106TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
106–634

CARDIAC ARREST SURVIVAL ACT OF 2000

MAY 23, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany H.R. 2498]

The Committee on Commerce, to whom was referred the bill (H.R. 2498) to amend the Public Health Service Act to provide for recommendations of the Secretary of Health and Human Services regarding the placement of automatic external defibrillators in Federal buildings in order to improve survival rates of individuals who experience cardiac arrest in such buildings, and to establish protections from civil liability arising from the emergency use of the devices, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cardiac Arrest Survival Act of 2000".

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Over 7 lives are lost every day to sudden cardiac arrest in the United States alone.

(2) Two out of every three sudden cardiac deaths occur before a victim can reach a hospital.

(3) More than 95 percent of these cardiac arrest victims will die, many because of lack of readily available life saving medical equipment.

(4) With current medical technology, up to 30 percent of cardiac arrest victims could be saved if victims had access to immediate medical response, including defibrillation and cardiopulmonary resuscitation.

(5) Once a victim has suffered a cardiac arrest, every minute that passes before returning the heart to a normal rhythm decreases the chance of survival by 10 percent.

(6) Most cardiac arrests are caused by abnormal heart rhythms called ventricular fibrillation. Ventricular fibrillation occurs when the heart's electrical system malfunctions, causing a chaotic rhythm that prevents the heart from pumping oxygen to the victim's brain and body.

(7) Communities that have implemented programs ensuring widespread public access to defibrillators, combined with appropriate training, maintenance, and coordination with local emergency medical systems, have improved the survival rates from cardiac arrest to as much as 20 percent.

(8) Automated external defibrillator devices have proven safe and effective, even when used by lay people, since the devices are designed not to allow a user to administer a shock until after the device has analyzed a victim's heart rhythm and determined that an electric shock is required.

(9) Increasing public awareness regarding automated external defibrillator devices and encouraging their use in Federal buildings will greatly facilitate their adoption.

(10) Limiting the liability of Good Samaritans in emergency situations may encourage the use of automated external defibrillator devices, and result in saved lives.

SEC. 3. RECOMMENDATIONS AND GUIDELINES OF SECRETARY OF HEALTH AND HUMAN SERVICES REGARDING AUTOMATED EXTERNAL DEFIBRILLATORS FOR FEDERAL BUILDINGS.

Part B of title II of the Public Health Service Act (42 U.S.C. 238 et seq.) is amended by adding at the end the following section:

"RECOMMENDATIONS AND GUIDELINES REGARDING AUTOMATED EXTERNAL DEFIBRILLATORS FOR FEDERAL BUILDINGS

"SEC. 247. (a) GUIDELINES ON PLACEMENT.—The Secretary shall establish guidelines with respect to placing automated external defibrillator devices in Federal buildings. Such guidelines shall take into account the extent to which such devices may be used by lay persons, the typical number of employees and visitors in the buildings, the extent of the need for security measures regarding the buildings, buildings or portions of buildings in which there are special circumstances such as high electrical voltage or extreme heat or cold, and such other factors as the Secretary determines to be appropriate.

"(b) RELATED RECOMMENDATIONS.—The Secretary shall publish in the Federal Register the recommendations of the Secretary on the appropriate implementation of the placement of automated external defibrillator devices under subsection (a), including procedures for the following:

"(1) Implementing appropriate training courses in the use of such devices, including the role of cardiopulmonary resuscitation.

"(2) Proper maintenance and testing of the devices.

"(3) Ensuring coordination with appropriate licensed professionals in the oversight of training of the devices.

"(4) Ensuring coordination with local emergency medical systems regarding the placement and incidents of use of the devices.

"(c) CONSULTATIONS; CONSIDERATION OF CERTAIN RECOMMENDATIONS.—In carrying out this section, the Secretary shall—

"(1) consult with appropriate public and private entities;

"(2) consider the recommendations of national and local public-health organizations for improving the survival rates of individuals who experience cardiac arrest in nonhospital settings by minimizing the time elapsing between the onset of cardiac arrest and the initial medical response; and

"(3) consult with and counsel other Federal agencies where such devices are to be used.

"(d) DATE CERTAIN FOR ESTABLISHING GUIDELINES AND RECOMMENDATIONS.—The Secretary shall comply with this section not later than 180 days after the date of the enactment of the Cardiac Arrest Survival Act of 2000.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The term 'automated external defibrillator device' has the meaning given such term in section 248.

"(2) The term 'Federal building' includes a building or portion of a building leased by a Federal agency, and includes buildings on military installations of the United States.".

SEC. 4. GOOD SAMARITAN PROTECTIONS REGARDING EMERGENCY USE OF AUTOMATED EXTERNAL DEFIBRILLATORS.

Part B of title II of the Public Health Service Act, as amended by section 3 of this Act, is amended by adding at the end the following section:

"LIABILITY REGARDING EMERGENCY USE OF AUTOMATED EXTERNAL DEFIBRILLATORS

"SEC. 248. (a) GOOD SAMARITAN PROTECTIONS REGARDING AEDS.—Except as provided in subsection (b), any person who uses an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use of such device; and in addition, any person who acquired the device is immune from such liability, if the harm was not due to the failure of such acquirer of the device—

"(1) to notify local emergency response personnel or other appropriate entities of the most recent placement of the device within a reasonable period of time after the device was placed;

"(2) to properly maintain and test the device; or

"(3) to provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if—

"(A) the employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

"(B) the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm (or between the acquisition of the device and the occurrence of the harm, in any case in which the device was acquired after such engagement of the person) was not a reasonably sufficient period in which to provide the training.

"(b) INAPPLICABILITY OF IMMUNITY.—Immunity under subsection (a) does not apply to a person if—

"(1) the harm involved was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed; or

"(2) the person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional; or

"(3) the person is a hospital, clinic, or other health care entity, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or

"(4) the person is an acquirer of the device who leased the device to a health care entity (or who otherwise provided the device to such entity for compensation without selling the device to the entity), and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent.

"(c) RULES OF CONSTRUCTION.—

"(1) IN GENERAL.—The following applies with respect to this section:

"(A) This section does not establish any cause of action, or require that an automated external defibrillator device be placed at any building or other location.

"(B) With respect to a class of persons for which this section provides immunity from civil liability, this section supersedes the law of a State only to the extent that the State has no statute or regulations that provide persons in such class with immunity for civil liability arising from the use by such persons of automated external defibrillator devices in emergency situations (within the meaning of the State law or regulation involved).

"(C) This section does not waive any protection from liability for Federal officers or employees under—

"(i) section 224; or

"(ii) sections 1346(b), 2672, and 2679 of title 28, United States Code, or under alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28.

"(2) CIVIL ACTIONS UNDER FEDERAL LAW.—

"(A) IN GENERAL.—The applicability of subsections (a) and (b) includes applicability to any action for civil liability described in subsection (a) that arises under Federal law.

"(B) FEDERAL AREAS ADOPTING STATE LAW.—If a geographic area is under Federal jurisdiction and is located within a State but out of the jurisdiction of the State, and if, pursuant to Federal law, the law of the State applies in such area regarding matters for which there is no applicable Federal law, then an action for civil liability described in subsection (a) that in such area arises under the law of the State is subject to subsections (a) through (c) in lieu of any related State law that would apply in such area in the absence of this subparagraph.

"(d) FEDERAL JURISDICTION.—In any civil action arising under State law, the courts of the State involved have jurisdiction to apply the provisions of this section exclusive of the jurisdiction of the courts of the United States.

"(e) DEFINITIONS.—

"(1) PERCEIVED MEDICAL EMERGENCY.—For purposes of this section, the term 'perceived medical emergency' means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

"(2) OTHER DEFINITIONS.—For purposes of this section:

"(A) The term 'automated external defibrillator device' means a defibrillator device that—

"(i) is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;

"(ii) is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed;

"(iii) upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual; and

"(iv) in the case of a defibrillator device that may be operated in either an automated or a manual mode, is set to operate in the automated mode.

"(B)(i) The term 'harm' includes physical, nonphysical, economic, and noneconomic losses.

"(ii) The term 'economic loss' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

"(iii) The term 'noneconomic losses' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.".

PURPOSE AND SUMMARY

H.R. 2498, The Cardiac Arrest Survival Act, contains two significant provisions—the creation of guidelines for placement of automated external defibrillators (AEDs) in federal buildings, and the establishment of limited immunity protections for people who use

or acquire AEDs. The first part of the bill encourages the Federal Government to be a role model for the private sector, directing the Secretary of Health and Human Services to develop guidelines for placing AEDs in Federal buildings, and to publish in the Federal Register its recommendations for appropriate training courses, maintenance and testing of AEDs, training for AED use, and coordination with local emergency medical systems (EMS) regarding the placement and notification of incidents of use of AEDs.

The second part of the bill establishes so-called "Good Samaritan" protections from liability for people who use or acquire AEDs. Immunity for acquirers applies only if the harm is not caused by the acquirer's failure to notify local EMS of the devices' placement within a reasonable period of time, to properly maintain and test the devices, or to provide appropriate training in certain instances. Furthermore, the immunity does not apply if the harm was caused by a person's willful or criminal or reckless misconduct, gross negligence, or a conscious, flagrant indifference to the rights or safety of the victim. It also does not apply if the AED is being used by a doctor or nurse or other licensed professional in their scope of employment, if it is being used by a hospital or other health care entity, or if it is being used by an acquirer leasing the AEDs to such a health care entity.

H.R. 2498 does not create any new causes of action and does not impose any new regulations on the private sector, nor does the bill require that AEDs be placed at any building or location. State laws are not superseded if the State has or enacts a statute or regulation providing immunity for the applicable persons.

BACKGROUND AND NEED FOR LEGISLATION

Sudden cardiac arrest is one of the leading causes of death in the United States, killing more than 250,000 Americans every year. Unlike a heart attack, which is the death of a muscle tissue from loss of blood supply, many victims of sudden cardiac arrest have no prior symptoms. Unfortunately, two out of every three sudden cardiac deaths occur before a victim can reach a hospital, and more than 95 percent of these cardiac arrest victims will die because of lack of readily available life saving medical equipment.

At the May 9, 2000 hearing on H.R. 2498 in the Subcommittee on Health and Environment, Mr. Robert T. Adams, Esq., testified that he had been in perfect health, as certified by numerous doctor examinations for his part-time work as an NCAA basketball referee, when he was victimized by a sudden cardiac arrest at Grand Central Station in New York. He testified that he probably would not be alive today if the station had not purchased an automated external defibrillator just one day before, which was used to save his life while emergency medical services personnel were in transit.

Once a victim has suffered a cardiac arrest, every minute that passes before returning the heart to a normal rhythm decreases the chance of survival by 10 percent. Most cardiac arrests are caused by abnormal heart rhythms called ventricular fibrillation. Ventricular fibrillation occurs when the heart's electrical system malfunctions, causing a chaotic rhythm that prevents the heart from pumping oxygen to the victim's brain and body.

Automated external defibrillators are medical devices that can restart a heart that has stopped beating effectively. AEDs are sub-

ject to FDA approval, and can only be sold with a prescription by a licensed individual. AED devices have been shown to be safe and effective, even when used by lay people, since the devices are designed so as not to allow a user to administer a shock until after the device has analyzed a victim's heart rhythm and determined that an electric shock is required. AED training courses are provided by the American Red Cross, the American Heart Association, local emergency medical services groups, and other public health and safety institutions.

Richard Hardman, Ph.D., NREMT–P, and EMS Training Coordinator for the Clark County Fire Department, testified at the May 9th hearing that after widespread placement of AEDs and implementation of AED training in Las Vegas casinos, survival rates for sudden cardiac arrest increased from less than 10% to an astounding 57%. Other experts estimate survival rates increasing to 30—40% where victims have access to immediate medical response including defibrillation and cardiopulmonary resuscitation.

Mr. Richard A. Lazar and other witnesses at the Subcommittee hearing testified that unfortunately, AED usage has been hindered by fears of liability exposure. People who design and implement training programs may be reluctant to volunteer or otherwise offer their services if they are thereby exposing themselves to significant financial liability. Similarly, acquirers and users of AEDs may be reluctant to purchase or use the devices if subjected to liability. Mr. Lazar testified that,

> We are not seeing [AEDs] widely deployed, notwithstanding their ease of use, their relatively low cost, and the clear public health interest in them being widely deployed. One of the critical reasons why that is is because there is this perception among would-be purchasers and users of AEDs that if they do this they are going to get sued. Now, statistically, and if you look in the courts, that is not really justified. But you know what, perception is reality, and perception is, indeed, creating a huge barrier to the widespread deployment and adoption of AED programs.

In 1997, Congress enacted the Volunteers Protection Act (P.L. 105–19; 42 U.S.C. §14501) to grant immunity from liability for Americans who volunteered their services for a nonprofit organization or a governmental entity. The Cardiac Arrest Survival Act will extend similar liability protections to people who voluntarily acquire or use AEDs to help save victims of sudden cardiac arrest. This immunity from unfair lawsuits will help protect "Good Samaritans" who use AEDs to help save the lives of our fellow Americans, as well as businesses and land owners who acquire the devices to make their buildings or offices safer for the public.

HEARINGS

The Subcommittee on Health and Environment held a hearing on H.R. 2498 on May 9, 2000. The Subcommittee received testimony from: Richard Hardman, Ph.D., NREMT–P, EMS Training Coordinator, Clark County Fire Department, Las Vegas, Nevada; Robert T. Adams, Esq., Partner, Wilson, Elser, Moskowitz, Edelman, & Dicker, L.L.P., New York City; Mr. Scott Conner, Vice President,

Health, Safety, & Community Services, American Red Cross, Washington, DC; and Richard A. Lazar, Esq., Portland, Oregon.

COMMITTEE CONSIDERATION

On May 9, 2000, the Subcommittee on Health and Environment met in open markup session and approved H.R. 2498 for Full Committee consideration, as amended, by a voice vote. On May 17, 2000, the Full Committee met in open markup session and approved H.R. 2498, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 2498 reported. A motion by Mr. Bliley to order H.R. 2498 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2498, the Cardiac Arrest Survival Act of 2000, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

Pursuant to clause 3 of rule XIII of the Rules of the House of Representatives, the Committee provides the following estimate of the costs of H.R. 2498:

H.R. 2498 directs the Secretary of Health and Human Services to develop guidelines for placing AEDs in Federal buildings, and to publish in the Federal Register its recommendations for appropriate training courses, maintenance and testing of AEDs, training for AED use, and coordination with local emergency medical systems (EMS) regarding the placement and notification of incidents of use of AEDs. The bill also establishes so-called "Good Samaritan" protections from liability for people who use or acquire AEDs.

The Committee estimates that enacting H.R. 2498 would have no significant impact on the Federal budget. Implementing the bill would require far less than $500,000 a year in discretionary spending during the 2000–2005 period. The Committee also finds that

H.R. 2498 would not affect direct spending, so pay-as-you-go procedures would not apply.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not timely submitted to the Committee.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not timely submitted to the Committee. Accordingly, the Committee finds that H.R. 2498 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reforms Act and would not affect the budgets of State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates the short title of the legislation as the "Cardiac Arrest Survival Act of 2000."

Section 2. Findings

Section 2 sets forth certain findings.

Section 3. Recommendations and guidelines of Secretary of Health and Human Services regarding automated external defibrillators for Federal buildings

Section 3 encourages the Federal government to be a role model for the private sector in implementing automated external defibrillator programs by directing the Secretary of Health and Human Services to develop guidelines for placing AEDs in Federal buildings, and to publish in the Federal Register its recommendations for appropriate training courses, maintenance and testing of AEDs, training for AED use, and coordination with local emergency

medical systems regarding the placement and notification of incidents of use of AEDs. The Secretary is required to consult with appropriate public and private entities, such as other Federal agencies where AEDs may be recommended to be placed, entities that own buildings or land rented or leased by Federal agencies, and various local and private sector health care groups that have traditionally been involved or that may become involved under the Secretary's guidelines in promoting or implementing AED use. The Secretary is also directed to consider various recommendations of national and local public-health organizations to achieve additional improvements in the survival rates of individuals experiencing cardiac arrest, and to minimize the time elapsing between the onset of cardiac arrest and the initial medical response of such individuals. The Secretary is directed to issue such guidelines and publish such recommendations within 180 days after the date of enactment of this legislation.

Section 4. Good Samaritan protections regarding emergency use of automated external defibrillators

Section 4 establishes so-called "Good Samaritan" protections from liability for people who use or acquire AEDs. Users of AEDs are protected from liability for using an AED on an individual so long as the individual's behavior could lead a reasonable person to believe that such individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual. This provision is intended by the Committee to be a reasonable good faith test, since there are very few outward symptoms of a cardiac arrest for which victims require immediate medical attention, and the AEDs will not administer a shock until after an individual's heart rate is measured and a shock determined appropriate. Thus, if a person reasonably believes that an individual is suffering cardiac arrest, this provision is intended to provide immunity from liability to encourage such person to utilize an AED on such individual. If a person uses an AED on an individual whom a reasonable lay person could clearly recognize was not suffering from a heart condition requiring immediate medical attention, then the liability protections of this Act do not apply.

Physicians and other licensed or certified health professionals who are using an AED within the scope of their health employment or agency are also excluded from immunity protection. Thus, a nurse using an AED at the nurse's place of employment while on duty would not be covered, but the same nurse if acting in a lay capacity as a bystander outside of a hospital would receive protection.

The immunity provision is further limited to cases where any harm caused by improper use of an AED is not due to the user's willful or criminal misconduct, gross negligence, reckless misconduct, or conscious and flagrant indifference to the rights or safety of the harmed individual. This standard is taken from the Volunteers Protection Act, and is intended to reflect a good faith standard that provides significantly more protection for Good Samaritans than the regular negligence standard common in most States.

Acquirers of AEDs are also granted immunity from liability related to the AEDs, so long as any harm caused by the use of an AED is not a result of the acquirer's failure to notify local emergency medical systems personnel or other appropriate entities of the devices' placement within a reasonable period of time after a placement of the device, failure to properly maintain and test the AED, or failure to provide appropriate AED training to an employee or agent who used the device on the victim in cases where the employee or agent would have been reasonably expected to use the device and the acquirer had a reasonable opportunity to train the user from the time at which the person could reasonably be expected to use the device.

Acquirers are subject to the same standard as good faith users (the harm was not caused by willful or criminal misconduct, etc.). However, the immunity provision does not protect hospitals and other health care entities where the harm from an AED use was caused by an employee or agent of the health entity using the AED while acting in the scope of their employment. This exclusion is similar to that for doctors and nurses acting within the scope of their employment, and is intended to exclude from immunity those entities holding themselves out as health care providers who are accordingly held to a higher standard of care then a person not acting in an official health care capacity.

The liability immunity protections do not apply to acquirers who lease, or rent, or otherwise hold title to an AED provided to a health care entity in cases where the AED is used by an employee or agent of a health care entity while acting within the scope of their employment or agency for such entity. This exclusion is intended to cover instances where hospitals and other health entities are using AEDs as part of the health care services they are providing, but where they are not the actual acquirers of the AED.

The rules of construction provide that this bill does not create any new cause of action, and does not require that an AED be placed at any building or other location. State laws are not superseded if the State has or enacts a statute or regulation providing immunity for the applicable class of persons. Additional existing protections from liability for Federal employees are not affected by this Act, including those in the Federal Tort Claims Act. However, the additional protections provided by this Act do apply to any action for civil liability arising under Federal law. The protections also apply to users and acquirers in military bases and other Federal jurisdictions that have adopted the laws of a surrounding State regarding matters where no other applicable Federal law exists.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

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TITLE II—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

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PART B—MISCELLANEOUS PROVISIONS

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RECOMMENDATIONS AND GUIDELINES REGARDING AUTOMATED EXTERNAL DEFIBRILLATORS FOR FEDERAL BUILDINGS

SEC. 247. (a) GUIDELINES ON PLACEMENT.—The Secretary shall establish guidelines with respect to placing automated external defibrillator devices in Federal buildings. Such guidelines shall take into account the extent to which such devices may be used by lay persons, the typical number of employees and visitors in the buildings, the extent of the need for security measures regarding the buildings, buildings or portions of buildings in which there are special circumstances such as high electrical voltage or extreme heat or cold, and such other factors as the Secretary determines to be appropriate.

(b) RELATED RECOMMENDATIONS.—The Secretary shall publish in the Federal Register the recommendations of the Secretary on the appropriate implementation of the placement of automated external defibrillator devices under subsection (a), including procedures for the following:

(1) Implementing appropriate training courses in the use of such devices, including the role of cardiopulmonary resuscitation.

(2) Proper maintenance and testing of the devices.

(3) Ensuring coordination with appropriate licensed professionals in the oversight of training of the devices.

(4) Ensuring coordination with local emergency medical systems regarding the placement and incidents of use of the devices.

(c) CONSULTATIONS; CONSIDERATION OF CERTAIN RECOMMENDATIONS.—In carrying out this section, the Secretary shall—

(1) consult with appropriate public and private entities;

(2) consider the recommendations of national and local public-health organizations for improving the survival rates of individuals who experience cardiac arrest in nonhospital settings by minimizing the time elapsing between the onset of cardiac arrest and the initial medical response; and

(3) consult with and counsel other Federal agencies where such devices are to be used.

(d) DATE CERTAIN FOR ESTABLISHING GUIDELINES AND RECOMMENDATIONS.—The Secretary shall comply with this section not later than 180 days after the date of the enactment of the Cardiac Arrest Survival Act of 2000.

(e) DEFINITIONS.—For purposes of this section:

(1) The term "automated external defibrillator device" has the meaning given such term in section 248.

(2) The term "Federal building" includes a building or portion of a building leased by a Federal agency, and includes buildings on military installations of the United States.

LIABILITY REGARDING EMERGENCY USE OF AUTOMATED EXTERNAL DEFIBRILLATORS

SEC. 248. (a) GOOD SAMARITAN PROTECTIONS REGARDING AEDS.—Except as provided in subsection (b), any person who uses an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use of such device; and in addition, any person who acquired the device is immune from such liability, if the harm was not due to the failure of such acquirer of the device—

(1) to notify local emergency response personnel or other appropriate entities of the most recent placement of the device within a reasonable period of time after the device was placed;

(2) to properly maintain and test the device; or

(3) to provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if—

(A) the employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

(B) the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm (or between the acquisition of the device and the occurrence of the harm, in any case in which the device was acquired after such engagement of the person) was not a reasonably sufficient period in which to provide the training.

(b) INAPPLICABILITY OF IMMUNITY.—Immunity under subsection (a) does not apply to a person if—

(1) the harm involved was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed; or

(2) the person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional; or

(3) the person is a hospital, clinic, or other health care entity, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or

(4) the person is an acquirer of the device who leased the device to a health care entity (or who otherwise provided the device to such entity for compensation without selling the device to the entity), and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent.

(c) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—The following applies with respect to this section:

(A) This section does not establish any cause of action, or require that an automated external defibrillator device be placed at any building or other location.

(B) With respect to a class of persons for which this section provides immunity from civil liability, this section supersedes the law of a State only to the extent that the State has no statute or regulations that provide persons in such class with immunity for civil liability arising from the use by such persons of automated external defibrillator devices in emergency situations (within the meaning of the State law or regulation involved).

(C) This section does not waive any protection from liability for Federal officers or employees under—

(i) section 224; or

(ii) sections 1346(b), 2672, and 2679 of title 28, United States Code, or under alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28.

(2) CIVIL ACTIONS UNDER FEDERAL LAW.—

(A) IN GENERAL.—The applicability of subsections (a) and (b) includes applicability to any action for civil liability described in subsection (a) that arises under Federal law.

(B) FEDERAL AREAS ADOPTING STATE LAW.—If a geographic area is under Federal jurisdiction and is located within a State but out of the jurisdiction of the State, and if, pursuant to Federal law, the law of the State applies in such area regarding matters for which there is no applicable Federal law, then an action for civil liability described in subsection (a) that in such area arises under the law of the State is subject to subsections (a) through (c) in lieu of any related State law that would apply in such area in the absence of this subparagraph.

(d) FEDERAL JURISDICTION.—In any civil action arising under State law, the courts of the State involved have jurisdiction to apply the provisions of this section exclusive of the jurisdiction of the courts of the United States.

(e) DEFINITIONS.—

(1) PERCEIVED MEDICAL EMERGENCY.—For purposes of this section, the term "perceived medical emergency" means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

(2) OTHER DEFINITIONS.—For purposes of this section:

(A) The term "automated external defibrillator device" means a defibrillator device that—

(i) is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;

(ii) is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed;

(iii) upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual; and

(iv) in the case of a defibrillator device that may be operated in either an automated or a manual mode, is set to operate in the automated mode.

(B)(i) The term "harm" includes physical, nonphysical, economic, and noneconomic losses.

(ii) The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(iii) The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

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