

111TH CONGRESS
1ST SESSION

S. 468

To amend title XVIII of the Social Security Act to improve access to emergency medical services and the quality and efficiency of care furnished in emergency departments of hospitals and critical access hospitals by establishing a bipartisan commission to examine factors that affect the effective delivery of such services, by providing for additional payments for certain physician services furnished in such emergency departments, and by establishing a Centers for Medicare & Medicaid Services Working Group, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2009

Ms. STABENOW (for herself, Mr. SPECTER, Mr. LEVIN, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to improve access to emergency medical services and the quality and efficiency of care furnished in emergency departments of hospitals and critical access hospitals by establishing a bipartisan commission to examine factors that affect the effective delivery of such services, by providing for additional payments for certain physician services furnished in such emergency departments, and by establishing a Centers for Medicare & Medicaid Services Working Group, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) IN GENERAL.—This Act may be cited as the “Ac-
 5 cess to Emergency Medical Services Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents of
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—BIPARTISAN COMMISSION ON ACCESS TO EMERGENCY
 MEDICAL SERVICES

Sec. 101. Establishment.

Sec. 102. Duties.

Sec. 103. Membership.

Sec. 104. Staff and consultants.

Sec. 105. Powers.

Sec. 106. Report on ways to promote the effective delivery of emergency med-
 ical services.

Sec. 107. Termination.

Sec. 108. Authorization of appropriations.

TITLE II—ADDITIONAL PAYMENTS FOR CERTAIN PHYSICIANS’
 SERVICES

Sec. 201. Additional payments for certain physicians’ services.

TITLE III—CENTERS FOR MEDICARE & MEDICAID SERVICES
 WORKING GROUP TO IMPROVE EMERGENCY CARE EFFICIENCY

Sec. 301. Centers for Medicare & Medicaid Services Working Group to improve
 emergency care efficiency.

8 **TITLE I—BIPARTISAN COMMIS-**
 9 **SION ON ACCESS TO EMER-**
 10 **GENCY MEDICAL SERVICES**

11 **SEC. 101. ESTABLISHMENT.**

12 There is established the United States Bipartisan
 13 Commission on Access to Emergency Medical Services (in
 14 this title referred to as the “Commission”).

1 **SEC. 102. DUTIES.**

2 (a) IN GENERAL.—The Commission shall perform
3 the following duties:

4 (1) Identify and examine factors (including fac-
5 tors described in subsection (b)) in the health care
6 delivery, financing, and legal systems that affect the
7 effective delivery of screening and stabilization serv-
8 ices furnished in hospitals that have emergency de-
9 partments pursuant to EMTALA.

10 (2) Make specific recommendations to Con-
11 gress, taking into account the considerations speci-
12 fied in subsection (c), with respect to Federal pro-
13 grams, policies, and financing needed to assure the
14 availability of such screening and stabilization serv-
15 ices and the coordination of State, local, and Federal
16 programs for responding to disasters and emer-
17 gencies.

18 (b) FACTORS CONSIDERED.—For purposes of sub-
19 section (a)(1), the Commission shall examine at least the
20 following factors, with respect to emergency departments
21 of hospitals:

22 (1) Crowded conditions in such emergency de-
23 partments and the practice of boarding patients who
24 require admission, or have already been admitted, to
25 a hospital for extended periods in such departments
26 and in the areas adjacent to such departments.

1 (2) With respect to individuals who present at
2 such emergency departments for the treatment of
3 emergency medical conditions, any barriers that im-
4 pede access within a reasonable period of time to
5 screening, stabilization services, and other appro-
6 priate consultations of physicians listed by the hos-
7 pital on its list of on-call physicians.

8 (3) The potential legal and financial liability of
9 health care professionals and providers with respect
10 to services required to be furnished to patients
11 under EMTALA, relating to the requirement of
12 emergency departments to screen and appropriately
13 treat or transfer individuals presenting themselves at
14 the departments with emergency medical conditions
15 and women in labor.

16 (c) CONSIDERATIONS IN RECOMMENDATIONS.—In
17 making recommendations under subsection (a)(2), the
18 Commission shall consider the following:

19 (1) Any changes in Federal law that would be
20 necessary to promote the effective delivery of emer-
21 gency medical services.

22 (2) The amount and sources of Federal funds
23 to finance such changes.

24 (3) The advantages and disadvantages of alter-
25 native approaches to protecting health care profes-

1 sionals and providers from legal and financial liabil-
2 ity with respect to services required to be furnished
3 to individuals under EMTALA.

4 (4) The most efficient and effective manner of
5 coordinating State, local, and Federal programs for
6 responding to disasters and emergencies, with re-
7 spect to the delivery of emergency medical services.

8 (d) DEFINITIONS.—For purposes of this title:

9 (1) HOSPITAL.—The term “hospital” means a
10 hospital (as defined in subsection (e) of section 1861
11 of the Social Security Act (42 U.S.C. 1395x)) and
12 a critical access hospital (as defined in subsection
13 (mm) of such section).

14 (2) EMTALA.—The term “EMTALA” means
15 section 1867 of the Social Security Act (42 U.S.C.
16 1395dd).

17 **SEC. 103. MEMBERSHIP.**

18 (a) APPOINTMENT.—

19 (1) The Commission shall be composed of 24
20 members, who shall be appointed not later than the
21 date that is 60 days after the date of the enactment
22 of this Act and in accordance with paragraph (2), as
23 follows:

24 (A) The President shall appoint 8 mem-
25 bers of the Commission.

1 (B) The Speaker of the House of Rep-
2 representatives, after consultation with the minor-
3 ity leader of the House of Representatives, shall
4 appoint 8 members of the Commission.

5 (C) The majority leader of the Senate,
6 after consultation with the minority leader of
7 the Senate, shall appoint 8 members of the
8 Commission.

9 (2) Of the members appointed under paragraph
10 (1), the President, the Speaker of the House of Rep-
11 resentatives, and the majority leader of the Senate
12 shall each appoint as members of the commission—

13 (A) two individuals who represent emer-
14 gency physicians, emergency nurses, and other
15 health care professionals who provide emer-
16 gency medical services;

17 (B) two individuals who are elected or ap-
18 pointed Federal, State, or local officials and
19 who are involved in issues and programs related
20 to the provision of emergency medical services;

21 (C) two health care consumer advocates;
22 and

23 (D) two individuals who represent hos-
24 pitals and health systems that provide emer-
25 gency medical services.

1 (b) CHAIRPERSON AND VICE CHAIRPERSON.—The
2 Commission shall elect a chairperson and 4 vice chair-
3 persons from among its members.

4 (c) TERMS.—Each member shall be appointed for the
5 life of the Commission.

6 (d) VACANCIES.—Any member appointed to fill a va-
7 cancy occurring before the expiration of the term for which
8 the member's predecessor was appointed shall be ap-
9 pointed only for the remainder of that term. A member
10 may serve after the expiration of that member's term until
11 a successor has taken office. Any vacancy in the member-
12 ship of the Commission shall be filled in the manner in
13 which the original appointment was made and shall not
14 affect the power of the remaining members to execute the
15 duties of the Commission.

16 (e) COMPENSATION.—

17 (1) IN GENERAL.—Members of the Commission
18 shall serve without pay.

19 (2) TRAVEL EXPENSES.—All members of the
20 Commission shall be reimbursed for travel and per
21 diem in lieu of subsistence expenses during the per-
22 formance of duties of the Commission while away
23 from their homes or regular places of business, in
24 accordance with subchapter I of chapter 57 of title
25 5, United States Code.

1 (f) QUORUM.—A quorum shall consist of 9 members
2 of the Commission, except that 6 or more members may
3 conduct a hearing under section 105(a).

4 (g) MEETINGS.—The Commission shall meet at the
5 call of its chairperson or a majority of its members.

6 **SEC. 104. STAFF AND CONSULTANTS.**

7 (a) STAFF.—The Commission may appoint and de-
8 termine the compensation of such staff as may be nec-
9 essary to carry out the duties of the Commission. Such
10 appointments and compensation may be made without re-
11 gard to the provisions of title 5, United States Code, that
12 govern appointments in the competitive services, and the
13 provisions of chapter 51 and subchapter III of chapter 53
14 of such title that relate to classifications and the General
15 Schedule pay rates.

16 (b) CONSULTANTS.—The Commission may procure
17 such temporary and intermittent services of experts and
18 consultants as the Commission determines to be necessary
19 to carry out the duties of the Commission, in accordance
20 with section 3109(b) of title 5, United States Code, but
21 at rates for individuals not to exceed the daily equivalent
22 of the maximum annual rate of basic pay payable for
23 grade GS–15 of the General Schedule under section 5332
24 of such title.

1 (c) **DETAIL OF FEDERAL EMPLOYEES.**—Upon the
2 request of the Commission, the head of any Federal agen-
3 cy is authorized to detail, without reimbursement to the
4 agency, any of the personnel of such agency to the Com-
5 mission to assist the Commission in carrying out its du-
6 ties. Any such detail shall not interrupt or otherwise affect
7 the civil service status or privileges of such personnel.

8 **SEC. 105. POWERS.**

9 (a) **HEARINGS AND OTHER ACTIVITIES.**—The Com-
10 mission may, for the purpose of carrying out this title,
11 hold hearings, sit and act at times and places, take testi-
12 mony, and receive evidence as the Commission determines
13 necessary to carry out its duties. The Commission may
14 administer oaths or affirmations to witnesses appearing
15 before it.

16 (b) **STUDIES BY GOVERNMENT ACCOUNTABILITY OF-**
17 **FICE.**—Upon the request of the Commission, the Comp-
18 troller General shall conduct such studies or investigations
19 as the Commission determines to be necessary to carry
20 out its duties.

21 (c) **COST ESTIMATES BY CONGRESSIONAL BUDGET**
22 **OFFICE.**—

23 (1) **DUTY TO PROVIDE REQUESTED ESTI-**
24 **MATES.**—Upon the request of the Commission, the
25 Director of the Congressional Budget Office shall

1 provide to the Commission such cost estimates as
2 the Commission determines to be necessary to carry
3 out its duties.

4 (2) REIMBURSEMENT FOR DEVELOPMENT OF
5 COST ESTIMATES.—The Commission shall reimburse
6 the Director of the Congressional Budget Office for
7 expenses relating to the employment in the office of
8 the Director of such additional staff as may be nec-
9 essary for the Director to comply with requests by
10 the Commission under paragraph (1).

11 (d) TECHNICAL ASSISTANCE.—Upon the request of
12 the Commission, the head of a Federal agency shall pro-
13 vide such technical assistance to the Commission as the
14 Commission determines to be necessary to carry out its
15 duties.

16 (e) USE OF MAILS.—The Commission may use the
17 United States mails in the same manner and under the
18 same conditions as Federal agencies, and shall, for pur-
19 poses of the frank, be considered a commission of Con-
20 gress as described in section 3215 of title 39, United
21 States Code.

22 (f) OBTAINING INFORMATION.—The Commission
23 may secure directly from any Federal agency information
24 necessary to enable it to carry out its duties, if the infor-
25 mation may be disclosed under section 552 of title 5,

1 United States Code. Upon request of the Chairperson of
2 the Commission, the head of such agency shall furnish
3 such information to the Commission.

4 (g) ADMINISTRATIVE SUPPORT SERVICES.—Upon
5 the request of the Commission, the Administrator of Gen-
6 eral Services shall provide to the Commission on a reim-
7 bursable basis such administrative support services as the
8 Commission may request.

9 (h) ACCEPTANCE OF DONATIONS.—The Commission
10 may accept, use, and dispose of gifts and donations of
11 services or property.

12 (i) PRINTING.—For purposes of costs relating to
13 printing and binding, including the costs of personnel de-
14 tailed from the Government Printing Office, the Commis-
15 sion shall be deemed to be a committee of the Congress.

16 **SEC. 106. REPORT ON WAYS TO PROMOTE THE EFFECTIVE**
17 **DELIVERY OF EMERGENCY MEDICAL SERV-**
18 **ICES.**

19 Not later than the date that is 18 months after the
20 date of the enactment of this Act, the Commission shall
21 submit to Congress and the Secretary of Health and
22 Human Services a report containing its findings and rec-
23 ommendations described in section 102(a), including rec-
24 ommendations to remove any identified barriers to the ef-
25 fective delivery of emergency medical services in the

1 United States and detailed recommendations for appro-
 2 priate legislative initiatives to remove such barriers.

3 **SEC. 107. TERMINATION.**

4 The Commission shall terminate 30 days after the
 5 date of submission of the report required in section 106.

6 **SEC. 108. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums
 8 as may be necessary to carry out this title.

9 **TITLE II—ADDITIONAL PAY-**
 10 **MENTS FOR CERTAIN PHYSI-**
 11 **CIANS' SERVICES**

12 **SEC. 201. ADDITIONAL PAYMENTS FOR CERTAIN PHYSI-**
 13 **CIANS' SERVICES.**

14 (a) IN GENERAL.—Section 1833 of the Social Secu-
 15 rity Act (42 U.S.C. 1395l) is amended by adding at the
 16 end the following new subsection:

17 “(x) ADDITIONAL PAYMENT FOR PHYSICIANS' SERV-
 18 ICES FURNISHED PURSUANT TO EMTALA.—In the case
 19 of physicians' services furnished in the emergency depart-
 20 ment of a hospital (as defined in subsection (e)(5) of sec-
 21 tion 1867) pursuant to such section to an individual cov-
 22 ered under the insurance program established under this
 23 part, in addition to the amount of payment that will other-
 24 wise be made for such services under this part, there shall
 25 also be paid to the physician or other person involved (or

1 in the cases described in subparagraph (A) of section
 2 1842(b)(6), to an employer or other entity involved) from
 3 the Federal Supplementary Trust Fund an amount equal
 4 to 10 percent of the payment amount for the services
 5 under this part (determined without regard to any addi-
 6 tional amounts paid under subsection (m) or (u)).”.

7 (b) EFFECTIVE DATE.—The amendment made by
 8 subsection (a) shall apply to services furnished on or after
 9 the date of the enactment of this Act.

10 **TITLE III—CENTERS FOR MEDI-**
 11 **CARE & MEDICAID SERVICES**
 12 **WORKING GROUP TO IM-**
 13 **PROVE EMERGENCY CARE EF-**
 14 **FICIENCY**

15 **SEC. 301. CENTERS FOR MEDICARE & MEDICAID SERVICES**
 16 **WORKING GROUP TO IMPROVE EMERGENCY**
 17 **CARE EFFICIENCY.**

18 (a) WORKING GROUP.—

19 (1) IN GENERAL.—The Secretary of Health and
 20 Human Services, acting through the Administrator
 21 of the Centers for Medicare & Medicaid Services,
 22 shall convene a working group (in this section re-
 23 ferred to as the “CMS working group”) that in-
 24 cludes experts in emergency care, inpatient critical
 25 care, hospital operations management, nursing, and

1 other relevant disciplines. The members of the CMS
2 working group shall be appointed by the Adminis-
3 trator.

4 (2) DUTIES.—

5 (A) DEVELOPMENT OF STANDARDS,
6 GUIDELINES, MEASURES, AND INCENTIVES.—

7 The CMS working group shall develop boarding
8 and diversion standards, guidelines, measures,
9 and incentives for hospitals, and, with respect
10 to the development of measures, the CMS work-
11 ing group shall consider measures developed or
12 under development by other entities. The CMS
13 working group shall send any measures devel-
14 oped under this subparagraph to the entity with
15 a contract under section 1890(a) of the Social
16 Security Act (42 U.S.C. 1395aaa(a)) for con-
17 sideration, and shall take into account whether
18 such measures have been recommended or
19 adopted for use by a relevant quality alliance
20 identified by the Secretary (such as the Hos-
21 pital Quality Alliance).

22 (B) IDENTIFICATION OF BARRIERS.—The
23 CMS working group shall identify barriers con-
24 tributing to delays in timely processing of pa-
25 tients requiring admission as an inpatient of a

1 hospital who initially sought care through the
2 emergency department of the hospital.

3 (C) IDENTIFICATION OF BEST PRAC-
4 TICES.—The CMS working group shall identify
5 best practices to improve patient flow within
6 hospitals. In order to carry out the preceding
7 sentence, the Agency for Healthcare Research
8 and Quality shall examine available evidence of
9 best practices to improve patient flow within
10 hospitals and transmit any findings from that
11 examination to the CMS working group. The
12 CMS working group shall take into account the
13 findings of the Agency in identifying such best
14 practices under this subparagraph.

15 (D) REPORT.—Not later than the date
16 that is 1 year after the date of the enactment
17 of this Act, the CMS Working Group shall sub-
18 mit to Congress and the Secretary of Health
19 and Human Services a report containing a de-
20 tailed description of the standards, guidelines,
21 measures, and incentives developed under sub-
22 paragraph (A), the barriers identified under
23 subparagraph (B), and the best practices iden-
24 tified under subparagraph (C), together with
25 recommendations for such legislative and ad-

1 ministrative actions as the CMS Working group
2 considers appropriate.

3 (3) INFORMATION.—In carrying out its duties
4 under paragraph (2), the CMS Working Group may
5 request such information from hospitals that the
6 CMS Working Group considers appropriate.

7 (4) TERMINATION.—The CMS Working Group
8 shall terminate 30 days after the date of submission
9 of the report required in paragraph (2)(D).

10 (b) DISCLOSURE OF FAILURE TO REPORT.—The
11 Secretary of Health and Human Services shall establish
12 a mechanism (such as publication on an Internet website
13 or in the Federal Register, or both) to disclose to the pub-
14 lic information regarding any hospital that fails to report
15 information requested by the CMS working group under
16 subsection (a)(3) and the type of information the hospital
17 failed to report.

18 (c) HOSPITAL DEFINED.—In this section, the term
19 “hospital” means a hospital (as defined in subsection (e)
20 of section 1861 of the Social Security Act (42 U.S.C.
21 1395x)) and a critical access hospital (as defined in sub-
22 section (mm) of such section).

○