

Whereas, the Medicare home health care benefit started in 1966 and has provided Medicare home health care insurance coverage to hundreds of thousands of home-bound Medicare beneficiaries who need care on a part-time or intermittent basis; and

Whereas, Medicare home health care users are older, sicker, poorer, and more disabled than the Medicare population generally, with 26 percent over 85 years of age; and

Whereas, in 1980, Congress changed the home health care benefit by expanding access to care for beneficiaries without a prior hospitalization and by eliminating visit limits; and

Whereas, in 1981 restrictive administrative interpretations of part-time or intermittent care limited spending by denying access to this medically fragile population. As a result of the restrictions, a class action lawsuit was filed that resulted in a 1988 ruling that overturned the restrictions. *Duggan v. Bowen* (D.C. 1988) 691 F. Supp. 1487. As a result, utilization of home health services grew; and

Whereas, the growth continued until Congress passed the 1997 Balanced Budget Act to restrict spending; and

Whereas, an interim payment system (IPS) was implemented in fiscal years 1998–2000 to immediately control spending; and

Whereas, the IPS system dramatically reduced reimbursement rates, which fell below 1993 payment limits and resulted in 284 closures of California home health care agencies during 1998–99; and

Whereas, a new system, the prospective payment system (PPS), was implemented to cease the IPS unprecedented reductions in payments; and

Whereas, PPS could not correct the 49 percent cut in home health care outlays with further declines expected through 2002; and

Whereas, during IPS implementation and before PPS, a new national standard patient assessment system, the Outcomes and Assessment Information Set (OASIS), was required for all Medicare providers in 1999 and provided burdensome reporting requirements; and

Whereas, the implementation of IPS, PPS, and OASIS collection has resulted in a 36-percent reduction in the number of participating home health care providers, closure of over 340 licensed home health agencies, and reduced access to care for medically fragile Californians; and

Whereas, the 1997 Balanced Budget Act has already reduced utilization and home health care spending significantly below the intended savings that were anticipated due to that act; and

Whereas, the Congressional Budget Office projected home health expenditure reductions of \$16.2 billion over five years (fiscal year 1998 to fiscal year 2002), actual reductions from fiscal year 1998 to fiscal year 2000 were \$35.8 billion, and current projected reductions for fiscal years 2001 and 2002 are an additional \$35.3 billion resulting in \$71.1 billion; and

Whereas, California is undergoing an anticipated \$20 billion budget deficit, which could result in Medi-Cal reducing current reimbursement rates to 2000 levels, resulting in a double rate reduction guaranteed to devastate the 629 Medicare certified home health care agencies operating California; and

Whereas, the proposed 15 percent cut in home health care reimbursement rates will negatively affect access to care, and leave thousands without a home health care agency that can service their medical needs: Now, therefore, be it

*Resolved* by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California hereby respectfully memorializes the President and

the Congress of the United States to enact legislation that contains steps to ensure that Medicare home health care recipients are guaranteed the best care, and that home health providers, who have undergone multiple regulation and administrative changes at the hands of the federal government since the 1997 Balanced Budget Act, are not further harmed; and be it further

*Resolved*, That the Legislature opposes the 15 percent cut in home health payments scheduled for October 1, 2002; and be it further

*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, the Minority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the President's commission to eliminate the pending additional 15 percent cut in home health payments scheduled for October 1, 2002.

POM-357. A resolution adopted by the Legislative of Guam relative to supporting efforts for a Constitutional amendment to limit the authority of the federal court system to appropriate money through judicial orders; to the Committee on Finance.

#### RESOLUTION NO. 6 (LS)

Whereas, concerns among state legislatures across the Nation have been raised relative to incursions by the Federal Judicial Branch into areas are clearly defined as powers of the Legislative Branch of government, more specifically, instance where members of the Federal judiciary have exercised the power to levy or increase taxes; and

Whereas, it is incumbent on all Legislative Branches of government, from the U.S. Congress to each state jurisdiction, to insure that the Separation of Powers Doctrine, its spirit, intent and integrity are inviolate; and

Whereas, the Judicial Branch of the Federal Government has ignored constitutional restrictions on its powers to levy or increase taxes, a power clearly reserved and limited to the Legislative Branch; and

Whereas, the only resolution to this threat to the integrity of and challenge to the Separation of Powers Doctrine, must emanate from the U.S. Congress in the form of a Constitutional amendment: Now therefore, be it

*Resolved*, That I Mina'Bente Sais Na Liheslataun Guahan does hereby, on behalf of the people of Guam, call upon the U.S. Congress to initiate the adoption of an amendment to the Constitution of the United States which would more clearly define and state the restriction upon the power of the Judicial Branch of the Federal Government to levy or increase taxes in any manner, means or form; and be it further

*Resolved*, That Mina'Bente Sais Na Liheslataun Guahan does hereby, on behalf of the people of Guam, suggest that the form of the amendment to the United Constitutional shall read: "Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or any official of such state or political subdivision, to levy or increase taxes"; and be it further

*Resolved*, That the Speaker certify, and the Legislative Secretary attests to, the adoption hereof and that copies of the same be thereafter transmitted to the Honorable George W. Bush, President of the United States of America; to the Honorable Richard B. Cheney, President of the United States Senate; to the Honorable J. Dennis Hastert, Speaker of the United States House of Rep-

resentatives; to Missouri State Senator Walter Mueller; to Mr. John R. Stoeffler, President, The Madison Forum; to the Honorable Robert A. Underwood, Member of Congress, U.S. House of Representatives; and to the Honorable Carl T.C. Gutierrez, I Maga'lahen Guahan.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 486: A bill to reduce the risk that innocent persons may be executed, and for other purposes. (Rept. No. 107–315).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1850: A bill to amend the Solid Waste Disposal Act to bring underground storage tanks into compliance with subtitle I of that Act, to promote cleanup of leaking underground storage tanks, to provide sufficient resources for such compliance and cleanup, and for other purposes. (Rept. No. 107–316).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment:

S. 2817: A bill to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes. (Rept. No. 107–317).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 630: A bill to prohibit senders of unsolicited commercial electronic mail from disguising the source of their messages, to give consumers the choice to cease receiving a sender's unsolicited commercial electronic mail messages, and for other purposes. (Rept. No. 107–318).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 2733: A bill to authorize the National Institute of Standards and Technology to work with major manufacturing industries on an initiative of standards development and implementation for electronic enterprise integration. (Rept. No. 107–319).

By Mr. LIEBERMAN, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 2644: A bill to amend chapter 35 of title 31, United States Code, to expand the types of Federal agencies that are required to prepare audited financial statements.

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GRAHAM for the Select Committee on Intelligence.

\*Scott W. Muller, of Maryland, to be General Counsel of the Central Intelligence Agency.

By Mr. LEVIN for the Committee on Armed Services.

Otis Webb Brawley, Jr., of Georgia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2003.

Air Force nomination of Lt. Gen. Glen W. Moorehead III.

Air Force nominations beginning Colonel Chris T. Anzalone and ending Colonel Thomas B. Wright, which nominations were received by the Senate and appeared in the Congressional Record on March 21, 2002.

Air Force nomination of Col. Frederick F. Roggero.

Army nomination of Lt. Gen. Burwell B. Bell III.

Army nomination of Maj. Gen. Robert W. Wagner.

Army nomination of Maj. Gen. Richard A. Hack.

Army nomination of Brigadier General George A. Buskirk, Jr.

Army nomination of Brig. Gen. David C. Harris.

Marine Corps nomination of Maj. Gen. James T. Conway.

Navy nomination of Rear Adm. Lowell E. Jacoby.

Navy nomination of Rear Adm. David L. Brewer III.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Air Force nomination of James M. Knauf.

Air Force nomination of Gary P. Endersby.

Air Force nomination of Mark A. Jeffries.

Air Force nomination of John P. Regan.

Air Force nomination of John S. McFadden.

Air Force nomination of Larry B. Largent.

Air Force nomination of Frank W. Palmisano.

Air Force nominations beginning David S. Brenton and ending Brenda K. Roberts, which nominations were received by the Senate and appeared in the Congressional Record on October 1, 2002.

Air Force nominations beginning Cynthia A. Jones and ending Jeffrey F. Jones, which nominations were received by the Senate and appeared in the Congressional Record on October 1, 2002.

Air Force nomination of Mario G. Correia.

Air Force nomination of Michael L. Martin.

Air Force nominations beginning Xiao Li Ren and ending Jeffrey H.\* Sedgewick, which nominations were received by the Senate and appeared in the Congressional Record on October 1, 2002.

Air Force nominations beginning Thomas A.\* Augustine III and ending Charles E.\* Pyke, which nominations were received by the Senate and appeared in the Congressional Record on October 1, 2002.

Army nomination of Scott T. Williams.

Army nomination of Erik A. Dahl.

Navy nomination of Ralph M. Gambone.

Air Force nominations beginning Errish Nasser G. Abu and ending Ernest J. Zeringue, which nominations were received by the Senate and appeared in the Congressional Record on October 4, 2002.

Air Force nominations beginning Dana H. Born and ending James L. Cook, which nominations were received by the Senate and appeared in the Congressional Record on October 8, 2002.

Army nomination of James R. Kimmelman.

Army nomination of John E. Johnston.

Army nominations beginning Janet L. Bargewell and ending Mitchell E. Tolman, which nominations were received by the Senate and appeared in the Congressional Record on October 8, 2002.

Army nominations beginning Leland W. Dochterman and ending Douglas R. Winters, which nominations were received by the Sen-

ate and appeared in the Congressional Record on October 8, 2002.

Army nominations beginning Glenn E. Ballard and ending Marion J. Yester, which nominations were received by the Senate and appeared in the Congressional Record on October 8, 2002.

Army nomination of Robert D. Boidock.

Army nomination of Dermot M. Cotter.

Army nomination of Connie R. Kalk.

Army nomination of Michael J. Hoilien.

Army nomination of Romeo Ng.

Navy nomination of Thomas E. Parsha.

Army nominations beginning Judy A. Abbott and ending Dennis C. Zachary, which nominations were received by the Senate and appeared in the Congressional Record on October 10, 2002.

Army nominations beginning Jose Alamocarrasquillo and ending Matthew L. Zizmor, which nominations were received by the Senate and appeared in the Congressional Record on October 10, 2002.

Army nominations beginning Arthur L. Arnold, Jr. and ending Mark S. Vajcovec, which nominations were received by the Senate and appeared in the Congressional Record on October 10, 2002.

Army nominations beginning Adrienne S. Adams and ending Maryellen Yacka, which nominations were received by the Senate and appeared in the Congressional Record on October 10, 2002.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LEAHY (for himself, Mr. JEFFORDS, and Ms. COLLINS):

S. 3114. A bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits; to the Committee on the Judiciary.

By Mr. GRAHAM:

S. 3115. A bill to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CORZINE:

S. 3116. A bill to permanently eliminate a procedure under which the Bureau of Alcohol, Tobacco, and Firearms can waive prohibitions on the possession of firearms and explosives by convicted felons, drug offenders, and other disqualified individuals; to the Committee on the Judiciary.

By Mr. BURNS:

S. 3117. A bill to extend the cooling off period in the labor dispute between the Pacific Maritime Association and the International Longshore and Warehouse Union; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ENSIGN (for himself, Mr. ALLARD, and Ms. CANTWELL):

S. 3118. A bill to strengthen enforcement of provisions of the Animal Welfare Act relating to animal fighting, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GRAHAM (for himself and Mr. FITZGERALD):

S. 3119. A bill to amend the Public Health Service Act to ensure the guaranteed renewability of individual health insurance coverage regardless of the health status-related factors of an enrollee; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, and Ms. COLLINS):

S. 3120. A bill to impose restrictions on the ability of officers and employees of the United States to enter into contracts with corporations or partnerships that move outside the United States while retaining substantially the same ownership; to the Committee on Governmental Affairs.

By Mr. BIDEN (for himself, Mr. LUGAR, Mr. DOMENICI, Mrs. CLINTON, Mr. GREGG, and Mr. SCHUMER):

S. 3121. A bill to authorize the Secretary of State to undertake measures in support of international programs to detect and prevent acts of nuclear or radiological terrorism, to authorize appropriations to the Department of State to carry out those measures, and for other purposes; to the Committee on Foreign Relations.

By Mr. BROWNBACK (for himself and Mr. HELMS):

S. 3122. A bill to allow North Koreans to apply for refugee status or asylum; to the Committee on the Judiciary.

By Mr. DEWINE:

S. 3123. A bill to expand certain preferential trade treatment of Haiti; to the Committee on Finance.

By Mr. McCAIN (for himself, Mr. FEINGOLD, and Mr. DURBIN):

S. 3124. A bill to amend the Communications Act of 1934 to revise and expand the lowest unit cost provision applicable to political campaign broadcasts, to establish commercial broadcasting station minimum airtime requirements for candidate-centered and issue-centered programming before primary and general elections, to establish a voucher system for the purchase of commercial broadcast airtime for political advertisements, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BROWNBACK (for himself, Mr. NELSON of Florida, Mr. LIEBERMAN, Mr. MURKOWSKI, Mr. SESSIONS, and Mr. MILLER):

S. 3125. A bill to designate "God Bless America" as the national song of the United States; to the Committee on the Judiciary.

By Mr. KERRY (for himself, Mr. SANTORUM, and Mr. SARBANES):

S. 3126. A bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes; to the Committee on Finance.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. LANDRIEU (for herself, Mr. STEVENS, Mr. BREAUX, Mr. KOHL, Mr. LOTT, Mr. FEINGOLD, and Mr. REID):

S. Res. 342. A resolution commemorating the life and work of Stephen E. Ambrose; considered and agreed to.

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 343. A resolution to authorize representation by the Senate Legal Counsel in Newdow v. Eagen, et al; considered and agreed to.