

FAMILY HEALTH CARE ACCESSIBILITY ACT OF 2010

SEPTEMBER 16, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 1745]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1745) to amend the Public Health Service Act to provide liability protections for volunteer practitioners at health centers under section 330 of such Act, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Health Care Accessibility Act of 2010".

SEC. 2. LIABILITY PROTECTIONS FOR HEALTH PROFESSIONAL VOLUNTEERS AT COMMUNITY HEALTH CENTERS.

Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding at the end the following:

"(q)(1) For purposes of this section, a health professional volunteer at an entity described in subsection (g)(4) shall, in providing a health professional service eligible for funding under section 330 to an individual, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (4)(C). The preceding sentence is subject to the provisions of this subsection.

"(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a health professional volunteer at an entity described in subsection (g)(4) if the following conditions are met:

"(A) The service is provided to the individual at the facilities of an entity described in subsection (g)(4), or through offsite programs or events carried out by the entity.

"(B) The entity is sponsoring the health care practitioner pursuant to paragraph (3)(B).

"(C) The health care practitioner does not receive any compensation for the service from the individual or from any third-party payer (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program), except that the health care practitioner may receive repayment from the entity described in subsection (g)(4) for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

"(D) Before the service is provided, the health care practitioner or the entity described in subsection (g)(4) posts a clear and conspicuous notice at the site where the service is provided of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection.

"(E) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable law regarding the provision of the service.

"(3) Subsection (g) (other than paragraphs (3) and (5)) and subsections (h), (i), and (l) apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (4) and subject to the following:

"(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

"(B) With respect to an entity described in subsection (g)(4), a health care practitioner is not a health professional volunteer at such entity unless the entity sponsors the health care practitioner. For purposes of this subsection, the entity shall be considered to be sponsoring the health care practitioner if—

"(i) with respect to the health care practitioner, the entity submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and

"(ii) the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

"(C) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) to be a health professional volunteer at such entity, this subsection applies to the health care practitioner (with respect to services performed on behalf of the entity sponsoring the health care practitioner pursuant to subparagraph (B)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

"(D) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

"(4)(A) Amounts in the fund established under subsection (k)(2) shall be available for transfer under subparagraph (C) for purposes of carrying out this subsection.

"(B) Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that,

by reason of the acts or omissions of health professional volunteers, will be paid pursuant to this section during the calendar year that begins in the following fiscal year. Subsection (k)(1)(B) applies to the estimate under the preceding sentence regarding health professional volunteers to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

“(C) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subsection (k)(2) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (B) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

“(5)(A) This subsection takes effect on October 1, 2011, except as provided in subparagraph (B).

“(B) Effective on the date of the enactment of this subsection—

“(i) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (3)(B); and

“(ii) reports under paragraph (4)(B) may be submitted to the Congress.”.

PURPOSE AND SUMMARY

H.R. 1745, the “Family Health Care Accessibility Act of 2009”, was introduced by Reps. Tim Murphy (R-PA) and Gene Green (D-TX) and referred to the Committee on Energy and Commerce on March 26, 2009.

The goal of H.R. 1745 is to remove possible disincentives for health care practitioners to volunteer at community health centers. The legislation amends the Public Health Service Act to provide liability protections for volunteer practitioners at community health centers.

BACKGROUND AND NEED FOR LEGISLATION

Currently all medical professionals employed by health centers are covered under the Federal Tort Claims Act (FTCA) for medical malpractice. In order to receive this coverage, each health center must undergo extensive risk management training and have in place continuous oversight mechanisms to reduce the risk of malpractice.

Individuals seeking to volunteer at a health center must either have their own independent coverage or rely on the Volunteer Protection Act (VPA), which can complicate a health center’s risk management practices. Indeed, VPA coverage does not have the same malpractice coverage as FTCA. Moreover, the possibility of malpractice litigation may dissuade some professionals from volunteering.

COMMITTEE CONSIDERATION

H.R. 1745, the “Family Health Care Accessibility Act of 2009”, was introduced by Reps. Tim Murphy (R-PA) and Gene Green (D-TX) on March 26, 2009, and referred to the Committee on Energy and Commerce. Subsequently, the bill was referred to the Subcommittee on Health on March 30, 2010. The Subcommittee met in open markup session to consider H.R. 1745 on July 22, 2010. An amendment in the nature of a substitute (manager’s amendment) by Rep. Gene Green of Texas was adopted by a voice vote. Subsequently, H.R. 1745 was favorably forwarded to the full Committee, amended, by a voice vote.

On July 28, 2010, the Committee on Energy and Commerce met in open markup session and considered H.R. 1745 as approved by the Subcommittee. An amendment offered by Rep. Gene Green of Texas was adopted by a voice vote. Subsequently, the Committee ordered H.R. 1745 favorably reported to the House, 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 each record vote on the motion to report legislation and amendments thereto. A motion by Mr. Waxman ordering H.R. 1745 reported to the House, amended, was approved by a voice vote. There were no record votes taken during consideration of this bill.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report, including the finding that the possibility of malpractice litigation may dissuade some health care professionals from volunteering at community health centers.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1745 would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the Committee are reflected in the descriptive portions of this report, including the goal to remove possible disincentives for health care practitioners to volunteer at community health centers.

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 H.R. 1745 is provided under Article I, section 8, clauses 3 and 18 of the Constitution of the United States.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1745 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the

definition of 5 U.S.C. App., section 5(b) of the Federal Advisory Committee Act.

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 1745 contains no such provisions.

FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act of 1974 (as amended by section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate of H.R. 1745 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1745 from the Director of the Congressional Budget Office:

SEPTEMBER 7, 2010.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1745, the Family Health Care Accessibility Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Ramirez-Branum.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1745—Family Health Care Accessibility Act of 2010

Summary: H.R. 1745 would amend the Public Health Service Act to expand the pool of individuals provided with liability protection under the Federal Tort Claims Act (FTCA).

CBO estimates that implementing the bill would cost \$1 million for 2011 and \$18 million over the 2011-2015 period, assuming the appropriation of necessary amounts. CBO estimates that funding

the act would require appropriations totalling \$6 million in 2011 and \$31 million over the 2011–2015 period. Enacting this legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1745 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the federal government: The estimated budgetary impact of H.R. 1745 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	6	6	6	6	6	31
Estimated Outlays	1	2	4	5	6	18

Basis of estimate: Under current law, the Federal Tort Claims Act (FTCA) provides liability protection to employees and contractors of certain health centers because those individuals are considered employees of the federal government. In doing so, the government defends all medical liability claims against health center employees and pays any claims arising from the liability. H.R. 1745 would grant that protection to health care professionals who volunteer at those health centers.

The liability protection for volunteers under H.R. 1745 would be conditional upon the appropriation of funds, in addition to existing FTCA resources, for the purposes of covering volunteers.¹ For this estimate, CBO assumes that H.R. 1745 will be enacted near the beginning of fiscal year 2011 and funds will be appropriated beginning in fiscal year 2011 and each year thereafter. Based on historical program expenditures for existing liability protections, the projected demand for health care professionals, and the potential role of volunteer staff at health centers, CBO estimates that covering volunteers under the FTCA would require the appropriation of \$6 million for 2011 and \$31 million over the 2011–2015 period. CBO estimates that implementing the FTCA expansion would cost \$18 million over the 2011–2015 period, assuming appropriation of the necessary amounts.

Intergovernmental and private-sector impact: H.R. 1745 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs and Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum, Impact on the Private Sector: Jimmy Jin.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

¹The Consolidated Appropriations Act, 2010, provided \$44 million for FTCA coverage of health center employees.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Family Health Care Accessibility Act of 2010”.

Section 2. Liability protections for health professional volunteers at community health centers

Section 2 amends section 224 of the Public Health Service Act (PHSA) (42 U.S.C. 233), the provision of current law that deals with the applicability of the Federal Tort Claims Act (FTCA) to certain employees of the Public Health Service (PHS) and certain employees of grantees under the PHSA. The new provision would deem a health care practitioner who volunteers at community health centers (CHCs) to be an employee of the PHS. The original bill, as introduced, would have applied only to physicians and psychologists. The bill, as reported (in the form of an amendment in the nature of a substitute), applies to all healthcare professional volunteers.

Under this section, this deemed status would apply only if:

- health services would be eligible for funding under section 330 of the PHSA;
- health services are provided at the facilities of the CHC or in a program or event sponsored by the CHC;
- the CHC is sponsoring the practitioner;
- the practitioner does not receive compensation for the services provided;
- the practitioner or CHC posts clear notice of the applicability of the FTCA; and
- the practitioner is licensed or certified in accordance with applicable law.

In addition, in order to have these provisions apply to a practitioner, the CHC must submit an application to the Secretary and the Secretary must determine that the practitioner meets the relevant requirements of the PHSA. This process is based off the current process in which volunteers at free health clinics receive FTCA protection. The FTCA protections apply to any cause of action that arises from acts or omissions of the practitioner on or after the Secretary’s determination.

Money to pay any judgments against a volunteer practitioner under this provision is to be made available from the fund established under subsection (k)(2) of section 224 of the PHSA. This fund now exists to pay judgments against CHC employees and officers. It is subject to appropriations and is made up of transfers of appropriations made for CHCs. This provision requires that the Secretary transfer money needed to satisfy these newly added professionals as well. This section also requires an annual report from the Attorney General, in consultation with the Secretary, estimating the costs of this provision.

The effective date of this provision is to be October 1, 2011.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

* * * * *

TITLE II—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

PART A—ADMINISTRATION

* * * * *

DEFENSE OF CERTAIN MALPRACTICE AND NEGLIGENCE SUITS

SEC. 224. (a) * * *

* * * * *

(q)(1) For purposes of this section, a health professional volunteer at an entity described in subsection (g)(4) shall, in providing a health professional service eligible for funding under section 330 to an individual, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (4)(C). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a health professional volunteer at an entity described in subsection (g)(4) if the following conditions are met:

(A) The service is provided to the individual at the facilities of an entity described in subsection (g)(4), or through offsite programs or events carried out by the entity.

(B) The entity is sponsoring the health care practitioner pursuant to paragraph (3)(B).

(C) The health care practitioner does not receive any compensation for the service from the individual or from any third-party payer (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program), except that the health care practitioner may receive repayment from the entity described in subsection (g)(4) for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

(D) Before the service is provided, the health care practitioner or the entity described in subsection (g)(4) posts a clear and conspicuous notice at the site where the service is provided of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection.

(E) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable law regarding the provision of the service.

(3) Subsection (g) (other than paragraphs (3) and (5)) and subsections (h), (i), and (l) apply to a health care practitioner for pur-

poses of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (4) and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

(B) With respect to an entity described in subsection (g)(4), a health care practitioner is not a health professional volunteer at such entity unless the entity sponsors the health care practitioner. For purposes of this subsection, the entity shall be considered to be sponsoring the health care practitioner if—

(i) with respect to the health care practitioner, the entity submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and

(ii) the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(C) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) to be a health professional volunteer at such entity, this subsection applies to the health care practitioner (with respect to services performed on behalf of the entity sponsoring the health care practitioner pursuant to subparagraph (B)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

(D) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(4)(A) Amounts in the fund established under subsection (k)(2) shall be available for transfer under subparagraph (C) for purposes of carrying out this subsection.

(B) Not later May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of health professional volunteers, will be paid pursuant to this section during the calendar year that begins in the following fiscal year. Subsection (k)(1)(B) applies to the estimate under the preceding sentence regarding health professional volunteers to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

(C) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subsection (k)(2) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (B) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(5)(A) This subsection takes effect on October 1, 2011, except as provided in subparagraph (B).

(B) Effective on the date of the enactment of this subsection—

(i) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (3)(B); and

(ii) reports under paragraph (4)(B) may be submitted to the Congress.

* * * * *