RESOLUTION DISAPPROVING OF HCFA'S SURETY BOND RULE

Mr. BOND. Mr. President, today I introduce a measure on behalf of myself, Mr. BAUCUS, Mr. GRASSLEY, and others which sends a strong message to the Health Care Financing Administration (HCFA) that the United States Senate disagrees with its recent rule regarding surety bond requirements for home health agencies.

The surety bond regulation, coupled with HCFA's implementation of the Interim Payment System (IPS) for home health agencies, places our Nation's home health agencies to provide high quality care to our Nation's seniors and disabled.

Over this past month alone, in St. Louis, Missouri, the two largest home health providers decided to get out of the home health business—leaving hundreds of elderly and disabled patients searching for a new provider. The invaluable, dedicated services provided by the largest independent provider in St. Louis, the Visiting Nurse Association (VNA), will no longer be realized by the approximately 600 home care patients the agency has served.

It is regrettable that a government bureaucracy is forcing a home health agency, that has served the St. Louis area for 87 years, out of the home health care business.

The Balanced Budget Act of 1997 requires that all Medicare-participating home care agencies hold surety bonds for at least $50,000. This provision was modeled after a successful Florida Medicaid statute which imposes surety bonds on home care providers as a way of ensuring that only reputable businesses entered Florida's Medicaid program.

This needed and modest idea, however, has been severely distorted by HCFA. HCFA's surety bond rule deviates from Florida's program in two major ways:

First, the Florida program requires a $50,000 bond. HCFA's rule requires the bond amount to be the greater of $50,000 or 15 percent of the home care agency's previous year's Medicare revenues.

Since HCFA issued its initial rule back in January of 1998, constituents in my home State have reported numerous problems in securing these bonds. These reputable individuals involved in the home care industry are refusing to sell home care bonds under the regulation's requirements. Those few companies that are selling bonds are requiring backup collateral equal to the full face value of the bond, or personal guarantees in the event of even three times the value of the bond.

Second, the Florida program requires only new home care agencies to secure these bonds. Agencies with at least one year in the program and with no history of overpayments are exempted from the bond requirement. HCFA's rule, however, requires all Medicare-participating home care agencies to hold bonds, regardless of how long an agency has been in Medicare and regardless of the agency's good Medicare history. Further, HCFA's rule requires every home care agency to purchase new surety bonds every year.

HCFA's rule is outrageous. These requirements and costs are unaffordable, especially for the smaller, freestanding home health agencies. HCFA's surety bond regulations threaten the existence of many small business home health providers and the essential services they provide to the most vulnerable and most frail of our society.

The surety bond requirement reflects HCFA's attitude that all Medicare providers are suspect. Rather than keeping unscrupulous providers out of the home health business, HCFA's rule will penalize and put many decent home health agencies out of business.

In promulgating this rule, HCFA did not consider the long-standing reputation of most home health agencies, their years of compliance with Medicare's regulations, or their history of managing and avoiding overpayments from the government. These providers have worked long and hard within the convoluted Medicare program, have abided by the rules and regulations, and have been subjected to numerous audits by fiscal intermediaries.

HCFA's careless disregard, which has already put many conscientious law-abiding companies out of business, must be dealt with immediately. It is especially incomprehensible when the small businesses at risk provide a service so valued by the disabled and older Americans who receive it.

On Tuesday, June 8, the Regulatory Fairness Board for Region VII held a public meeting in Frontenac, Missouri, a suburb of St. Louis, Mo. My Red Tape Reduction Act of 1996 created ten Regional Fairness Boards to be the eyes and ears of small business, collecting comments from small businesses on their experience with Federal regulatory agencies. The Ombudsman, created under the same law, is to use these comments to evaluate the small business responsiveness of agency enforcement actions.

According to Scott George, a small business owner from Mt. Vernon, Missouri, who serves on the Region VII Fairness Board, this particular meeting of the Fairness Board was dominated by testimony from smaller, freestanding home health care agencies that will be driven out of business by the HCFA regulations. They testified that more than 1,100 home health care providers nationwide have already closed their doors this year. Mr. George noted that every company that testified before the Region VII Fairness Board said they would be driven out of business by year-end. One couple traveled from Missouri to testify that they will be out of business by the time of the Regional Fairness Board for their area holds a hearing absent relief from the HCFA regulations.