II) nothing in paragraph (1)(D) shall be construed as preventing a physician or physician group described in subparagraph (B)(ii) from making the application referred to in such paragraph or as conditioning the deeming of a physician or physician group that makes such an application upon receipt by the Secretary of an application from the hospital or emergency department that employs or contracts with...
the physician or group, or enlists the phys-

ician or physician group as an on-call pro-

vider;

“(III) notwithstanding paragraph (3),

this paragraph shall apply only with re-

spect to causes of action arising from acts

or omissions that occur on or after Janu-

ary 1, 2012;

“(IV) paragraph (5) shall not apply to

a physician or physician group described in

subparagraph (B)(ii);

“(V) the Attorney General, in con-

sultation with the Secretary, shall make

separate estimates under subsection (k)(1)

with respect to entities described in sub-

paragraph (B) and entities described in

paragraph (4) (other than those described

in subparagraph (B)), and the Secretary

shall establish separate funds under sub-

section (k)(2) with respect to such groups

of entities, and any appropriations under

this subsection for entities described in

subparagraph (B) shall be separate from

the amounts authorized by subsection

(k)(2);
“(VI) notwithstanding subsection (k)(2), the amount of the fund established by the Secretary under such subsection with respect to entities described in subparagraph (B) may exceed a total of $10,000,000 for a fiscal year; and

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

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

“(i) a hospital or an emergency department to which section 1867 of the Social Security Act applies; and

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

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

“(i) has full, temporary, or locum tenens staff privileges at a hospital or emergency department to which section 1867 of the Social Security Act applies; and
“(ii) is not employed by or under contract with such hospital or emergency department, but agrees to be ready and available to provide services pursuant to section 1867 of the Social Security Act or post-stabilization services to individuals being treated in the hospital or emergency department with or without compensation from the hospital or emergency department.

“(D) For purposes of this paragraph, the term ‘post stabilization services’ means, with respect to an individual who has been treated by an entity described in subparagraph (B) for purposes of complying with section 1867 of the Social Security Act, services that are—

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

“(ii) provided after the individual is stabilized in order to maintain the stabilized condition or to improve or resolve the condition of the individual.

“(E)(i) Nothing in this paragraph (or in any other provision of this section as such provision applies to entities described in subparagraph (B) by operation of subparagraph (A)) shall be construed as authorizing or requiring the Secretary to make pay-
ments to such entities, the budget authority for
which is not provided in advance by appropriation
Acts.

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