

**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.”.

