

AMENDMENT TO H.R. 5620
OFFERED BY MR. NEWHOUSE OF WASHINGTON

Add at the end the following new section:

1 **SEC. 11. CLARIFICATION OF EMERGENCY HOSPITAL CARE**
2 **FURNISHED BY THE SECRETARY OF VET-**
3 **ERANS AFFAIRS TO CERTAIN VETERANS.**

4 (a) IN GENERAL.—Chapter 17 of title 38, United
5 States Code, is amended by inserting after section 1730A
6 the following new section:

7 **“§ 1730B. Examination and treatment for emergency**
8 **medical conditions and women in labor**

9 “(a) MEDICAL SCREENING EXAMINATIONS.—In car-
10 rying out this chapter, if any enrolled veteran requests,
11 or a request is made on behalf of the veteran, for examina-
12 tion or treatment for a medical condition, regardless of
13 whether such condition is service-connected, at a hospital
14 emergency department of a medical facility of the Depart-
15 ment, the Secretary shall ensure that the veteran is pro-
16 vided an appropriate medical screening examination within
17 the capability of the emergency department, including an-
18 cillary services routinely available to the emergency de-
19 partment, to determine whether an emergency medical
20 condition exists.

1 “(b) NECESSARY STABILIZING TREATMENT FOR
2 EMERGENCY MEDICAL CONDITIONS AND LABOR.—(1) If
3 an enrolled veteran comes to a medical facility of the De-
4 partment and the Secretary determines that the veteran
5 has an emergency medical condition, the Secretary shall
6 provide either—

7 “(A) such further medical examination and
8 such treatment as may be required to stabilize the
9 medical condition; or

10 “(B) for the transfer of the veteran to another
11 medical facility of the Department or a non-Depart-
12 ment facility in accordance with subsection (c).

13 “(2) The Secretary is deemed to meet the require-
14 ment of paragraph (1)(A) with respect to an enrolled vet-
15 eran if the Secretary offers the veteran the further medical
16 examination and treatment described in such paragraph
17 and informs the veteran (or an individual acting on behalf
18 of the veteran) of the risks and benefits to the veteran
19 of such examination and treatment, but the veteran (or
20 individual) refuses to consent to the examination and
21 treatment. The Secretary shall take all reasonable steps
22 to secure the written informed consent of such veteran (or
23 individual) to refuse such examination and treatment.

24 “(3) The Secretary is deemed to meet the require-
25 ment of paragraph (1) with respect to an enrolled veteran

1 if the Secretary offers to transfer the individual to another
2 medical facility in accordance with subsection (c) of this
3 section and informs the veteran (or an individual acting
4 on behalf of the veteran) of the risks and benefits to the
5 veteran of such transfer, but the veteran (or individual)
6 refuses to consent to the transfer. The hospital shall take
7 all reasonable steps to secure the written informed consent
8 of such veteran (or individual) to refuse such transfer.

9 “(c) RESTRICTION OF TRANSFERS UNTIL VETERAN
10 STABILIZED.—(1) If an enrolled veteran at a medical fa-
11 cility of the Department has an emergency medical condi-
12 tion that has not been stabilized, the Secretary may not
13 transfer the veteran to another medical facility of the De-
14 partment or a non-Department facility unless—

15 “(A)(i) the veteran (or a legally responsible in-
16 dividual acting on behalf of the veteran), after being
17 informed of the obligation of the Secretary under
18 this section and of the risk of transfer, requests in
19 writing a transfer to another medical facility;

20 “(ii) a physician has signed a certification (in-
21 cluding a summary of the risks and benefits) that,
22 based upon the information available at the time of
23 transfer, the medical benefits reasonably expected
24 from the provision of appropriate medical treatment
25 at another medical facility outweigh the increased

1 risks to the veteran and, in the case of labor, to the
2 unborn child from effecting the transfer; or

3 “(iii) if a physician is not physically present in
4 the emergency department at the time a veteran is
5 transferred, a qualified medical person (as defined
6 by the Secretary in regulations) has signed a certifi-
7 cation described in clause (ii) after a physician, in
8 consultation with the person, has made the deter-
9 mination described in such clause, and subsequently
10 countersigns the certification; and

11 “(B) the transfer is an appropriate transfer as
12 described in paragraph (2).

13 “(2) An appropriate transfer to a medical facility is
14 a transfer—

15 “(A) in which the transferring medical facility
16 provides the medical treatment within the capacity
17 of the facility that minimizes the risks to the health
18 of the enrolled veteran and, in the case of a woman
19 in labor, the health of the unborn child;

20 “(B) in which the receiving facility—

21 “(i) has available space and qualified per-
22 sonnel for the treatment of the veteran; and

23 “(ii) has agreed to accept transfer of the
24 veteran and to provide appropriate medical
25 treatment;

1 “(C) in which the transferring facility sends to
2 the receiving facility all medical records (or copies
3 thereof), related to the emergency condition for
4 which the veteran has presented, available at the
5 time of the transfer, including records related to the
6 emergency medical condition of the veteran, observa-
7 tions of signs or symptoms, preliminary diagnosis,
8 treatment provided, results of any tests and the in-
9 formed written consent or certification (or copy
10 thereof) provided under paragraph (1)(A), and the
11 name and address of any on-call physician (de-
12 scribed in subsection (d)(1)(C) of this section) who
13 has refused or failed to appear within a reasonable
14 time to provide necessary stabilizing treatment;

15 “(D) in which the transfer is effected through
16 qualified personnel and transportation equipment, as
17 required including the use of necessary and medi-
18 cally appropriate life support measures during the
19 transfer; and

20 “(E) that meets such other requirements as the
21 Secretary may find necessary in the interest of the
22 health and safety of veterans transferred.

23 “(d) CHARGES.—(1) Nothing in this section may be
24 construed to affect any charges that the Secretary may
25 collect from a veteran or third party.

1 “(2) The Secretary shall treat any care provided by
2 a non-Department facility pursuant to this section as care
3 otherwise provided by a non-Department facility pursuant
4 to this chapter for purposes of paying such non-Depart-
5 ment facility for such care.

6 “(e) NONDISCRIMINATION.—A medical facility of the
7 Department or a non-Department facility, as the case may
8 be, that has specialized capabilities or facilities (such as
9 burn units, shock-trauma units, neonatal intensive care
10 units, or (with respect to rural areas) regional referral
11 centers as identified by the Secretary in regulation) shall
12 not refuse to accept an appropriate transfer of an enrolled
13 veteran who requires such specialized capabilities or facili-
14 ties if the facility has the capacity to treat the veteran.

15 “(f) NO DELAY IN EXAMINATION OR TREATMENT.—
16 A medical facility of the Department or a non-Department
17 facility, as the case may be, may not delay provision of
18 an appropriate medical screening examination required
19 under subsection (a) or further medical examination and
20 treatment required under subsection (b) of this section in
21 order to inquire about the method of payment or insurance
22 status of an enrolled veteran.

23 “(g) WHISTLEBLOWER PROTECTIONS.—The Sec-
24 retary may not take adverse action against an employee
25 of the Department because the employee refuses to au-

1 thorize the transfer of an enrolled veteran with an emer-
2 gency medical condition that has not been stabilized or
3 because the employee reports a violation of a requirement
4 of this section.

5 “(h) DEFINITIONS.—In this section:

6 “(1) The term ‘emergency medical condition’
7 means—

8 “(A) a medical condition manifesting itself
9 by acute symptoms of sufficient severity (in-
10 cluding severe pain) such that the absence of
11 immediate medical attention could reasonably
12 be expected to result in—

13 “(i) placing the health of the enrolled
14 veteran (or, with respect to an enrolled vet-
15 eran who is a pregnant woman, the health
16 of the woman or her unborn child) in seri-
17 ous jeopardy;

18 “(ii) serious impairment to bodily
19 functions; or

20 “(iii) serious dysfunction of any bodily
21 organ or part; or

22 “(B) with respect to an enrolled veteran
23 who is a pregnant woman having contractions—

1 “(i) that there is inadequate time to
2 effect a safe transfer to another hospital
3 before delivery; or

4 “(ii) that transfer may pose a threat
5 to the health or safety of the woman or the
6 unborn child.

7 “(2) The term ‘enrolled veteran’ means a vet-
8 eran who is enrolled in the health care system estab-
9 lished under section 1705(a) of this title.

10 “(3) The term ‘to stabilize’ means, with respect
11 to an emergency medical condition described in
12 paragraph (1)(A), to provide such medical treatment
13 of the condition as may be necessary to assure, with-
14 in reasonable medical probability, that no material
15 deterioration of the condition is likely to result from
16 or occur during the transfer of the enrolled veteran
17 from a facility, or, with respect to an emergency
18 medical condition described in paragraph (1)(B), to
19 deliver (including the placenta).

20 “(4) The term ‘stabilized’ means, with respect
21 to an emergency medical condition described in
22 paragraph (1)(A), that no material deterioration of
23 the condition is likely, within reasonable medical
24 probability, to result from or occur during the trans-
25 fer of the individual from a facility, or, with respect

1 to an emergency medical condition described in
2 paragraph (1)(B), that the woman has delivered (in-
3 cluding the placenta).

4 “(5) The term ‘transfer’ means the movement
5 (including the discharge) of an enrolled veteran out-
6 side the facilities of a medical facility of the Depart-
7 ment at the direction of any individual employed by
8 (or affiliated or associated, directly or indirectly,
9 with) the Department, but does not include such a
10 movement of an individual who—

11 “(A) has been declared dead; or

12 “(B) leaves the facility without the permis-
13 sion of any such person.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 of such chapter is amended by inserting after the item
16 relating to section 1730A the following new item:

“1730B. Examination and treatment for emergency medical conditions and
women in labor.”.

