

I request that the full text of the bill be included at this point in the RECORD:

H.R. 491

*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 "Filipino Veterans Equity Act of 2001".

#### SEC. 2 CERTAIN SERVICE IN THE ORGANIZED MILITARY FORCES OF THE PHILIPPINES AND THE PHILIPPINE SCOUTS DEEMED TO BE ACTIVE SERVICE.

(a) IN GENERAL.—Section 107 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "not" after "Army of the United States, shall"; and

(B) by striking out "except benefits under—" and all that follows in that subsection and inserting in lieu thereof a period;

(2) in subsection (b)—

(A) by striking out "not" after "Armed Forces Voluntary Recruitment Act of 1945 shall"; and

(B) by striking out "except—" and all that follows in that subsection and inserting in lieu thereof a period; and

(3) by striking out the subsection (c) inserted by section 501 of H.R. 5482 of the 106th Congress, as introduced on October 18, 2000, and enacted into law by Public Law 106-377, and the subsection (c) inserted by section 332(a)(2) of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106-419).

(b) CONFORMING AMENDMENTS.—(1) The heading of such section is amended to read as follows:

**"§107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts".**

(2) The item relating to such section in the table of sections at the beginning of chapter 1 of such title is amended to read as follows:

"107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts".

#### SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on January 1, 2002.

(b) APPLICABILITY.—No benefits shall accrue to any person for any period before the effective date of this Act by reason of the amendments made by this Act.

#### INTRODUCTION OF HOUSE JOINT RESOLUTION REGARDING QUALITY OF CARE IN ASSISTED LIVING FACILITIES

#### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 7, 2001

Mr. STARK. Mr. Speaker, today I rise with Mr. WAXMAN, Mr. COYNE, Mr. FROST, Mr. LANTOS, Mr. MILLER, Ms. SCHAKOWSKY, and Mr. STRICKLAND to re-introduce a joint resolution calling for a White House conference to discuss and develop national quality of care recommendations for assisted living facilities (ALFs). Between 800,000 and 1.5 million American seniors currently reside in ALFs and these numbers may double in the next 20 years. Until recently, the industry has been al-

most entirely private-pay. But times are changing and ALFs increasingly seek and receive federal funding through Medicaid's Home and Community-Based Services waiver. In fact, overall spending for this waiver swelled 29% between 1988-1999, due in part to growing numbers of ALF placements.

In many states, industry expansion has not been accompanied by a tightening of quality standards or accountability measures. Instead, the definition and philosophy across ALFs varies from state to state and their is little consistency in state regulatory efforts. Furthermore, a 1999 General Accounting Office report found that 25% of surveyed facilities were cited for five or more quality of care violations between 1996-1997 and 11% were cited for 10 or more problems. Frequently cited problems ranged from providing inadequate care, particularly around medication issues, to having insufficient and unqualified staff.

I'd like to call attention to an article entitled, "Assisted Living" firm prospers by housing a frail population," published on January 15th in the Wall Street Journal. This article discusses industry trends and carefully details the business practices and policies of Sunrise Assisted Living, Inc., one of the country's most successful ALF companies. At a time when many of its competitors are posting large operating losses, Sunrise earns millions of dollars in profits each year. How do they do it?—by accepting elderly applicants with serious health conditions and collecting extra-care fees, sometimes as high as \$1640/month (on top of regular monthly fees) for very sick or cognitively impaired residents. Paul Klassen, Sunrise's chief executive, makes no bones about this marketing strategy. At a recent orientation for new Sunrise managers, he urged that "the frailest of the frail" be considered as candidates for assisted living.

Although originally developed as an alternative to nursing homes, this article makes abundantly clear that ALFs are now recruiting the same frail seniors that might otherwise be served by nursing homes. Yet the average Sunrise facility (housing 90 residents) maintains only one registered nurse on duty for 8-12 hours per day. Nursing homes of that same size average four to five nurses on duty at all times. Furthermore, nursing homes must comply with federal quality regulations, but ALFs answer only to states, where there is considerable variation in terms of regulation and oversight.

This regulatory variation can have deadly consequences. As reported by the Wall Street Journal, staffing issues contributed to the death of a visually-impaired Sunrise resident in Georgia, who was awaiting delivery of a liquid herbal supplement. At the resident's request, a substitute concierge delivered a package that was not specifically addressed to the resident. After drinking what they thought was an herbal supplement (but was really caustic bathroom cleaner), both the resident and his wife became critically ill and she died several days later. Perhaps as disturbing as the incident itself, is the fact that the facility's only penalty to date has been a paltry \$3000 state fine.

Closer to home, last August in my district, an elderly woman passed away in an assisted living facility due to hemorrhaging from her dialysis shunt. Two times, she pressed her call pendant for help, but no help came. Instead, the ALF staff cleared the alarms and reset the

machines both times. The facility did not place a 911 call for assistance until 1 hour and 34 minutes later. There was no nurse on duty, and all four resident aides in the facility at the time have denied responding to the calls or clearing/resetting the call system. This situation is still under investigation, but it highlights the seriousness of inadequate quality of care in these facilities.

I believe that ALFs that receive federal funding should be required to meet reasonable, commonsense quality standards to protect residents. This joint resolution presents a valuable opportunity for policymakers, industry stakeholders, and consumers to discuss and debate how best to develop these needed quality standards. Frail, elderly ALF residents must be protected and sub-par facilities must face real consequences. I look forward to working with my colleagues on both sides of the aisle to protect frail seniors in ALFs throughout our country.

The resolution has been endorsed by the Consumer Consortium on Assisted Living, California Advocates for Nursing Home Reform, National Association for HomeCare, and Elder Care America, which are organizations active in protecting consumer interests in assisted living and other settings. The January 15, 2001 article by Ann Davis of the Wall Street Journal appears below:

#### "ASSISTED LIVING" FIRM PROSPERS BY HOUSING A FRAIL POPULATION

(By Ann Davis)

ATLANTA.—Early last year, Tom Spiro, the director of a Sunrise Assisted Living Inc. home here, warned his boss he might lose another resident.

It wasn't welcome news. The home's 71% occupancy was already far below the corporate target of 95%. But the resident, an 82-year-old woman just out of a hospital, could no longer walk, took a battery of medications and was being fed from a tube. Mr. Spiro felt that his assisted-living facility—a nursing-home alternative that provides less care—was in no position to accommodate someone so frail.

He was told he was being too cautious. "There was pressure to take everybody," he says. Ultimately, Mr. Spiro retained the resident, along with several others he considered too infirm. Even so, with the home's performance still lagging a few months later, he was asked to resign.

Linda Selvidge, who was his boss but has also since left the company, says it made sense to keep the elderly woman as a resident because her husband was in the facility. But Ms. Selvidge acknowledges urging Mr. Spiro to accept residents despite his reservations. "Being frail is nothing to be nervous about," she recalls telling him.

#### THE MISSION

Why such eagerness to enroll clients whose care would seem sure to mean extra cost, complexity and risk? One reason is the company founders' longtime commitment to offering a homelike alternative to nursing homes. But accepting residents who are infirm also helps to fill beds, at a time when the assisted-living industry is burdened by overcapacity. And Sunrise, more so than its competitors, has figured out how to make serving such clients a profitable business.

The assisted-living industry is at a crossroads, two decades after springing up amid dissatisfaction with nursing homes. Its mission was to offer attractive housing—for those who could afford it—where the elderly could get help with daily routines like bathing and dressing, but no intensive nursing

care. Yet while the initial target was the relatively healthy elderly, providers have increasingly targeted frailer and frailer people since a capacity glut developed in the late 1990s. At the same time, staffs of assisted-living homes often aren't qualified or permitted to do some of the things nursing homes do for infirm residents, such as administer medication. And because the facilities typically aren't paid by Medicaid, they needn't meet the extensive federal regulations nursing homes face. This has led critics to call for tighter controls on whom the facilities can admit—even as some residents and families are pushing in the opposite direction, claiming a right to choose the homes regardless of any risk.

Sunrise's founders, Paul and Terry Klaassen, make no apologies for housing ailing seniors. The couple, who own 13.2% of the McLean, Va., company, refer to shunting old people into nursing homes as "the dreaded act of our society." At a recent orientation session, Mr. Klaassen, who is Sunrise's chief executive, urged new managers to see "the frailest of the frail" as candidates for assisted living.

Meanwhile, Sunrise facilities have higher operating-profit margins than those of other public assisted-living companies that disclose this information. A key reason for its success is occupancy. A rule of thumb in the business is that facilities don't produce much profit till they reach about 90% occupancy, but can throw off rich profits above that level. Sunrise averages 91.4% occupancy at homes open at least a year; most competitors are below 90%.

Sunrise credits its customer service. In addition, says David Schless of the American Seniors Housing Association in Washington, some other companies "have had much shorter resident stays" because they "haven't ever been willing to provide some of the supportive-care services to care for the truly frail elderly" that Sunrise does.

Sunrise doesn't just enroll more people—it also charges them more. The company "has figured out how to price its services better than its competitors," Mr. Schless adds.

Sunrise makes the business pay by charging hefty premiums for care beyond assisted living's basics, which are help with dressing, bathing and getting around. Competitors do something similar in pricing, but Sunrise collects extra-care fees from a larger percentage of residents, about 60%, than most. Extra-care fees average \$517 a month per resident at Sunrise; they come to about \$200 a month at one major competitor, Alterra Healthcare Corp.

And despite the industry overcapacity, Sunrise manages to raise fees. It has increased the base rent about 5% a year (now an average of \$2,700 monthly). And lately it has made a concerted effort, when residents grow frailer, to reassign them to higher-care, higher-price categories. In typical homes, residents' monthly bills are \$677 higher than they were in 1998, figures supplied by Sunrise show. The company's costs for resident care have risen just \$180 a month per resident, the same figures show.

Mr. Klaassen says fees went up because local Sunrise managers realized they weren't charging enough, given the costs and staff time that frailer residents require. The CEO also says Sunrise spends more to run its homes than others do, and that the key to success is offering consumers such high quality that it contrasts sharply with a nursing-home environment. "Competitors that are not as full charge less," Mr. Klaassen says, "and that's their problem. Most assisted-living communities do not charge enough and do not spend enough."

Sunrise earned \$15.5 million the first three quarters of 2000, including gains on the sale

of several properties it is managing under contract. Rival Alterra had a \$35 million net loss in the nine months, and another big competitor, the Marriott Senior Living Services unit of Marriott International Inc., had a \$6 million operating loss. Sunrise's stock is up about 50% from a year ago, making the Klaassen's stake worth about \$60 million.

Sunrise's methods have been put to a severe test in Atlanta. The city seemed an ideal market when Sunrise was launching a big expansion in the 1990s. It targets metropolitan areas "with dense rings of relatively affluent people," says the company's president, Tom Newell. Sunrise ultimately built or acquired six assisted-living facilities in the Atlanta area and two more elsewhere in Georgia.

#### TARGETING ELDER DAUGHTERS

Its marketing focus isn't the elderly themselves but their grown children. The target customer is a 45-to-64-year-old eldest daughter who is deciding how to care for an octogenarian parent. The chain adapts ideas from other franchises, setting out to emulate, as Mr. Klaassen puts it, the pleasant environment of the Ritz-Carlton and the personalized customer service of Nordstrom.

Many Sunrise buildings resemble sprawling Victorian mansions, with curving staircases. They have hair salons, libraries and small kitchens in rooms, whose doors have locks for privacy. To avoid an institutional feel, handrails in hallways look like molding. Signature touches include ice-cream parlors with jukeboxes that play Sinatra and exhibits of antique wedding dresses to stimulate memories.

Peggy Farris of Atlanta jumped at the chance to put her mother in a special Sunrise unit for Alzheimer's patients rather than in a nursing home. Now her mother is taking part in flower-arranging and music programs and "seems to be flourishing more than she was in my home," Ms. Farris says. A great many other customers are similarly pleased.

Sunrise was part of a building boom that added about 3,700 assisted-living beds in Atlanta in four years, quintupling the supply, according to market-research firm AZ Consulting. The facility Mr. Spiro managed was half-empty and losing tens of thousands of dollars a month for parts of 1998 and 1999, Sunrise records show.

Competitors resorted to price wars. Sunrise experimented with discounting, too, but mostly it threw its energy into recruiting residents. Marketing directors at five of its homes were asked to log 20 face-to-face meetings, 100 phone calls and 200 mailings a week to potential customers and medical professionals, some recall. One incentive: a commission of about \$250 whenever a new customer made a deposit.

Chris Boyce of Atlanta says that after Marriott expressed reluctance in 1998 to take his mother, who was incontinent, the Sunrise in Decatur, Ga., accepted her, along with her husband. "Sunrise told us they would handle my parents until they died," Mr. Boyce says. Nonetheless, he eventually moved them to a nursing home when their health declined further.

Sunrise also scored points with hospitals' "discharge planners," making it easy for them to place patients needing too much care to go home. With Sunrise, "we can make a call in the morning and by the afternoon it's taken care of and the patient is moving in," says John Dornbusch, a planner at DeKalb Medical Center in Decatur.

In handling health needs, Sunrise facilities are quite different from nursing homes. Despite nursing homes' chronic problems with short staffing, those the size of Sunrise's homes—about 90 residents—average two reg-

istered nurses and two or three licensed practical nurses on duty at all times, according to federal data. Sunrise says it usually has one registered nurse on duty the eight to 12 hours during the day and none the rest of the time. Nursing homes also have to have an on-call medical director. Assisted-living homes rely on residents' own outside doctors.

While nursing homes are supposed to meet numerous federal requirements, assisted-living homes face only state regulation. In about half of the states, they come under antiquated rules covering "board and care" group homes. Such homes, which fell out of favor in the 1970s provided meals and minimal assistance, often in private houses and for just two or three residents. While many states have strengthened the regulations, there is still lots of leeway.

Medication is a particularly knotty issue. A key function of nursing homes is administering medicines to residents, whether pills, IVs or injections. Not so at assisted-living facilities, in most states. Georgia's rules say that with a few exceptions, notably insulin shots, assisted-living homes' staffs are allowed only to prompt residents to take their medication. Putting a pill in a resident's mouth and helping him or her hold a glass of water to swallow it isn't permitted.

But some aides feel they have no choice. Sharon Thompson, a former caregiver on the Alzheimers' floor at Sunrise at East Cobb (County) says that if she merely left a pill on a table, the resident, often wouldn't take it. While the rules said that in such a case she should simply note on the resident's files that the person refused the medication, she says she routinely placed pills to people's mouths and got them to swallow. Otherwise, "in an Alzheimers' unit, they'll never get their medications. I know you're not supposed to administer medicine, but what are you going to do?"

#### ADMISSIONS RULES

Tim Cox, a Sunrise senior vice president, says there are various ways around this problem, including asking the family to give the medicine and developing an eating or drinking routine that gets the resident accustomed to taking medicine at a certain time. "It is never appropriate to administer if the regulations do not permit us to," he says. A Georgia regulator says the medication issue is one of the reasons for restricting whom assisted-living homes can admit.

Georgia bars assisted-living facilities from taking certain kinds of residents, such as people too weak to propel a wheelchair or walker in an emergency evacuation. In six months, the state has cited Sunrise's six Atlanta-area homes for accepting 27 residents who needed more care than the homes were licensed to provide, Alterra and Marriott, which together have seven Atlanta homes, were each cited just once. David Dunbar, Georgia's top long-term-care regulator, calls Sunrise's number of citations "unusual."

Yet the state has never asked Sunrise to discharge a resident, he says. When cited, a facility can simply apply for a waiver to keep the person. The state routinely grants one if it is the resident's and family's wish to stay and if the home explains how it can meet the resident's needs, the regulator says.

A government ombudsman wasn't so lenient in 1998, when Sunrise at East Cobb sought to admit a man to its Alzheimer's unit who couldn't communicate, dress, feed himself or walk. Laura Formby, who had been notified of the case by a social worker, says she found the man "totally unacceptable" for assisted living and contacted the facility, which canceled the admission.

Sunrise President Tom Newell says Sunrise tries to "balance risk" against the preferences of residents and family. It sometimes asks the relatives of people who want to remain, despite worsening health, to supplement the care at their own expense. "We work with the regulators to explain how we will be able to care for them," Mr. Newell says. "Part of the plan that's developed to allow them to live in assisted living would be private-duty aides they would bring in or home-care agencies."

Gwen Birchall says she paid Sunrise \$930 a month in extra-care charges for her aged mother but still felt obliged to hire an aide. She says she also did certain chores that Sunrise staff had promised to handle, and her husband routinely washed dishes after meals to free up frazzled Sunrise caregivers. She moved her mother to a nursing home in January. Told of the case, Tiffany Tomasso, Sunrise's president of resident-care operations, says such an experience is "unfortunate" but when the company is made aware of these concerns, it addresses them right away.

#### FINE-TUNING

Sunrise calibrates its staffing levels precisely with residents' "acuity level"—how medically needy they are—and facilities quickly adjust workers' hours when the resident mix changes. Sometimes, Sunrise appears to cut it too close. After a Dec. 5 inspection of Sunrise at Huntcliff Summit in Atlanta, Georgia regulators said the facility "has consistently operated with fewer employees than needed to properly safeguard the health, safety and welfare of all residents." Muriel Flournoy, an 87-year-old resident of the facility, says, "If you need help at night, it can be almost impossible to get an answer."

Ms. Tomasso says Sunrise's review of its hours at that home indicates staffing was "well within the parameters of our model" and exceeded minimum state staffing ratios. She adds that Sunrise increases staff hours when a resident is reassessed at a higher-care level. "It's a very fluid process," she says. As for Ms. Flournoy's complaint, "We're never happy when customers don't feel their needs are being met," Ms. Tomasso says. A company spokeswoman adds that Sunrise has recently taken steps to improve response time at night to address her complaint.

In 1999, Sunrise rolled out new, more-expensive pricing tiers, such as "Plus Plus" for extra-sick residents and "Reminiscence Plus" for those with later-stage dementia. Such care levels can add as much as \$1,640 a month in fees. Families say they were told that residents placed in higher-care categories would get more staff time. But Carla Neal, former head of the Alzheimer's floor at Sunrise at East Cobb, says her boss told her she was "overstaffing" her floor and should stick more closely to the staffing formula. She says she wound up giving residents less attention than before, even though they were now paying more. "There wasn't any way we could deliver the care needed," says Ms. Neal, who left Sunrise.

Rick Gagnon, who was her boss but who also has since left, terms the staffing guidelines "quite appropriate." Caregivers, he observes, "tend to err on the side of the person whom they're caring for." But also important, in his view, are managers with "the corporate mentality to make the system work."

Staffing issues contributed to a death at Sunrise at East Cobb last July. A volunteer was filling in at the front desk for an absent concierge when a visually impaired resident asked for a package he thought contained a liquid herbal supplement he was expecting.

Though the box was addressed to Sunrise, not to the resident, the volunteer delivered it to the man's room, a state "complaint narrative" says. The liquid was a caustic bathtub cleaner. The man and his wife each drank some. He became critically ill and she died a few days later.

The state fined the company \$3,001 after alleging that it had failed to provide the care these residents needed. Sunrise's Mr. Cox says the facility erred in not training the volunteer to safeguard all packages in the mailroom. Since Mr. Cox was interviewed, the surviving husband has filed suit against Sunrise.

#### FIGHTING AN EVICTION

Some of Sunrise's rivals have also drawn regulatory scrutiny. For instance, Michigan regulators cited Alterra last summer for accepting a number of patients the state deemed too sick for assisted living.

Alterra helped two of the residents find an attorney, and the residents then sued the state of Michigan, alleging that their eviction would violate federal laws barring housing discrimination against the disabled. The suit is pending, but in the meantime, Michigan has enacted a law saying regulators must let a resident stay in an assisted-living facility if the resident, the family, the resident's doctor and the facility all agree the person can remain. It isn't clear whether the new law applies to the two who sued.

In the Atlanta area, Sunrise's efforts to recruit and accommodate increasingly infirm residents finally paid off. Its facilities there now have occupancy and operating-profit rates in line with company averages. Meanwhile, marketing and pricing efforts continue. To interest younger seniors in its facilities, Sunrise is testing a new service, Sunrise At Home, which sends aides and nurses to private residences. It is also casting about for new ways to cater to the oldest and frailest of Americans. Internally, the initiative is dubbed "Plus Plus Plus."

#### INTRODUCTION OF LEGISLATION TO CREATE THE "WORKER'S INCOME TAX CREDIT"

**HON. JOHN J. LaFALCE**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 7, 2001*

Mr. LaFALCE. Mr. Speaker, today I introduce legislation to provide substantial tax relief to all Americans through the Worker's Income Tax Credit. In brief, this bill will create a refundable tax credit equal to 6.2% of wages, up to a maximum of \$350 per earner. For couples, the credit is computed per earner, for a maximum credit of \$700 per couple.

I believe any tax cut plan should pass two requirements: it should be fair, and it should be fiscally responsible. This proposal meets both standards. The Worker's Income Tax Credit provides a tax cut to all workers, but provides the most relief to those who need it most—middle and lower income workers. And it does so without undermining fiscal responsibility. This proposal will cost less than \$440 billion over ten years, leaving enough surpluses to achieve the goals of debt reduction and meeting critical investment needs.

"The Worker's Income Tax Credit Is Fair and Simple"—All workers, rich and poor, will benefit from this tax cut. But the relief will be greatest for those whose tax burden is most onerous—middle and lower income working

families. The vast majority of the tax cut's benefits would accrue, not to the wealthiest 10% of tax payers, but to the remaining 90%. Compare this to President Bush's version of tax fairness and equity. When fully phased in, the \$2.1 trillion Bush tax plan would deliver half of all its benefits to the wealthiest 5% of taxpayers. President Bush may hold up highly-stylized examples of waitresses and lawyers who will benefit from his tax cut, but in reality, it will tax a legion of tax lawyers to determine who qualifies and who doesn't for the Bush tax cuts. But the complexity of his plan can not obscure the basic fact of where most of the money goes—and it doesn't go to the waitresses of this country. For example, while the lawyer earning \$200,000 in President Bush's example would receive a tax cut of approximately \$3,100 a year, a waitress who is married with family earnings of \$25,000 would receive absolutely no benefits from the Bush tax plan.

Low-income workers will benefit from the Worker's Income Tax Credit because the credit is refundable. A full-time minimum wage earner would qualify for the full \$350 credit, and a couple working at minimum wage would receive a \$700 credit. But the benefits are not limited to low-income workers. Anyone earning more than \$5,600 a year would qualify for the full credit, and those earning less would receive a partial credit.

"The WITC is a better alternative to President Bush's Marginal Rate Cuts"—Because a majority of Americans pay more in payroll taxes than they do in income taxes, adjustments to marginal income tax rates will not provide significant tax relief to most taxpayers, and particularly to lower and middle income workers. In focusing on marginal rate adjustments, particularly to lower and middle income workers. In focusing on marginal rate adjustments, particularly at the high end, President Bush makes our tax system more regressive, favoring wealthier taxpayers over middle and lower income workers. While the bottom 40 percent of the population would receive just 4% of the Bush tax cuts, the wealthiest 1% of taxpayers would receive 43% of the total tax cuts. The Worker's Income Tax Credit does just the opposite, favoring lower and middle income workers over the wealthy by extending a refundable credit to all workers, even when they face little or no income tax liability.

"The Worker's Income Tax Credit will alleviate the Marriage Tax Penalty"—There is considerable support in this Congress for addressing the marriage tax penalty. I am strongly in favor of achieving a workable solution to addressing this problem in the tax code, but I would also offer the Worker's Income Tax Credit as a means of providing some relief from the penalty. In short, the tax credit is doubled for two-earner married couples. As a result, it will provide relief from the additional tax burden that two-earner couples face as a result of being married.

"The Worker's Income Tax Credit is fiscally responsible"—The tax credit will cost approximately \$440 billion over ten years, less than 1/4 the estimated cost of the Bush tax plan, which has grown to exceed \$2 trillion by recent estimates.

Given current and projected budget surpluses, it is appropriate to provide taxpayers with significant tax relief. However, favorable surplus estimates do not give us license to pursue an irresponsible fiscal policy. We