AMENDMENT NO. 2719

At the request of Mr. JOHNSON, his name was added as a cosponsor of amendment No. 2719.

AMENDMENT NO. 2722

At the request of Mr. ALLARD, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of amendment No. 2722.

At the request of Mr. JOHNSON, his name was added as a cosponsor of amendment No. 2722 supra.

AMENDMENT NO. 2723

At the request of Mr. DOMENICI, the names of the Senator from Missouri (Mr. BOND) and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of amendment No. 2723.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROCKEFELLER (by request):

S. 1905. A bill to amend title 38, United States Code, to enhance veterans' programs and the ability of the Department of Veterans Affairs to administer them; to the Committee on Veterans' Affairs.

Mr. ROCKEFELLER. Mr. President, today I introduce legislation requested by the Secretary of Veterans Affairs, as a courtesy to the Secretary and the Department of Veterans Affairs, VA. Except in unusual circumstances, it is my practice to introduce legislation requested by the Administration so that such measures will be available for review and consideration.

This ''by-request'' bill would, among other things, include care for newborn children of women veterans provided by a contract provider among those medical services VA is allowed to provide, authorize VA to provide dental care to former Prisoners of War, POW, and change the definition of ''minority veterans'' to conform to the new Race & Ethnic Standards used in Federal statistical reporting and in the 2000 U.S. Census.

I ask unanimous consent that the text of the bill and Secretary Principi's transmittal letter that accompanied the draft legislation be printed in the RECORD.

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

S. 1905

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

SECTION 1. TABLE OF CONTENTS.

(a) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—VETERANS HEALTH-CARE IMPROVEMENTS

SEC. 101. CARE FOR NEWBORN CHILDREN OF ENROLLED WOMEN VETERANS.

Section 1701 is amended:

(a) in subsection (6),

(1) by striking out ''and'' at the end of paragraph (A);

(2) by adding ''and'' at the end of paragraph (B); and

(3) by adding at the end the following new paragraph:

''(C) care for newborn children.''; and

(b) by adding at the end the following new subsection:

''(11) The term ''care for newborn children'' means care provided to an infant of a woman veteran enrolled in the VA health care system. Such care may be provided until the mother is discharged from the hospital after delivery of the child or for 14 days after the date of birth of the child, whichever period is shorter, and only if the Department contracted for the delivery of the child.''.

SEC. 102. OUTPATIENT DENTAL CARE FOR ALL FORMER PRISONERS OF WAR.

Section 1712(a)(1)(F) is amended by striking out ''for a period of not less than 90 days''.

SEC. 103. PAY COMPARABILITY FOR DIRECTOR, NURSING SERVICE.

(a) Section 7306(a)(5) is amended by adding at the end thereof, ''The position shall be exempt from the provisions of section 7451 of this title and shall be paid at the maximum rate payable to a Senior Executive Service employee under 5 U.S.C. §§5304(g) and 5382.''.

(b) Section 7404(d) is amended by deleting ''section'' the first time it appears and inserting in its place ''sections 7306(a)(5) and''.

TITLE II—VETERANS' BENEFIT PROGRAMS

SEC. 201. LIMITATION ON PROVISION OF CERTAIN BENEFITS.

(a) PROHIBITIONS.—(1) Section 112 is amended by adding at the end the following new subsection:

''(c) A certificate shall not be furnished under this program on behalf of a deceased veteran described in section 2411(b) of this title.''

(2) Section 2301 is amended by adding at the end the following new subsection:

''(f) A flag shall not be furnished under this section on behalf of a deceased veteran described in section 2411(b) of this title.''

(3) Section 2306 is amended by adding at the end the following new subsection:

''(f)(1) A headstone or marker shall not be furnished under subsection (a) for the unmarked grave of an individual described in section 2411(b) of this title.

''(2) A memorial headstone or marker shall not be furnished under subsection (b) for the purpose of commemorating an individual described in section 2411(b) of this title.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to deaths occurring on or after the date of its enactment.

SEC. 202. CLARIFICATION OF PROCEDURES REGARDING DISQUALIFICATION OF CERTAIN INDIVIDUALS FOR MEMORIALIZATION IN VETERANS CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking ''The prohibition'' and inserting ''In the case of a person described in subsection (b)(1) or (b)(2), the prohibition''; and

(2) by striking ''or finding under subsection (b)'' and inserting ''referred to in subsection (b)(1) or (b)(2), respectively''.

SEC. 203. CLARIFICATION OF THE PERIOD FOR APPEALING RULINGS OF THE BOARD OF VETERANS APPEALS.

(a) CLARIFICATION.—Paragraph (1) of section 7266(a) is amended by striking ''notice of the decision is mailed pursuant to section 7104(e) of this title'' and inserting ''a copy of the decision, pursuant to section 7104(e) of this title, is mailed or sent to the claimant's representative or, if the claimant is not represented, mailed to the claimant''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to Board of Veterans' Appeals decisions made on or after the date of enactment of this Act.

TITLE III—VA PROGRAM ADMINISTRATION IMPROVEMENTS

SEC. 301. REPEAL OF CAP ON NUMBER OF NON-CAREER MEMBERS OF SENIOR EXECUTIVE SERVING IN VA.

(a) Section 709(a) is repealed.

(b) Section 709 is amended by re-designating subsections (b) and (c) as subsections (a) and (b), respectively.

SEC. 302. REPEAL OF PRECEDING-SERVICE REQUIREMENT FOR VA DEPUTY ASSISTANT SECRETARIES.

(a) Section 308(d)(2) is repealed.

(b) Section 308 is amended by deleting ''(1)'' from subsection (d).

SEC. 303. REVOLVING SUPPLY FUND AMENDMENTS.

Section 8121(a) is amended—

(1) by adding ''and for medical supplies, equipment, and services for the Department of Defense'' after ''Department'';

(2) in paragraph (2), by adding ''of the Department and the Department of Defense'' after ''appropriations''; and

(3) in paragraph (3), by adding ''of the Department and the Department of Defense'' after ''appropriations''.

SEC. 304. REDEFINITION OF "MINORITY GROUP MEMBER" IN 38 U.S.C. §544(d).

Section 544(d) is amended to read as follows:

''(d) In this section, the term ''minority group member'' means an individual who is—

(1) American Indian or Alaska Native;

(2) Asian;

(3) African American;

(4) Native Hawaiian or other Pacific Islander; or

(5) Hispanic, Spanish, or Latino.''

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, January 9, 2002.

Hon. RICHARD B. CHENEY,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: I am transmitting a draft bill to enhance a number of veterans'

programs and our ability to manage them. Details regarding the context and justification of the bill's 10 provisions are provided in the enclosed section-by-section analysis. If enacted, this legislation would:

Sec. 101—authorize VA to provide medical care for newborn children of enrolled women veterans;

Sec. 102—authorized VA to provide outpatient dental care to more former prisoners of war;

Sec. 103—establish pay comparability for the Director of the Nursing Service with other VHA executives;

Sec. 201—prohibit provision of presidential memorial certificates, burial flags, and headstones and markers on behalf of individuals who have committed capital crimes;

Sec. 202—clarify procedures relating to the prohibition against allowing individuals who had committed capital crimes to be interred or memorialized in national veterans' cemeteries;

Sec. 203—clarify current law regarding the date on which the 120-day period for appeal of a Board of Veterans' Appeals decision to the U.S. Court of Appeals for Veterans Claims begins to run;

Sec. 301—conform the VA 5-percent limitation on non-career SES members to the Government-wide 10-percent limitation;

Sec. 302—eliminate the requirement that at least two-thirds of VA deputy assistant secretaries must have served continuously for 5 years in the Federal civil service immediately prior to their appointments;

Sec. 303—authorize the Department of Defense to purchase medical items and services through VA's Revolving Supply Fund; and

Sec. 304—conform the current-law definition of minority veterans to the new Race & Ethnic Standards used in Federal statistical reporting and in the 2000 U.S. Census.

I request that this bill be promptly considered and enacted.

Advise has been received from the Office of Management and Budget that, from the standpoint of the Administration's program, there is no objection to enactment of this draft bill.

Sincerely yours,

ANTHONY J. PRINCIPI.

Enclosures.

SECTION-BY-SECTION ANALYSIS AND JUSTIFICATION

SECTION 101—CARE FOR NEWBORN CHILDREN OF ENROLLED WOMEN VETERANS

Section 101 would amend the definition of medical services that VA may provide to veterans to include care provided by a contract provider to newborn children of women veterans. To receive this benefit, a veteran must be enrolled in the VA health care system. VA would contract for this care until the mother is discharged from the hospital after delivery of the child or for 14 days after the birth of the child, whichever period is shorter, and only if VA contracted for delivery of the child. After childbirth, some veterans may need this limited benefit to give them time to apply for medical assistance. Offering this care would also be consistent with the normal pregnancy and delivery coverage in the community.

The discretionary-cost estimate for enactment of this proposal is as follows:

Fiscal year	Cost
2002	$5,344,795
2003	5,451,691
2004	5,560,725
2005	5,671,939
2006	5,785,378
2007	5,901,085
2008	6,019,107
2009	6,139,489
2010	6,262,279
2011	6,387,525
Total	55,524,013

SECTION 102—OUTPATIENT DENTAL CARE FOR ALL FORMER PRISONERS OF WAR

Section 102 would authorize VA to provide outpatient dental care to former prisoners of war (POW's) regardless of the length of their detention or internment. Currently, the law only permits VA to provide such care to former POW's who were detained or interned for 90 days or more. This provision is needed to ensure that former POW's receive all needed care for conditions that may be attributable to the privations of their service.

There would be insignificant costs resulting from enactment of this proposal.

SECTION 103—PAY COMPARABILITY FOR DIRECTOR, NURSING SERVICE

This section of the draft bill would amend section 7306(a)(5) to exempt the position of the Director of Nursing Service, VA's chief nurse executive, from the nurse-pay restrictions in section 7451 and require that the Director of Nursing Service be paid at a rate comparable to that of other non-physician (SES) VA executives. The current pay-rate disparity is unjustified.

There are no significant costs associated with this proposal.

SECTION 201—LIMITATION ON PROVISION OF CERTAIN BENEFITS

Section 201 of the draft bill would amend sections 112, 2301, and 2306 of title 38, United States Code, to prohibit VA, in the case of a death occurring after the date of enactment, from furnishing a presidential memorial certificate, a burial flag, a headstone or marker, or a memorial headstone or marker on behalf of a person barred from burial or memorialization in a national cemetery by operation of 38 U.S.C. §2411. Section 112 currently authorizes the Secretary of Veterans Affairs to conduct a program for honoring the memory of deceased veterans by preparing and sending to eligible recipients a certificate bearing the signature of the President and expressing the country's grateful recognition of the veteran's service in the Armed Forces. Section 2301(a) currently requires the Secretary to furnish a burial flag to drape the casket of any deceased veteran who: (1) was a veteran of any war or of service after January 31, 1955; (2) served at least one enlistment; (3) was released from active service for a disability incurred or aggravated in the line of duty; or, (4) was entitled to receive retirement pay at age 60 based on service in the Reserves or National Guard. Section 2306(a) currently requires the Secretary to furnish on request a headstone or marker for the unmarked grave of: (1) any individual buried in a national cemetery; (2) many individuals eligible for burial in a national cemetery but not buried there; (3) Civil War soldiers; (4) spouses, surviving spouses, and children of certain eligible individuals, when buried in a state veterans' cemetery; and (5) certain reservists and retired reservists with 20 years of service. Section 2306(b) currently requires the Secretary to furnish on request a memorial headstone or marker for the purpose of commemorating a veteran or the spouse or surviving spouse of a veteran, whose remains are unavailable.

Section 2411 of title 38, United States Code, prohibits burial in a national cemetery of persons who: (1) have been convicted of a Federal capital crime and sentenced to death or life imprisonment; (2) have been convicted of a State capital crime and sentenced to death or life imprisonment without parole; or, (3) are found administratively by clear and convincing evidence to have committed such a crime but not been convicted due to death or flight to avoid prosecution. This provision would amend sections 112, 2301, and 2306 to prohibit the furnishing of presidential memorial certificates, burial flags, headstones or markers, and memorial headstones or markers by VA on behalf of these three classes of persons. This amendment is a limited and logical extension of the section 2411 prohibition that would avoid placing the United States in the position of honoring at the time of death a person who has committed a heinous crime.

There is no cost associated with this proposal.

SECTION 202—CLARIFICATION OF PROCEDURES REGARDING DISQUALIFICATION OF CERTAIN INDIVIDUALS FOR MEMORIALIZATION IN VETERANS CEMETERIES

Section 202 of the draft bill would amend Section 2411 of title 38, United States Code, to correct a technical defect in the prohibition against the interment or memorialization in a cemetery operated by the National Cemetery Administration (or in Arlington National Cemetery) of certain persons who have committed Federal or state capital crimes. Under Section 2411(a), the Secretary of Veterans Affairs (or the Secretary of the Army, with respect to Arlington National Cemetery) may not inter the remains of or memorialize in such a cemetery: (1) a person who has been convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment; (2) a person who has been convicted of a state capital crime for which the person was sentenced to death or life imprisonment without parole; or (3) a person who is found administratively to have committed a Federal or state capital crime, but to have avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution. Administrative findings regarding the third category of persons would be made by the Secretary of Veterans Affairs in the case of a VA national cemetery and the Secretary of the Army in the case of Arlington National Cemetery.

Section 2411(a)(2) provides that the prohibitions against interment and memorialization do not apply unless the appropriate Secretary has received from the Attorney General, in the case of a Federal capital crime, or an appropriate state official, in the case of a state capital crime, written notice of a disqualifying conviction or administrative finding before approval of an application for interment or memorialization. The notification requirement appears to have been included in error with respect to a case involving an administrative finding that an individual had committed a capital offense but was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution. Since the Secretary of Veterans Affairs or the Secretary of the Army would have made the finding in the first place, there would appear to be no reason to require the Attorney General or an appropriate state official provide written notice to the Secretary concerned regarding that Secretary's own finding. Nonetheless, persons requesting interment services may argue that the interment prohibition is inoperative in the absence of such notice. Accordingly, we believe the reference to notification of administrative findings should be removed.

There is no cost associated with this proposal.

SECTION 203—CLARIFICATION OF THE PERIOD FOR APPEALING RULINGS OF THE BOARD OF VETERANS' APPEALS

Section 203 of the draft bill would clarify an ambiguity created by past legislation.

Section 7266(a)(1) of title 38, United States Code, provides that, to obtain review by the United States Court of Appeals for Veterans Claims (Court) of a final Board of Veterans' Appeals (Board) decision, a person adversely affected by the decision must file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to 38 U.S.C. §7104(e). Before its amendment by the Veterans' Benefits Improvements Act of 1996, Pub. L. No. 104–275, 110 Stat. 3322, Section 7104(e) required the Board to promptly mail a copy of its decision to the claimant and the claimant's authorized representative, if any. The Court had construed those provisions as requiring, if a claimant is represented, the accomplishment of both mailings to begin the 120-day appeal period. See Paniag v. Brown, 10 Vet. App. 265, 267 (1997).

As amended by Section 509 of Pub. L. No. 104–275, 110 Stat. at 3344, Section 7104(e) now requires the Board to promptly mail a copy of its written decision to the claimant and, if the claimant has an authorized representative, to mail a copy of its written decision to the authorized representative or send a copy of its written decision to the authorized representative by any means reasonably likely to provide the representative with the decision as timely as if it were mailed first class. Thus, under Section 7104(e) as amended, the Board must still notify a claimant's representative, if any, but such notice may be made by mailing or sending the representative a copy of the decision. Although Section 7104(e) was so amended, no corresponding change was made to Section 7266(a)(1)'s reference to ''mail[ing] pursuant to Section 7104(e).'' See Dippel v. West, 12 Vet. App. 466, 470 (1999) (noting that Congress did not change Section 7266(a) and that Section 7104(e)'s plain meaning would suggest that Section 7266(a)(1)'s reference to ''mail pursuant to Section 7104(e)'' does not cover a decision sent pursuant to Section 7104(e)(2)(B)).

The amendment to former Section 7104(e) without a corresponding change to Section 7266(a)(1) has created an ambiguity. It is not clear when the 120-day appeal period prescribed by Section 7266(a)(1) begins if a claimant is represented and the Board mails copies of its decision to the claimant and the claimant's representative, but mails them on different days. Section 7266(a)(1) does not specify whether the appeal period in that situation begins on the date of mailing to the claimant, on the date of mailing to the representative, on the date of the earlier of both mailings, or on the date of the later of both mailings.

The draft bill would clarify that matter. Section 241 of the bill would amend Section 7266(a)(1) to require, for initiation of Court review of a final Board decision, that a notice of appeal be filed within 120 days after a copy of the decision, pursuant to Section 7104(e), is mailed or sent to the claimant's representative or, if the claimant is not represented, mailed to the claimant. Thus, the 120-day appeal period would begin when the Board mails or sends a copy of its decision to the claimant's authorized representative or, if the claimant is not represented, when the Board mails a copy of its decision to the claimant. We have chosen the date of mailing or sending to the representative, if any, because generally a representative stands in the claimant's place for the purpose of receiving notice of the decision. If the appeal period were to begin on the date of mailing to the claimant, a delay in providing notice of the decision to the representative could compromise the representative's ability to timely advise the claimant. Beginning the appeal period on the date of mailing or sending notice to the representative would maximize the time available to the representative to advise the claimant as to the best course of action.

Section 2(b) of the draft bill would make the amendment to Section 7266(a)(1) apply to any Board decision made on or after the date of enactment of this Act.

No costs or savings would result from enactment of this provision.

SECTION 301—REPEAL OF CAP ON NUMBER OF NON-CAREER MEMBERS OF THE SENIOR EXECUTIVE SERVICE SERVING IN VA

Section 301(a) of the bill would repeal the current statutory limitation applicable to VA on the number of non-career members of the SES that may serve in the Department. Currently, that number may not exceed five-percent (5%) of the average number of senior executives employed in Senior Executive Service positions in the Department during the preceding fiscal year. This provision would not affect the Government-wide ten-percent (10%) limitation that generally applies to other agencies and departments. Section 301(b) would also make conforming amendments to 38 U.S.C. 709.

The Department would greatly benefit from being able to avail itself further of the experience and expertise of executive-level professionals from the private sector, as we restructure fundamental Departmental processes to improve the timely delivery of both health care services and benefits to veterans. The proposed flexibility in staffing would better position VA to increase its knowledge of successful private sector business practices, identify those that have application to VA, and successfully implement them. This, in turn, would enable VA to better meet the expectations of the beneficiaries of VA's programs. The proposal is consistent with the Government's policy of partnering with the private sector to improve Government performance.

VA would remain subject to the ten-percent (10%) Government-wide limitation on non-career SES positions, which OPM administers. The current five-percent (5%) cap on the number of non-career members of the Senior Executive Service is applicable only to VA. While mindful and appreciative of Congress' intention to limit policitization of the Department when it established VA as an Executive Department in 1988, we nonetheless believe that the number of non-career SES members appointed to VA positions should be based on the actual current leadership needs of the Department, as determined by the Administration, subject to the ten-percent (10%) Government-wide limitation. There would be no costs associated with enactment of this provision.

SECTION 302—REPEAL OF PRECEDING-SERVICE REQUIREMENT FOR VA DEPUTY ASSISTANT SECRETARIES

Section 302 of the draft bill would repeal section 308(d)(2), which now requires at least two-thirds of VA's Deputy Assistant Secretaries (DAS's) to have served continuously for five years in the Federal Civil Service in the Executive Branch immediately prior to their appointments. This requirement was established in 1988 to maintain the institutional memory and the Department's tradition of career service. However, this limitation has, in practice, proven to be overly prescriptive. It prevents utilization of highly competent people not meeting the criteria. Because the stringent continuous five-year service requirement applies to all but one-third of the DAS positions, it has required VA to utilize these limited ''non-career'' DAS slots for ''career'' appointees who are not political appointees but who simply fail to meet the service requirement. This includes career employees who have moved from the private sector, within the last five years. This limits the pool of candidates from which the Secretary may select his leadership team. We recommend eliminating the existing service requirement. VA could establish its own standards for these high-level positions, addressing Congress' original concerns of institutional memory and the tradition of career service while still providing needed flexibility for selecting the best-qualified persons.

No costs are associated with enactment of this provision.

SECTION 303—REVOLVING SUPPLY FUND AMENDMENTS

Section 303 would expand the services of the Revolving Supply Fund (38 U.S.C. §8121), to permit the Department of Defense (DOD) to enter into interagency agreements with the Revolving Supply Fund (Supply Fund) for the procurement of certain items and services under the purchase authority of the Supply Fund. Purchases would be limited to medical items and services, e.g., pharmaceuticals, medical/surgical supplies, equipment, and systems and consulting services. Currently, only offices funded by VA appropriations may purchase under that authority. DOD and other Federal agencies enter into interagency agreements with the Supply Fund under the Economy Act (31 U.S.C. §1535).

Congress traditionally has favored consolidated purchases because the increased buying power provides additional procurement leverage and resulting cost savings. Most recently, Congress, in §210 of the Veterans Millennium Health Care and Benefits Act (P.L. 106–117), required VA and DOD to jointly report on the cooperation between the two Departments in procuring pharmaceuticals, medical supplies and equipment. It is clear that Congress holds VA and DOD accountable for achieving efficiencies through the consolidation of contracting and logistics responsibilities.

The legislation, if enacted, would provide additional incentives for DOD to purchase medical items and services directly or through joint procurements from the Supply Fund, e.g., the ordering agencies' obligations remain payable in full from the appropriation initially charged irrespective of when performance occurs; and VA Supply Fund program managers are better able to negotiate contracts for bona fide high priority items because frantic year-end spending is eliminated.

The enactment of this proposal would not result in any cost to VA. The Supply Fund operates entirely upon fees assessed for services rendered.

SECTION 304—REDEFINITION OF ''MINORITY GROUP MEMBER'' IN 38 U.S.C. §544(d)

Section 306 is a technical amendment to 38 U.S.C. §544(d) to change the definition of minority veterans to make it conform to the new Race & Ethic Standards used in Federal statistical reporting and in the 2000 U.S. Census. The amendment would not change eligibility or entitlement to existing or future benefits. No costs would result from enactment of this proposal.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 95—PROVIDING FOR CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following current