

109TH CONGRESS
1ST SESSION

H. R. 2729

To amend the Public Health Service Act to protect certain health care providers against legal liability for providing emergency and related care to uninsured individuals.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2005

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

A BILL

To amend the Public Health Service Act to protect certain health care providers against legal liability for providing emergency and related care to uninsured individuals.

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 “Ensuring Access to
5 Emergency Rooms Act of 2005”.

6 **SEC. 2. CONSTITUTIONAL AUTHORITY.**

7 The constitutional authority upon which this Act
8 rests is the power of the Congress to provide for the gen-
9 eral welfare, to regulate commerce, and to make all laws

1 which shall be necessary and proper for carrying into exe-
 2 cution Federal powers, as enumerated in section 8 of arti-
 3 cle I of the Constitution of the United States.

4 **SEC. 3. PROTECTION AGAINST LEGAL LIABILITY FOR**
 5 **EMERGENCY AND RELATED SERVICES FUR-**
 6 **NISHED TO UNINSURED INDIVIDUALS.**

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

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

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

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

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

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

22 “(I) notwithstanding paragraph
 23 (1)(B), the deeming of any entity described
 24 in subparagraph (B), or of an officer, gov-
 25 erning board member, employee, or con-

1 tractor of such an entity, to be an em-
2 ployee of the Public Health Service for
3 purposes of this section shall apply only
4 with respect to items and services that are
5 furnished to an uninsured individual (as
6 defined in subparagraph (C)) pursuant to
7 section 1867 of the Social Security Act
8 and to post-stabilization services (as de-
9 fined in subparagraph (D)) furnished to
10 such an individual;

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

22 “(III) notwithstanding paragraph (3),
23 this paragraph shall apply only with re-
24 spect to causes of action arising from acts

1 or omissions that occur on or after Janu-
2 ary 1, 2004;

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

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

20 “(VI) notwithstanding subsection
21 (k)(2), the amount of the fund established
22 by the Secretary under such subsection
23 with respect to entities described in sub-
24 paragraph (B) may exceed a total of
25 \$10,000,000 for a fiscal year; and

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

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

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

8 “(ii) a physician or physician group that is
9 employed by, or under contract with, such hos-
10 pital or department to furnish items and serv-
11 ices to individuals under such section.

12 “(C) For purposes of this paragraph, the term
13 ‘uninsured individual’ means an individual who, at
14 the time treatment is provided by an entity de-
15 scribed in subparagraph (B) for purposes of com-
16 plying with section 1867 of the Social Security
17 Act—

18 “(i) does not have coverage under—

19 “(I) a group health plan (as defined
20 in section 2791(a)(1));

21 “(II) part A or B of title XVIII of the
22 Social Security Act; or

23 “(III) a State plan under title XIX of
24 such Act; and

1 “(ii) does not have health insurance cov-
2 erage (as defined in section 2791(b)(1)) from
3 any other source.

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

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

12 “(ii) provided after the individual is sta-
13 bilized in order to maintain the stabilized condi-
14 tion or to improve or resolve the individual’s
15 condition.

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

24 “(ii) The Secretary shall limit the total amount
25 of payments under this paragraph for a fiscal year

1 to the total amount appropriated in advance by ap-
2 propriation Acts for such purpose for such fiscal
3 year. If the total amount of payments that would
4 otherwise be made under this paragraph for a fiscal
5 year exceeds such total amount appropriated, the
6 Secretary shall take such steps as may be necessary
7 to ensure that the total amount of payments under
8 this paragraph for such fiscal year does not exceed
9 such total amount appropriated.”.

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