110TH CONGRESS
2D SESSION

S. 3312

To amend the Public Health Service Act to ensure that victims of public health emergencies have meaningful and immediate access to medically necessary health care services.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2008

Mr. DURBIN (for himself, Mr. BINGAMAN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To amend the Public Health Service Act to ensure that victims of public health emergencies have meaningful and immediate access to medically necessary health care services.

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 ''Public Health Emergency Response Act of 2008''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Since 2000, the Secretary of Health and Human Services has declared that a public health emergency existed nationwide in response to the attacks of September 11th and in response to Hurricanes Katrina and Rita.

(2) In the event of a public health emergency, compliance with recommendations to seek immediate care may be critical to containing the spread of an infectious disease outbreak or responding to a bio-terror attack.

(3) Nearly sixteen percent of Americans lack health insurance coverage.

(4) Fears of out-of-pocket expenses may cause individuals to delay seeking medical attention during a public health emergency.

(5) A public health emergency may disrupt health care assistance programs for individuals with chronic conditions, exacerbating the costs and risks to their health.

(6) The uninsured could place great financial strain on healthcare providers during a public health emergency.

(7) The Department of Health and Human Services Pandemic Influenza Plan projects that a pandemic influenza outbreak could result in 45 mil-

lion additional outpatient visits, with 865,000 to 9,900,000 individuals requiring hospitalization, depending upon the severity of the pandemic.

(8) Hospitals in the United States could lose as much as $3.9 billion in uncompensated care and cash flow losses in the event of a severe pandemic.

(9) Under current statute, no dedicated mechanism exists to reimburse providers for uncompensated care during a public health emergency.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide temporary emergency healthcare coverage for uninsured and certain otherwise qualified individuals in the event of a public health emergency declared by the Secretary of Health and Human Services;

(2) to ensure that healthcare providers remain fiscally solvent and are not overburdened by the cost of uncompensated care during a public health emergency;

(3) to eliminate a primary disincentive for uninsured and certain otherwise qualified individuals to promptly seek medical care during a public health emergency; and

(4) to minimize delays in the provision of emergency healthcare coverage by clarifying eligibility re-

quirements and the scope of such coverage and identifying the funding mechanisms for emergency healthcare services.

SEC. 3. EMERGENCY HEALTHCARE COVERAGE.

(a) IN GENERAL.—Title III of the Public Health Service Act is amended by inserting after section 319K the following new section:

"SEC. 319K–1. EMERGENCY HEALTHCARE COVERAGE.

"(a) ACTIVATION AND TERMINATION OF EMERGENCY HEALTHCARE COVERAGE.—

"(1) BASED ON PUBLIC HEALTH EMERGENCY.—

"(A) IN GENERAL.—The Secretary may activate the coverage of emergency healthcare services under this section only if the Secretary determines that there is a public health emergency.

"(B) DETERMINATION OF PUBLIC HEALTH EMERGENCY.—For purposes of this section, there is a 'public health emergency' only if a public health emergency exists under section 319.

"(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Secretary shall consider a range of factors including the following:

''(A) The degree to which the emergency is likely to overwhelm healthcare providers in the region.

''(B) The opportunity to minimize morbidity and mortality through intervention under this section.

''(C) The estimated number of direct casualties of the emergency.

''(D) The potential number of casualties in the absence of intervention under this section (such as in the case of infectious disease).

''(E) The potential adverse financial impacts on local healthcare providers in the absence of activation of this section.

''(F) The need for healthcare services is of sufficient severity and magnitude to warrant major assistance under this section above and beyond the emergency services otherwise available from the Federal Government.

''(G) Such other factors as the Secretary may deem appropriate.

''(3) TERMINATION AND EXTENSION.—

''(A) IN GENERAL.—Coverage of emergency healthcare services under this section

shall terminate, subject to subsection (c)(2), upon the earlier of the following:

"(i) The Secretary's determination that a public health emergency no longer exists.

"(ii) Subject to subparagraph (B), 90 days after the initiation of coverage of emergency healthcare services.

"(B) EXTENSION AUTHORITY.—The Secretary may extend a public health emergency for a second 90-day period, but only if a report to Congress is made under paragraph (4) in conjunction with making such extension.

"(4) REPORT.—

"(A) IN GENERAL.—Prior to making an extension under paragraph (3)(B), the Secretary shall transmit a report to Congress that includes information on the nature of the public health emergency and the expected duration of the emergency. The Secretary shall include in such report recommendations, if deemed appropriate, regarding requesting Congress to provide a further extension of the public health emergency period beyond the second 90-day period.

''(B) REPORT CONTENTS.—A report under subparagraph (A) shall include a discussion of the healthcare needs of emergency victims and affected individuals including the likely need for follow-up care over a two-year period.

''(5) COORDINATION.—The Secretary shall ensure that the activation, implementation, and termination of emergency healthcare services under this section in response to a public health emergency is coordinated with all functions, personnel, and assets of the Federal, State, local, and tribal responses to the emergency.

''(6) MEDICAL MONITORING PROGRAM.—The Secretary shall establish a medical monitoring program for monitoring and reporting on healthcare needs of the affected population over time. At least annually during the 5-year period following the date of a public health emergency, the Secretary shall report to Congress on any continuing healthcare needs of the affected population related to the public health emergency. Such reports shall include recommendations on how to ensure that emergency victims and affected individuals have access to needed healthcare services.

''(b) ELIGIBILITY FOR COVERAGE OF EMERGENCY HEALTHCARE SERVICES.—

''(1) LIMITED ELIGIBILITY.—

''(A) IN GENERAL.—Eligibility for coverage of emergency healthcare services under this section for a public health emergency is limited to individuals who—

''(i) are emergency victims who are uninsured or otherwise qualified; or

''(ii) are affected individuals who are uninsured.

''(B) DEFINITIONS.—For purposes of this section with respect to a public health emergency:

''(i) INSURED.—An individual is 'insured' if the individual has group or individual health insurance coverage or publicly financed health insurance (as defined by the Secretary).

''(ii) OTHERWISE QUALIFIED.—An individual is ''otherwise qualified'' if the individual is insured but the Secretary determines that the individual's healthcare insurance coverage is not at least actuarially-equivalent to benchmark coverage. In es-

tablishing such benchmark coverage, the Secretary shall consider the standard Blue Cross/Blue Shield preferred provider option service benefit plan described in and offered under section 8903(1) of title 5, United States Code.

''(iii) UNINSURED.—An individual is 'uninsured' if the individual is not insured.

''(iv) EMERGENCY VICTIM.—An individual is an 'emergency victim' with respect to a public health emergency if the individual needs healthcare services due to injuries or disease resulting from the public health emergency.

''(v) AFFECTED INDIVIDUAL.—An individual is an 'affected individual' with respect to a public health emergency if—

''(I) the individual resides in an assistance area designated for the emergency (or whose residence was displaced by the emergency) or, in the case of such an emergency constituting a pandemic flu or other infectious disease outbreak, who resides in the area affected by the outbreak (or

whose residence was displaced by the emergency); and

"(II) the individual's ability to access care or medicine is disrupted as a result of the emergency.

"(2) PROCESS.—The Secretary shall establish a streamlined process for determining eligibility for emergency healthcare services under this section. In establishing such process—

"(A) the Secretary shall recognize that in the context of a public health emergency, individuals may be unable to provide identification cards, healthcare insurance information, or other documentation; and

"(B) the primary method for determining eligibility for such services shall be an attestation provided to the healthcare provider by the recipient of the services that the recipient meets the eligibility criteria established under paragraph (1)(A), with a standard alternative for unattended minors and adults without the capacity to sign such an attestation form.

"(3) SERVICE DELIVERY.—Providers may commence provision of emergency healthcare services for an individual in the absence of any centralized en-

rollment process, if the provider has collected basic information, specified by the Secretary, including the individual's name, address, social security number, and existing health insurance coverage (if any), that establishes a prima facie basis for eligibility, except that such information shall not be required in cases where the individual is unable to provide the information due to disability or incapacitation.

''(c) EMERGENCY HEALTHCARE SERVICES.—

''(1) IN GENERAL.—For purposes of this section, the term 'emergency healthcare services'—

''(A) means items and services for which payment may be made under parts A and B of the Medicare program;

''(B) includes prescription drugs (not covered under such part B) specified by the Secretary under subsection (g), based on the formularies of the two or more prescription drug plans under part D of the Medicare program with the largest enrollment;

''(C) may include drugs, devices, biologics, and other healthcare products, if such products are authorized for use by the Food and Drug Administration pursuant to an alternate authority, including the emergency use authority

under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3); and

''(D) for an affected individual, is limited to those items and services described under subparagraphs (A), (B) or (C) that a third-party payor, such as a government program or charitable organization, reimbursed or otherwise provided to an affected individual during the three months prior to the declaration of the public health emergency.

''(2) NOT MEDICARE, MEDICAID, OR SCHIP BENEFITS.—The emergency healthcare services provided under this section are not benefits under Medicare, Medicaid or SCHIP. Nothing in this section shall be interpreted as altering or otherwise conflicting with titles XVIII, XIX, or XXI of the Social Security Act.

''(3) COMPLETION OF TREATMENT FOR EMERGENCY VICTIMS.—Notwithstanding termination of the coverage of emergency healthcare services pursuant to subsection (a)(4), the Secretary may identify a subgroup of emergency victims on a case-by-case basis or otherwise to continue receiving coverage of emergency healthcare services for up to an additional 60 days. Such emergency healthcare services

provided after the termination date shall be limited to services and items that are medically necessary to treat an injury or disease resulting directly from the public health emergency involved.

"(d) COVERED PROVIDERS.—

"(1) IN GENERAL.—Subject to paragraph (2), healthcare services are not covered under this section unless they are furnished by a healthcare provider that—

"(A) has a valid provider number under the Medicare program, the Medicaid program, or SCHIP;

"(B) is in good standing with such program; and

"(C) is not excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act, 42 U.S.C. 1320a–7b(f)).

"(2) WAIVER AUTHORITY.—

"(A) IN GENERAL.—The Secretary may by regulation waive certain requirements for provider enrollment that otherwise apply under the Medicare or Medicaid program or under SCHIP to ensure an adequate supply of healthcare providers (such as nurses and other health care

providers who do not typically participate in the Medicare or Medicaid program or SCHIP) and services in the case of a public health emergency. Such requirements may include the requirement that a licensed physician or other health care professional holds a license in the State in which the professional provides services or is otherwise authorized under State law to provide the services involved.

''(B) REPORT ON EMERGENCY SYSTEM FOR ADVANCE REGISTRATION OF VOLUNTEER HEALTH PROFESSIONALS (ESAR–VHP).—Not later than 180 days after the date of the enactment of this section, the Secretary shall submit to Congress a report on the number of volunteers, by profession and credential level, enrolled in the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR–VHP) that will be available to each State in the event of a public health emergency. The Secretary shall determine if the number of such volunteers is adequate for interstate deployment in response to regional requests for volunteers and, if not, shall include in the report recommendations for actions to ensure an

adequate surge capacity for public health emergencies in defined geographic areas.

''(3) MEDICARE AND MEDICAID PROGRAMS AND SCHIP DEFINED.—For purposes of this section:

''(A) The term 'Medicare program' means the program under parts A, B, and D of title XVIII of the Social Security.

''(B) The term 'Medicaid program' means the program of medical assistance under title XIX of such Act.

''(C) The term 'SCHIP' means the State children's health insurance program under title XXI of such Act.

''(e) PAYMENTS AND CLAIMS ADMINISTRATION.—

''(1) PAYMENT AMOUNT.—The amount of payment under this section to a provider for emergency healthcare services shall be equal to 100 percent of the payment rate for the corresponding service under part A or B of the Medicare program, or, in the case of prescription drugs and other items and services not covered under either such part, such amount as the Secretary may specify by rule. Such a provider shall not be permitted to impose any cost-sharing or to balance bill for services furnished under this section.

''(2) USE OF MEDICARE CONTRACTORS.—The Secretary shall enter into arrangements with Medicare administrative contractors under which they process claims for emergency healthcare services under this section using the claim forms, codes, and nomenclature in effect under the Medicare program.

''(3) APPLICATION OF SECONDARY PAYER RULES.—In the case of payment under this section for emergency healthcare services for otherwise qualified individuals who have some health insurance coverage with respect to such services, the administrative contractors under paragraph (2) shall submit a claim to the entity offering such coverage to recoup all or some of such payment, reflecting whatever amount the entity would normally reimburse for each covered service. The provisions of section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) shall apply to benefits provided under this section in the same manner as they apply to benefits provided under the Medicare program.

''(4) PAYMENTS FOR EMERGENCY HEALTHCARE SERVICES AND RELATED COSTS.—Payments to provide, and costs to administer, emergency healthcare services under this section shall be made from the

Public Health Emergency Fund, as provided under subsection (f)(1).

''(5) ATTESTATION REQUIREMENT.—No payment shall be made under this section to a provider for emergency healthcare services unless the provider has executed an attestation that—

''(A) the provider has notified the administrative contractor of any third-party payment received or claims pending for such services;

''(B) the recipient of the services has executed an attestation or otherwise satisfies the eligibility criteria established under subsection (b); and

''(C) the services were medically necessary.

''(f) PUBLIC HEALTH EMERGENCY FUND; FRAUD AND ABUSE PROVISIONS.—

''(1) THE PUBLIC HEALTH EMERGENCY FUND.—There is authorized to be appropriated to the Public Health Emergency Fund (established under section 319(b)) such sums as may be necessary under this section for payments to provide emergency healthcare services and costs to administer the services during a public health emergency.

''(2) NO USE OF MEDICARE FUNDS.—No funds under the Medicare program shall be available or used to make payments under this section.

''(3) FRAUD AND ABUSE PROVISIONS.—Providers and recipients of emergency healthcare services under this section shall be subject to the Federal fraud and abuse protections that apply to Federal healthcare programs as defined in section 1128B(f) of the Social Security Act.

''(g) RULEMAKING.—The Secretary may issue regulations to carry out this section and shall use a negotiated rulemaking process to advise the Secretary on key issues regarding the implementation of this section.

''(h) PUBLIC HEALTH EMERGENCY PLANNING AND THE EDUCATION OF HEALTHCARE PROVIDERS AND THE GENERAL POPULATION.—

''(1) PLANNING FOR COVERAGE OF EMERGENCY HEALTHCARE SERVICES IN PUBLIC HEALTH EMERGENCIES.—The Secretary shall, within 90 days after the date of the enactment of this section, initiate planning to carry out this section, including planning relating to implementation of the subsection (e) in the event of activation of emergency healthcare coverage.

''(2) OUTREACH AND PUBLIC EDUCATION CAMPAIGN.—The Secretary shall conduct an outreach and public education campaign to inform healthcare providers and the general public about the availability of emergency healthcare coverage under this section during the period of the emergency. Such campaign shall include—

''(A) an explanation of the emergency healthcare coverage program under this section;

''(B) claim forms and instructions for healthcare providers to use when providing covered services during the emergency period; and

''(C) special outreach initiatives to vulnerable and hard-to-reach populations.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each fiscal year (beginning with fiscal year 2009) $7,000,000 to carry out paragraphs (1) and (2) during the fiscal year.

''(i) APPLICATION OF POLICIES UNDER OTHER FEDERAL HEALTH CARE PROGRAMS.—As specified in subsections (c) through (e), the Secretary may adopt in whole or in part the coverage, reimbursement, provider enrollment, and other policies used under the Medicare program and other Federal health care programs in administering

emergency healthcare services under this section to the extent consistent with this section.''.

(b) APPLICATION OF PUBLIC HEALTH EMERGENCY FUND.—Section 319(b)(1) of such Act (42 U.S.C. 247d(b)(1)) is amended—

(1) by inserting ''and section 319K–1'' after ''subsection (a)''; and

(2) by striking ''such subsection'' and inserting ''subsection (a)''.

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