

and second time by unanimous consent, and referred as indicated:

By Mr. BREAUX (for himself, Mr. MACK, Mr. GRAHAM, and Mr. DORGAN):

S. 734. A bill to amend title XVIII of the Social Security Act to make certain changes to hospice care under the medicare program; to the Committee on Finance.

By Mr. D'AMATO:

S. 735. A bill to amend title 10, United States Code, to restore the Department of Defense loan guarantee program for small and medium-sized business concerns that are economically dependent on defense expenditures; to the Committee on Armed Services.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BREAUX (for himself, Mr. MACK, Mr. GRAHAM, and Mr. DORGAN):

S. 734. A bill to amend title XVIII of the Social Security Act to make certain changes to hospice care under the Medicare Program; to the Committee on Finance.

THE MEDICARE HOSPICE BENEFIT AMENDMENTS OF 1997

• Mr. BREAUX. Mr. President, I introduce legislation to make technical changes to the Medicare hospice benefit which will ensure that high-quality hospice services will be available to all terminally ill Medicare beneficiaries. This legislation is identical to H.R. 521, introduced by Representative CARDIN.

Hospices care for and comfort terminally ill patients at home or in home-like settings. There are 2,800 hospice programs in all 50 States and in 1995 they cared for more than 390,000 patients. One out of every three people who died from cancer or AIDS were cared for by hospice.

Services provided under the Medicare hospice benefit include physician services, nursing care, drugs for symptom management, pain relief, short term inpatient and respite care, and counseling both for the terminally ill and their families. But terminally ill patients who elect hospice care opt out of most other Medicare services related to their terminal illness.

Hospice services permit terminally ill people to die with dignity, usually in the comforting surroundings of their own homes with their loved ones nearby. Hospice is also a cost-effective form of care. At a time when Medicare is pushing to enroll more beneficiaries in managed care plans, hospice is already managed. Hospices provide patients with whatever palliative services are needed to manage their terminal illness, and they are reimbursed a standard per diem rate, based on the intensity of care needed and the location of the provision of care.

With 28 percent of all Medicare costs now going toward the care of people in their last year of life, and almost 50 percent of those costs spent during the last 2 months of life, cost-effective alternatives are needed. Studies show hospices reduce Medicare spending. A 1995 Lewin study showed that for every dollar Medicare spent on hospice, it

saved \$1.52 in Medicare part A and part B expenditures. Similarly, a 1989 study commissioned by the Health Care Financing Administration showed savings of \$1.26 for every Medicare dollar spent on hospice.

Since 1982, when the hospice benefit was added to the Medicare statute, more and more Americans have chosen to spend their final months of life in this humane and cost-effective setting. Yet in recent years, it has become clear that certain technical changes are needed in the Medicare hospice benefit to protect beneficiaries and ensure that a full range of cost-effective hospice services continue to be available. The bill I am introducing today makes these necessary technical changes.

First, the Medicare Hospice Benefits Amendments of 1997 restructure the hospice benefit periods. The basic eligibility criteria do not change. Under this bill, as in current law, a person is eligible for the Medicare hospice benefit only if two physicians have certified that the patient is terminally ill with a life expectancy of six months or less. Patients who elect to receive hospice benefits give up most other Medicare benefits unless and until they withdraw from the hospice program.

While this bill does not change hospice eligibility criteria, it does change how the benefit periods are structured. Currently, the Medicare benefit consists of four benefit periods. At the end of each of the first three periods, the patient must be recertified as being terminally ill. The fourth benefit period is of unlimited duration. However, a patient who withdraws from hospice during the fourth hospice period forfeits his ability to elect hospice services in the future. Thus, patients who go into remission, and are thus no longer eligible for hospice because their life expectancy exceeds 6 months, cannot return to hospice when their condition worsens.

This bill restructures the hospice benefit periods to eliminate the existing open-ended fourth benefit period and to provide that after the first two 90-day periods, patients are reevaluated every 60 days to ensure they still qualify for hospice services. This restructuring ensures that those receiving Medicare benefits are able to receive hospice services at the time they need them and can be discharged from hospice care with no penalty if their prognosis changes.

Second, the bill clarifies that ambulance services, diagnostic tests, radiation, and chemotherapy are covered under the hospice benefit when they are included in the patient's plan of care. No separate payment will be made for these services, but hospices will have to provide them when they are found to be necessary as a palliative measure. This change conforms the statute to current Medicare regulatory policy and does not cost Medicare any additional money because payments are covered by the current per-diem payments.

Third, the bill also permits hospices to have independent contractor relationships with physicians. Under current law, hospices must directly employ their medical directors and other staff physicians. This creates a legal problem in some States which prohibit the corporate practice of medicine, and the requirement has made it increasingly difficult to recruit part-time hospice physicians.

Fourth, the bill creates a mechanism to allow waiver of certain staffing requirements for rural hospices, which often have difficulty becoming Medicare-certified because of shortages of certain health professionals. Currently, about 80 percent of hospices are Medicare-certified or pending certification.

Finally, this bill provides some administrative flexibility regarding certification of terminal illness. Currently, the statute requires that paperwork documenting physician certification of a patient's terminal illness be completed within a certain number of days of the patient's admission to hospice. This bill will eliminate the strict statutory requirements. It gives the Health Care Financing Administration the discretion, as it currently has with home health certifications, to require hospice certifications to be on file before a Medicare claim is submitted.

The Medicare Hospice Benefit Amendments of 1997 are noncontroversial and should not affect Medicare spending, but they will make important and necessary changes to the Medicare hospice benefit, to enable hospices to provide high-quality, cost-effective care to the terminally ill, and to protect beneficiaries who depend on these services.

I urge my colleagues to support this bill, and I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Hospice Benefit Amendments of 1997".

SEC. 2. HOSPICE CARE BENEFIT PERIODS.

(a) RESTRUCTURING OF BENEFIT PERIOD.—Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended in subsections (a)(4) and (d)(1), by striking "a subsequent period of 30 days, and a subsequent extension period" and inserting "and an unlimited number of subsequent periods of 60 days each".

(b) CONFORMING AMENDMENTS.—

(1) Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended in subsection (d)(2)(B) by striking "90- or 30-day period or a subsequent extension period" and inserting "90-day period or a subsequent 60-day period".

(2) Section 1814(a)(7)(A) of the Social Security Act (42 U.S.C. 1395f(a)(7)(A)) is amended—

(A) in clause (i), by inserting "and" at the end;

(B) in clause (ii)—

(i) by striking "30-day" and inserting "60-day"; and

(ii) by striking “, and” at the end and inserting a period; and

(C) by striking clause (iii).

SEC. 3. OTHER ITEMS AND SERVICES INCLUDED IN HOSPICE CARE.

Section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)) is amended—

(1) in subparagraph (G), by striking “and” at the end;

(2) in subparagraph (H), by striking the period at the end and inserting “, and”; and

(3) by inserting after subparagraph (H) the following:

“(I) any other item or service which is specified in the plan and for which payment may otherwise be made under this title.”.

SEC. 4. CONTRACTING WITH INDEPENDENT PHYSICIANS OR PHYSICIAN GROUPS FOR HOSPICE CARE SERVICES PERMITTED.

Section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)) is amended—

(1) in subparagraph (A)(ii)(I), by striking “(F),”; and

(2) in subparagraph (B)(i), by inserting “or under contract with” after “employed by”.

SEC. 5. WAIVER OF CERTAIN STAFFING REQUIREMENTS FOR HOSPICE CARE PROGRAMS IN NONURBANIZED AREAS.

Section 1861(dd)(5) of the Social Security Act (42 U.S.C. 1395x(dd)(5)) is amended—

(1) in subparagraph (B), by inserting “or (C)” after “subparagraph (A)” each place it appears; and

(2) by adding at the end the following:

“(C) The Secretary may waive the requirements of clauses (i) and (ii) of paragraph (2)(A) for an agency or organization with respect to the services described in paragraph (1)(B) and, with respect to dietary counseling, paragraph (1)(H), if such agency or organization—

“(i) is located in an area which is not an urbanized area (as defined by the Bureau of Census); and

“(ii) demonstrates to the satisfaction of the Secretary that the agency or organization has been unable, despite diligent efforts, to recruit appropriate personnel.”.

SEC. 6. LIMITATION ON LIABILITY OF BENEFICIARIES AND PROVIDERS FOR CERTAIN HOSPICE COVERAGE DENIALS.

Section 1879(g) of the Social Security Act (42 U.S.C. 1395pp(g)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving those subparagraphs 2 ems to the right;

(2) by striking “is,” and inserting “is—”;

(3) by making the remaining text of subsection (g) (as amended) that follows “is—” a new paragraph (1) and indenting that paragraph 2 ems to the right;

(4) by striking the period at the end and inserting “; and”; and

(5) by adding at the end the following:

“(2) with respect to the provision of hospice care to an individual, a determination that the individual is not terminally ill.”.

SEC. 7. EXTENDING THE PERIOD FOR PHYSICIAN CERTIFICATION OF AN INDIVIDUAL'S TERMINAL ILLNESS.

Section 1814(a)(7)(A)(i)(II) of the Social Security Act (42 U.S.C. 1395f(a)(7)(A)(i)(II)) is amended by striking “, not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated),” and inserting “at the beginning of the period”.

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act apply to benefits provided on or after the date of enactment of this Act, regardless of whether or not an individual has made an election under section 1812(d) of the Social Security Act (42 U.S.C. 1395d(d)) before that date.●

By Mr. D'AMATO:

S. 735. A bill to amend title 10, United States Code, to restore the Department of Defense loan guarantee program for small and medium-sized business concerns that are economically dependent on defense expenditures; to the Committee on Armed Services.

THE SMALL BUSINESS ADMINISTRATION DEFENSE LOAN AND TECHNICAL ASSISTANCE LOAN EXTENSION ACT OF 1997

● Mr. D'AMATO. Mr. President, I introduce legislation that will extend the Small Business Administration Defense Loan and Technical Assistance [DELTA] Loan Program. There are many areas in the country still in the process of trying to transition from defense into commercial product lines. The proposed legislation would extend the program to September 30, 1999, and broadens the eligibility to include companies that derived at least 25 percent of its sales from defense-related contracts in any 1 of 7 prior years and increases the loan guarantee to 90 percent. Since the funds have already been appropriated no additional funds are required.

Presently under the current DELTA Program, a company must have 25 percent of its sales coming from defense contracts in the prior year and guarantees 75 percent of the loan. The current DELTA Program has a sunset clause which goes into effect at the end of fiscal year 1998.

Without this legislation, the DELTA Program expires before companies have been given ample opportunity to make this very difficult transition. We have an obligation to provide extended support for small businesses in areas that have been hard hit by defense downsizing.

If the DELTA Program is allowed to expire, all the undedicated monies would revert back to the General Treasury. Of the \$30 million appropriated, only slightly more than \$3 million has been utilized.

Mr. President, I urge my colleagues on both sides of the aisle to join me in cosponsoring this important legislation.

Mr. President, I ask unanimous consent that the complete text of the bill be placed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 735

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RESTORATION OF LOAN GUARANTEE PROGRAM FOR DEFENSE DEPENDENT SMALL AND MEDIUM-SIZED BUSINESS CONCERNS.

(a) DELTA LOAN GUARANTEE PROGRAM.—(1) Chapter 148 of title 10, United States Code, is amended by inserting before section 2525 the following new section:

“§2524. Loan guarantees for defense dependent small and medium-sized business concerns

“(a) LOAN GUARANTEES AUTHORIZED.—The Secretary of Defense may provide support

under this section for programs sponsored by the Federal Government, regional entities, States, local governments, and private entities and nonprofit organizations that assist small business concerns and medium-sized business concerns that are economically dependent on defense expenditures to acquire dual-use capabilities through the provision of loan guarantees to such business concerns under the terms and conditions specified under this section and other applicable law.

“(b) TRANSFER OF ADMINISTRATION.—(1) The Secretary of Defense may enter into a memorandum of understanding with the Administrator of the Small Business Administration, the Administrator of the Economic Development Administration of the Department of Commerce, or the head of any other Federal agency having expertise regarding the provision of loan guarantees, under which the agency may—

“(A) process applications for loan guarantees under this section;

“(B) guarantee repayment of the resulting loans; and

“(C) provide any other services to the Secretary to administer the loan guarantee program under this section.

“(2) From funds made available for the loan guarantee program under this section, the Secretary of Defense may transfer to the agency or agencies that are parties to the memorandum of understanding such sums as may be necessary for the agency or agencies to carry out activities under the loan guarantee program.

“(3) The Secretary of Defense shall enter into the memorandum of understanding authorized by paragraph (1) within 60 days after the date of the enactment of this section.

“(c) CONDITION ON OPERATION.—The Secretary shall carry out the loan guarantee program authorized under this section during any fiscal year for which funds are specifically made available to cover the costs of loan guarantees to be issued pursuant to such section.

“(d) SPECIAL REQUIREMENTS REGARDING LOAN GUARANTEES.—(1) Competitive procedures shall be used in the selection of small business concerns and medium-sized business concerns to receive loan guarantees under this section.

“(2) The criteria used for the selection of a small business concern or medium-sized business concern to receive a loan guarantee under this section shall include the following:

“(A) The extent to which the loans to be guaranteed would support the retention of defense workers whose employment would otherwise be permanently or temporarily terminated as a result of reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

“(B) The extent to which the loans to be guaranteed would stimulate job creation and new economic activities in communities most adversely affected by reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

“(C) The extent to which the loans to be guaranteed would be used to acquire (or permit the use of other funds to acquire) capital equipment to modernize or expand the facilities of the borrower to enable the borrower to remain in the national technology and industrial base available to the Department of Defense.

"(3) Except as provided in paragraph (4), to be eligible for a loan guarantee under this section, a borrower must demonstrate to the satisfaction of the Secretary that, during any one of the seven preceding operating years of the borrower, at least 25 percent of the value of the borrower's sales were derived from—

"(A) contracts with the Department of Defense or the defense-related activities of the Department of Energy; or

"(B) subcontracts in support of defense-related prime contracts.

"(4)(A) An individual described in subparagraph (B) shall be eligible for a loan guarantee under this section to establish, or acquire and operate, a small business concern in an area that the Secretary determines is (or reasonably can be expected to be) detrimentally affected by reductions in defense spending, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

"(B) An individual referred to in subparagraph (A) is an individual—

"(i) who is a former employee of the Department of Defense or a defense contractor; and

"(ii) whose employment was terminated as a result of reductions in defense spending, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

"(e) MAXIMUM AMOUNT OF LOAN PRINCIPAL.—The maximum amount of loan principal for which the Secretary may provide a guarantee under this section during a fiscal year may not exceed—

"(1) \$1,250,000, with respect to a small business concern; and

"(2) \$10,000,000 with respect to a medium-sized business concern.

"(f) LOAN GUARANTY RATE.—The maximum allowable guarantee percentage for loans guaranteed under this section may not exceed 90 percent.

"(g) ALLOCATION OF FUNDS BETWEEN SMALL AND MEDIUM BUSINESSES.—The total amount available for a fiscal year to cover the costs of loan guarantees under this section shall be divided between small business concerns and medium-sized business concerns as follows:

"(A) 60 percent for small business concerns.

"(B) 40 percent for medium-sized business concerns.

"(h) MEDIUM-SIZED BUSINESS CONCERN DEFINED.—In this section, the term 'medium-sized business concern' means a business concern that is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing a product or service is a small business concern."

(2) The table of sections at the beginning of subchapter IV of such chapter is amended by inserting before the item relating to section 2525 the following new item:

"2524. Loan guarantees for defense dependent small- and medium-sized business concerns."

(b) CONTINUED AVAILABILITY OF EXISTING FUNDS.—The funds made available under the second proviso under the heading "RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE" in Public Law 103-335 (108 Stat. 2613) shall be available until September 30, 1999—

(1) to cover the costs (as defined in section 502(5) of the Federal Credit Reform Act of

1990 (2 U.S.C. 661a(5))) of loan guarantees issued under section 2524 of title 10, United States Code, as added by subsection (a); and

(2) to cover the reasonable costs of the administration of loan guarantees referred to in such section.●

ADDITIONAL COSPONSORS

S. 376

At the request of Mr. LEAHY, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 376, a bill to affirm the rights of Americans to use and sell encryption products, to establish privacy standards for voluntary key recovery encryption systems, and for other purposes.

S. 387

At the request of Mr. HATCH, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 387, a bill to amend the Internal Revenue Code of 1986 to provide equity to exports of software.

S. 394

At the request of Mr. HATCH, the names of the Senator from California [Mrs. FEINSTEIN] and the Senator from Minnesota [Mr. GRAMS] were added as cosponsors of S. 394, a bill to partially restore compensation levels to their past equivalent in terms of real income and establish the procedure for adjusting future compensation of justices and judges of the United States.

S. 535

At the request of Mr. MCCAIN, the name of the Senator from Oregon [Mr. SMITH] was added as a cosponsor of S. 535, a bill to amend the Public Health Service Act to provide for the establishment of a program for research and training with respect to Parkinson's disease.

S. 620

At the request of Mr. GREGG, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 620, a bill to amend the Internal Revenue Code of 1986 to provide greater equity in savings opportunities for families with children, and for other purposes.

S. 717

At the request of Mr. FORD, his name was added as a cosponsor of S. 717, a bill to amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

SENATE CONCURRENT RESOLUTION 21

At the request of Mr. MOYNIHAN, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of Senate Concurrent Resolution 21, a concurrent resolution congratulating the residents of Jerusalem and the people of Israel on the thirtieth anniversary of the reunification of that historic city, and for other purposes.

SENATE RESOLUTION 82

At the request of Mr. SMITH, his name was added as a cosponsor of Senate Resolution 82, a resolution expressing the sense of the Senate to urge the

Clinton Administration to enforce the provisions of the Iran-Iraq Arms Non-Proliferation Act of 1992 with respect to the acquisition by Iran of C-802 cruise missiles.

SENATE RESOLUTION 85

At the request of Mr. GREGG, the name of the Senator from South Dakota [Mr. JOHNSON] was added as a cosponsor of Senate Resolution 85, a resolution expressing the sense of the Senate that individuals affected by breast cancer should not be alone in their fight against the disease.

AMENDMENTS SUBMITTED

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENT ACT OF 1997

JEFFORDS AMENDMENT NO. 240

Mr. JEFFORDS proposed an amendment to the bill (S. 717) to amend the Individuals With Disabilities Education Act, to reauthorize and make improvements to that act, and for other purposes; as follows:

Beginning on page 65, strike line 25 and all that follows through page 66, line 4 and insert the following: "part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

"(I) were not actually identified as being a child with a disability under section 602(3); or

"(II) did not have an individualized education program under this part."

GREGG AMENDMENT NO. 241

Mr. GREGG proposed an amendment to the bill, S. 717, supra; as follows:

On page 64, strike lines 19 and 20, and insert the following: "there are authorized to be appropriated to the Secretary not less than \$4,107,522,000 for fiscal year 1998, not less than \$5,607,522,000 for fiscal year 1999, not less than \$7,107,522,000 for fiscal year 2000, not less than \$8,607,522,000 for fiscal year 2001, not less than \$10,107,522,000 for fiscal year 2002, not less than \$11,607,522,000 for fiscal year 2003, not less than \$13,107,522,000 for fiscal year 2004, and such sums as may be necessary for each succeeding fiscal year."

NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will meet on Tuesday, May 13, 1997, at 10:30 a.m. in room 485, Russell Senate Office Building to conduct an oversight hearing on Public Law 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. NICKLES. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Energy Research, Development, Production and Regulation of