H. R. 2523

To assure that the services of a nonemergency department physician are available to hospital patients 24 hours a day, seven days a week in all non-Federal hospitals with at least 100 licensed beds.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2011

Ms. SCHAKOWSKY introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To assure that the services of a nonemergency department physician are available to hospital patients 24 hours a day, seven days a week in all non-Federal hospitals with at least 100 licensed beds.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Physician Availability Act of 2011”.


SEC. 2. REQUIREMENT FOR PHYSICIAN AVAILABILITY IN
ACUTE CARE HOSPITALS.

(a) In General.—Each covered hospital shall have
a qualified physician available in the hospital 24 hours a
day, seven days a week to attend to the needs of inpatients
of the hospital.

(b) Definitions.—For purposes of this section:

(1) Covered hospital.—

(A) In General.—Subject to subpara-
graph (B), the term “covered hospital” means
a subsection (d) hospital (as defined in section
1886(d)(1)(B) of the Social Security Act (42
U.S.C. 1395ww(d)(1)(B)) that—

(i) has a participation agreement in
effect under section 1866 of such Act (42
U.S.C. 1395cc);

(ii) is participating in the program
under title XIX of such Act; or

(iii) is receiving Federal funds under
a grant or cooperative agreement.

(B) Exclusion for Federal Facilities
and Small Hospitals.—Such term does not
include a hospital that—

(i) is a facility of the Federal Govern-
ment; or
(ii) the Secretary of Health and Human Services determines has fewer than 100 licensed beds (as defined by the Secretary).

(2) PHYSICIAN; QUALIFIED PHYSICIAN.—

(A) The term “physician” means, with respect to a hospital, an individual who is a doctor of medicine or osteopathy legally authorized under State law to practice medicine and surgery in that hospital.

(B) The term “qualified physician” means, with respect to a hospital, an individual who is a physician and whose credentials as such a physician have been verified by the administration of the hospital (before providing any services at the hospital) through appropriate means, including verification through the National Practitioner Databank.

(3) PHYSICIAN AVAILABILITY.—A physician is considered to be “available” in a hospital if—

(A) the physician is physically present in the hospital;

(B) the physician’s primary responsibility is to be in attendance to serve the needs of the hospital’s inpatients without delay; and
(C) the physician is not physically present in, assigned to, serving in, or expected to cover, the hospital’s emergency room or emergency department.

(c) **Enforcement.**—

(1) **Warning.**—If the Secretary of Health and Human Services (in this section referred to as the “Secretary”) determines that a hospital has violated subsection (a), in the first instance the Secretary shall provide a written warning regarding such violation to the hospital and shall notify the Inspector General of the Department of Health and Human Services (in this section referred to as the “HHS Inspector General”) of such violation. Subsequently, the HHS Inspector General shall monitor the compliance of the hospital with the requirement of subsection (a).

(2) **Second Violation.**—After providing a warning to a hospital under paragraph (1), if the Secretary determines that the hospital subsequently and knowingly violates subsection (a)—

(A) the hospital is subject to a civil money penalty in an amount not to exceed $100,000, and
(B) the hospital shall submit to the HHS Inspector General, by not later than 30 days after the date of such a determination, a remedial plan to prevent future violations of the requirement of such subsection.

The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a), other than subsections (a) and (b) of such section, shall apply to civil money penalties under subparagraph (A) in the same manner as they apply to a penalty or proceeding under subsection (a) of such section.

(3) Subsequent Violations.—After imposing a civil money penalty under paragraph (2) against a hospital, if the Secretary determines that the hospital subsequently and knowingly violates subsection (a), the Secretary may issue an order disqualifying the hospital from participation in the programs under titles XVIII and XIX of the Social Security Act and from receipt of Federal funds under any grant or cooperative agreement for such period as the Secretary specifies and until the Secretary receives satisfactory assurances that the hospital will be in substantial compliance with the requirement of subsection (a).
(4) Failure to submit or comply with remedial plan.—If the Secretary determines, after consultation with the HHS Inspector General, that a hospital has failed to submit a satisfactory remedial plan required under paragraph (2)(B) or is failing to substantially carry out such a plan, the Secretary may suspend payment of funds to the hospital under titles XVIII and XIX of the Social Security Act and under Federal grants or cooperative agreements until the Secretary receives satisfactory assurances that such failures will not continue.

(d) Effective Date.—This section shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act.