

110TH CONGRESS  
1ST SESSION

# S. 1003

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.

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IN THE SENATE OF THE UNITED STATES

MARCH 28, 2007

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

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## 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 2007”.

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           resentatives, 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 “(v) ADDITIONAL PAYMENT FOR PHYSICIANS’ SERV-  
 18 ICES FURNISHED PURSUANT TO EMTALA.—In the case  
 19 of physicians’ services furnished on or after January 1,  
 20 2008, in the emergency department of a hospital (as de-  
 21 fined in subsection (e)(5) of section 1867) pursuant to  
 22 such section to an individual covered under the insurance  
 23 program established under this part, in addition to the  
 24 amount of payment that will otherwise be made for such  
 25 services under this part, there shall also be paid to the

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

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 subsection (a) shall apply to services furnished on or after  
 10 January 1, 2008.

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

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

19 (a) WORKING GROUP.—

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

1 care, hospital operations management, nursing, and  
2 other relevant disciplines. The members of the CMS  
3 working group shall be appointed by the Adminis-  
4 trator.

5 (2) DUTIES.—

6 (A) DEVELOPMENT OF STANDARDS.—The  
7 CMS working group shall develop—

8 (i) boarding and diversion standards  
9 for hospitals; and

10 (ii) guidelines, measures, and incen-  
11 tives for implementation, monitoring, and  
12 enforcement of the standards developed  
13 under clause (i).

14 (B) IDENTIFICATION OF BARRIERS.—The  
15 CMS working group shall identify barriers con-  
16 tributing to delays in timely processing of pa-  
17 tients requiring admission as an inpatient of a  
18 hospital who initially sought care through the  
19 emergency department of the hospital.

20 (C) IDENTIFICATION OF BEST PRAC-  
21 TICES.—The CMS working group shall identify  
22 best practices to improve patient flow within  
23 hospitals.

24 (D) REPORT.—Not later than the date  
25 that is 2 years after the date of the enactment

1 of this Act, the CMS Working Group shall sub-  
2 mit to Congress and the Secretary of Health  
3 and Human Services a report containing a de-  
4 tailed description of the standards, guidelines,  
5 measures, and incentives developed under sub-  
6 paragraph (A), the barriers identified under  
7 subparagraph (B), and the best practices iden-  
8 tified under subparagraph (C), together with  
9 recommendations for such legislative and ad-  
10 ministrative actions as the CMS Working group  
11 considers appropriate.

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

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

19 (b) DISCLOSURE OF FAILURE TO REPORT.—The  
20 Secretary of Health and Human Services shall establish  
21 a mechanism (such as publication on an Internet website  
22 or in the Federal Register, or both) to disclose to the pub-  
23 lic information regarding any hospital that fails to report  
24 information requested by the CMS working group under

1 subsection (a)(3) and the type of information the hospital  
2 failed to report.

3 (c) HOSPITAL DEFINED.—In this section, the term  
4 “hospital” means a hospital (as defined in subsection (e)  
5 of section 1861 of the Social Security Act (42 U.S.C.  
6 1395x)) and a critical access hospital (as defined in sub-  
7 section (mm) of such section).

○