

108TH CONGRESS  
2D SESSION

# H. R. 3722

To amend section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to impose conditions on Federal reimbursement of emergency health services furnished to undocumented aliens.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2004

Mr. ROHRBACHER introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to impose conditions on Federal reimbursement of emergency health services furnished to undocumented aliens.

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 “Undocumented Alien  
5 Emergency Medical Assistance Amendments of 2004”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) The provision of medical care by public or  
2       private health care providers to undocumented aliens  
3       is appropriate only—

4                   (A) to protect the health and safety of  
5       United States citizens;

6                   (B) to save the life of an undocumented  
7       alien in a life-threatening medical emergency;  
8       and

9                   (C) to stabilize an emergency medical con-  
10      dition so that an undocumented alien can be re-  
11      patriated for medical treatment in the alien's  
12      own country.

13          (2) Federal reimbursement of emergency hos-  
14      pital services furnished to undocumented aliens  
15      should be conditioned upon obtaining sufficient in-  
16      formation to promptly remove the aliens.

17          (3) Employers who employ undocumented aliens  
18      without completing employment authorization  
19      verification procedures should be held liable for un-  
20      compensated emergency services furnished to such  
21      aliens.

1 **SEC. 3. CONDITIONS FOR RECEIPT OF FEDERAL ASSIST-**  
2 **ANCE FOR EMERGENCY SERVICES FOR UN-**  
3 **DOCUMENTED ALIENS.**

4 (a) IN GENERAL.—Section 1011 of the Medicare Pre-  
5 scription Drug, Improvement, and Modernization Act of  
6 2003 (Public Law 108–173) is amended—

7 (1) in subsection (d)(1), by adding at the end  
8 the following new subparagraph:

9 “(C) APPLICATION OF REQUIREMENT.—

10 Under such process, the Secretary shall not  
11 provide payment under subsection (c) to an eli-  
12 gible provider that is a hospital for eligible serv-  
13 ices for an alien described in subsection  
14 (c)(5)(A) unless the requirements of subsection  
15 (f) are met by that provider with respect to  
16 such alien.”;

17 (2) in subsection (e)(2), by adding at the end  
18 the following new sentence: “Such term also in-  
19 cludes, with respect to an undocumented alien de-  
20 scribed in subsection (c)(5)(A), costs for emergency  
21 medical transportation and evacuation incurred by a  
22 hospital in transferring and removing the alien to a  
23 foreign country for receipt of appropriate health care  
24 services.”; and

25 (3) by adding at the end the following new sub-  
26 section:

1       “(f) REQUIREMENT FOR COLLECTION OF IMMIGRA-  
2 TION-RELATED INFORMATION FOR UNDOCUMENTED  
3 ALIENS.—

4           “(1) IN GENERAL.—No payment may be made  
5 under subsection (c) to a hospital with respect to the  
6 provision of eligible services to an undocumented  
7 alien described in subsection (c)(5)(A) unless the fol-  
8 lowing requirements are met:

9           “(A) The hospital has obtained in good  
10 faith from the alien (or a legal guardian or  
11 other representative on behalf of the alien) the  
12 following information in a document that is  
13 signed by the alien (or such guardian or rep-  
14 resentative) under oath or affirmation and that  
15 is in a form that includes a notice that fraudu-  
16 lent or false statements constitute a criminal  
17 act punishable under Federal law:

18           “(i) The citizenship of the alien.

19           “(ii) The immigration status of the  
20 alien.

21           “(iii) The address of the alien in the  
22 United States.

23           “(iv) Such personal or financial data  
24 regarding the alien as the hospital rou-  
25 tinely requires of non-indigent patients, in-

1 cluding information regarding health insur-  
2 ance.

3 “(v) Information on the identity of  
4 any current employer of the alien for  
5 whom the alien has executed an Internal  
6 Revenue Service Form W-4.

7 A hospital is not liable for the accuracy of the  
8 information provided under this subparagraph  
9 so long as it exercises reasonable care and good  
10 faith in obtaining the information.

11 “(B) The hospital obtains one or more  
12 identifiers for the alien and records such identi-  
13 fiers in a digital, electronic format specified by  
14 the Secretary in consultation with the Secretary  
15 of Homeland Security. Such format shall be  
16 compatible with at least one interoperable data-  
17 base maintained by the Secretary of Homeland  
18 Security for the purpose of verifying the iden-  
19 tity and immigration status of aliens.

20 “(C) The hospital transmits to the Sec-  
21 retary of Homeland Security, in a digital, elec-  
22 tronic format and manner specified by such  
23 Secretary, the information provided under sub-  
24 paragraph (A) and the identifier (or identifiers)  
25 obtained under subparagraph (B).

1           “(2) MAINTENANCE OF HOSPITAL RECORDS.—

2           For a period of at least 5 years, a hospital referred  
3           to in paragraph (1) shall maintain the original docu-  
4           ments described in paragraph (1)(A) on file and  
5           makes such documents available for examination by  
6           the Secretary and the Secretary of Homeland Secu-  
7           rity or their designees.

8           “(3) PROVISION OF TECHNICAL SUPPORT.—The

9           Secretary of Homeland Security shall provide hos-  
10          pitals under this section with software, training, and  
11          technical support services, at no cost to the hospital,  
12          to assist and enable hospitals to comply with the re-  
13          quirements of paragraph (1).

14          “(4) PROMPT ACTION BY DHS.—The Secretary  
15          of Homeland Security shall take steps as may be  
16          necessary—

17                 “(A) to obtain, process, and promptly re-  
18                 view information transmitted under paragraph  
19                 (1)(C);

20                 “(B) to determine whether an alien for  
21                 whom such information is transmitted is remov-  
22                 able under any provision of Federal immigra-  
23                 tion law; and

24                 “(C) to initiate removal proceedings under  
25                 the relevant provisions of the Immigration and

1           Nationality Act in the case of any such alien  
2           who is identified as being removable.

3           “(5) REMOVABILITY.—An undocumented alien  
4           who obtains eligible services through a hospital and  
5           does not provide for payment for such services and  
6           who fails to provide accurate information described  
7           in paragraph (1)(A) or an identifier (as defined in  
8           paragraph (6)) shall be treated as removable on the  
9           ground described in section 237(a)(5) of the Immi-  
10          gration and Nationality Act (8 U.S.C. 1227(a)(5)).

11          “(6) DEFINITION OF IDENTIFIER.—In this sec-  
12          tion, the term ‘identifier’ means a fingerprint or  
13          other biometric identifier as the Secretary of Home-  
14          land Security may require.

15          “(g) RESPONSIBILITY OF CERTAIN EMPLOYERS.—

16          “(1) IN GENERAL.—In the case of an employer  
17          of an undocumented alien worker described in para-  
18          graph (2) for whom payments are made to a hospital  
19          for eligible services under this section, subject to  
20          paragraph (3), the employer shall be liable to the  
21          Secretary for the amount of the payments so made.

22          “(2) UNDOCUMENTED ALIEN WORKER DE-  
23          FINED.—

24          “(A) IN GENERAL.—For purposes of this  
25          subsection, the term ‘undocumented alien work-

1 er’ means, with respect to an employer, an un-  
2 documented alien described in subsection  
3 (c)(5)(A)—

4 “(i) who is an unauthorized alien (as  
5 defined in section 274A(h)(3) of the Immi-  
6 gration and Nationality Act (8 U.S.C.  
7 1324a(h)(3));

8 “(ii) who has provided the employer  
9 with an Internal Revenue Service Form  
10 W-4; and

11 “(iii) with respect to whom neither the  
12 conditions described in subparagraph  
13 (B)(i) or the condition described in sub-  
14 paragraph (B)(ii) have been met.

15 “(B) CONDITIONS FOR EXEMPTION.—For  
16 purposes of subparagraph (A)(iii)—

17 “(i) FIRST SET OF CONDITIONS.—The  
18 conditions described in this clause for an  
19 employer and alien are the following:

20 “(I) The employer and alien have  
21 fully complied with all requirements of  
22 the employment verification system  
23 prescribed in section 274A(b) of the  
24 Immigration and Nationality Act (8  
25 U.S.C. 1324a(b)).



1                   “(II) The employer has enrolled  
2                   the alien in a State workmen’s com-  
3                   pensation plan.

4                   “(III) The alien is enrolled under  
5                   a health benefits plan or health insur-  
6                   ance coverage that provides such level  
7                   of coverage with respect to emergency  
8                   medical and hospitalization benefits as  
9                   the Secretary shall specify, in con-  
10                  sultation with the Secretary of Home-  
11                  land Security.

12                  “(IV) The employer has assumed  
13                  responsibility for any cost-sharing (in-  
14                  cluding applicable deductibles and co-  
15                  insurance) that applies to the alien.

16                  “(ii) ALTERNATIVE CONDITION.—The  
17                  condition described in this clause for an  
18                  employer and alien are that the employer  
19                  has verified the employment authorization  
20                  of the alien through the voluntary basic  
21                  employment verification pilot program  
22                  under section 403(a) of the Immigration  
23                  Reform and Immigrant Responsibility Act  
24                  of 1996 (division C of Public Law 104–  
25                  208), where available, or by any other

1 means made available for such verification  
2 purposes by the Secretary of Homeland  
3 Security.

4 “(3) LIMITATION ON LIABILITY.—The liability  
5 of an employer under this subsection shall be limited  
6 to an employer that employs an undocumented alien  
7 worker at the time (as specified under rules of the  
8 Secretary of Homeland Security) the eligible services  
9 are provided for which payment may be made by the  
10 Secretary under this section.

11 “(h) LIMITATION ON CARE REQUIRED.—Notwith-  
12 standing any other provision of law (including section  
13 1867 of the Social Security Act, 42 U.S.C. 1395dd), a  
14 hospital is not required to make available to an undocu-  
15 mented alien described in subsection (c)(5)(A) care or  
16 services if—

17 “(1) the alien may be transported to the alien’s  
18 country of origin (as determined in accordance with  
19 rules of the Secretary of Homeland Security) with-  
20 out a significant likelihood of material deterioration  
21 of medical condition of the alien (or, in the case of  
22 an alien in active labor, of the child), within reason-  
23 able medical probability, resulting from the transfer  
24 of the alien from the hospital; or

25 “(2) the care—

1           “(A) involves organ transplantation or  
2           other extraordinary medical treatment (or other  
3           treatment the estimated cost of which exceeds  
4           \$50,000); and

5           “(B) is for treatment of a condition that  
6           existed before the alien entered the United  
7           States or is not required as a direct and imme-  
8           diate result of an accident in the United  
9           States.”.

10       (b) EFFECTIVE DATE.—The amendments made by  
11       subsection (a) shall be effective as if included in the enact-  
12       ment of the Medicare Prescription Drug, Improvement,  
13       and Modernization Act of 2003.

14       (c) REGULATIONS.—

15           (1) IN GENERAL.—The Secretary of Homeland  
16       Security, in consultation with the Secretary of  
17       Health and Human Services, shall issue interim reg-  
18       ulations implementing the amendments made by  
19       subsection (a) no later than 60 days after the date  
20       of the enactment of this Act and shall permit a pe-  
21       riod of public notice and comment of at least 90  
22       days.

23           (2) FINAL REGULATIONS.—The Secretary of  
24       Homeland Security, in consultation with the Sec-  
25       retary of Health and Human Services, shall issue

1 final regulations implementing such amendments not  
2 later than one year after the date of publication of  
3 such interim regulations.

4 (d) ANNUAL REPORT ON IMPLEMENTATION.—

5 (1) IN GENERAL.—The Secretary of Homeland  
6 Security, in consultation with the Secretary of  
7 Health and Human Services, shall submit to the  
8 chairman and ranking minority member of the Judi-  
9 ciary and Appropriations Committees of the House  
10 of Representatives and the Senate, the Select Com-  
11 mittee on Homeland Security of the House of Rep-  
12 resentatives, and the Senate Committee on Govern-  
13 mental Affairs an annual report on the implementa-  
14 tion of section 1011 of the Medicare Prescription  
15 Drug, Improvement, and Modernization Act of 2003,  
16 as amended by this section.

17 (2) ITEMS TO BE INCLUDED.—Each annual re-  
18 port under paragraph (1) shall include—

19 (A) a cost analysis of Federal expenditures  
20 under such section 1011;

21 (B) a description of the assistance pro-  
22 vided to hospitals under subsection (f)(2) of  
23 such section;

1 (C) the number of undocumented aliens re-  
2 moved under subsection (f)(3) of such section;  
3 and

4 (D) amounts recovered from employers  
5 under subsection (g) of such section.

6 (e) FEASIBILITY OF EFFECTING TREATIES FOR  
7 INTERNATIONAL MEDICAL EVACUATION.—

8 (1) STUDY.—The Secretary of State shall con-  
9 duct an analysis of the feasibility and appropriate-  
10 ness of the following:

11 (A) Negotiating with foreign states treaties  
12 under which such states provide payment for  
13 the cost of international medical evacuation for  
14 their nationals who require emergency health  
15 care in the United States and who do not other-  
16 wise have insurance or other coverage for the  
17 costs of such care.

18 (B) In the case of nationals of a foreign  
19 state for whom significant costs are incurred  
20 under section 1011 of the Medicare Prescrip-  
21 tion Drug, Improvement, and Modernization  
22 Act of 2003 and for which state a treaty de-  
23 scribed in subparagraph (A) is not in effect, im-  
24 posing a visa, port of entry, or similar sur-  
25 charge the proceeds of which may be used to-

1           wards such costs and towards the cost of inter-  
2           national medical evacuation described in such  
3           clause.

4           (2) REPORT.—The Secretary of State shall sub-  
5           mit to the committees described in subsection (d)(1)  
6           a report on the analysis under paragraph (1).

○