

AMENDMENT NO. 1085

(Purpose: To express the sense of the Senate regarding payment reductions under the Medicare physician fee schedule)

At the end of title VI, insert the following:
SEC. ____ . SENSE OF THE SENATE ON PAYMENT REDUCTIONS UNDER MEDICARE PHYSICIAN FEE SCHEDULE.

- (a) FINDINGS.—Congress finds that—
- (1) the fees Medicare pays physicians were reduced by 5.4 percent across-the-board in 2002;
 - (2) recent action by Congress narrowly averted another across-the-board reduction of 4.4 percent for 2003;
 - (3) based on current projections, the Centers for Medicare & Medicaid Services (CMS) estimates that, absent legislative or administrative action, fees will be reduced across-the-board once again in 2004 by 4.2 percent;
 - (4) the prospect of continued payment reductions under the Medicare physician fee schedule for the foreseeable future threatens to destabilize an important element of the program, namely physician participation and willingness to accept Medicare patients;
 - (5) the primary source of this instability is the sustainable growth rate (SGR), a system of annual spending targets for physicians' services under Medicare;
 - (6) the SGR system has a number of defects that result in unrealistically low spending targets, such as the use of the increase in the gross domestic product (GDP) as a proxy for increases in the volume and intensity of services provided by physicians, no tolerance for variance between growth in Medicare beneficiary health care costs and our Nation's GDP, and a requirement for immediate recoupment of the difference;
 - (7) both administrative and legislative action are needed to return stability to the physician payment system;
 - (8) using the discretion given to it by Medicare law, CMS has included expenditures for prescription drugs and biologicals administered incident to physicians' services under the annual spending targets without making appropriate adjustments to the targets to reflect price increases in these drugs and biologicals or the growing reliance on such therapies in the treatment of Medicare patients;
 - (9) between 1996 and 2002, annual Medicare spending on these drugs grew from \$1,800,000,000 to \$6,200,000,000, or from \$55 per beneficiary to an estimated \$187 per beneficiary;
 - (10) although physicians are responsible for prescribing these drugs and biologicals, neither the price of the drugs and biologicals, nor the standards of care that encourage their use, are within the control of physicians; and
 - (11) SGR target adjustments have not been made for cost increases due to new coverage decisions and new rules and regulations.
- (b) SENSE OF THE SENATE.—It is the sense of the Senate that—
- (1) the Center for Medicare & Medicaid Services (CMS) should use its discretion to exclude drugs and biologicals administered incident to physician services from the sustainable growth rate (SGR) system;
 - (2) CMS should use its discretion to make SGR target adjustments for new coverage decisions and new rules and regulations; and
 - (3) in order to provide ample time for Congress to consider more fundamental changes to the SGR system, the conferees on the Prescription Drug and Medicare Improvement Act of 2003 should include in the conference agreement a provision to establish a minimum percentage update in physician fees for the next 2 years and should consider adding provisions that would mitigate the swings in payment, such as establishing

multi-year adjustments to recoup the variance and creating "tolerance" corridors for variations around the update target trend.

AMENDMENT NO. 960

(Purpose: To Require a Streamlining of the Medicare Regulations)

At the end of subtitle A of title V, add the following:

SEC. ____ . STREAMLINING AND SIMPLIFICATION OF MEDICARE REGULATIONS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct an analysis of the regulations issued under title XVIII of the Social Security Act and related laws in order to determine how such regulations may be streamlined and simplified to increase the efficiency and effectiveness of the medicare program without harming beneficiaries or providers and to decrease the burdens the medicare payment systems impose on both beneficiaries and providers.

(b) REDUCTION IN REGULATIONS.—The Secretary, after completion of the analysis under subsection (a), shall direct the rewriting of the regulations described in subsection (a) in such a manner as to—

(1) reduce the number of words comprising all regulations by at least two-thirds by October 1, 2004, and

(2) ensure the simple, effective, and efficient operation of the medicare program.

(c) APPLICATION OF THE PAPERWORK REDUCTION ACT.—The Secretary shall apply the provisions of chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act") to the provisions of this Act to ensure that any regulations issued to implement this Act are written in plain language, are streamlined, promote the maximum efficiency and effectiveness of the medicare and medicaid programs without harming beneficiaries or providers, and minimize the burdens the payment systems affected by this Act impose on both beneficiaries and providers. If the Secretary determines that the two-thirds reduction in words by October 1, 2004 required in (B)(1) is not feasible, he shall inform Congress in writing by July 1, 2004 of the reasons for its unfeasibility. He shall then establish a feasible reduction to be received by January 1, 2005.

Mr. GRASSLEY. I ask unanimous consent that these amendments and the following pending amendments be adopted en bloc and that the motion to reconsider be laid upon the table: Amendment No. 1017, Allard; No. 968, Harkin; No. 948, Graham of South Carolina; No. 960, Dayton; No. 1054, Feingold; No. 1030, Enzi.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The amendments were agreed to.

Mr. GRASSLEY. Thank you. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM of South Carolina. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

STROM THURMOND

Mr. GRAHAM of South Carolina. Mr. President, I rise to make a brief statement, like my colleague from South

Carolina, Senator HOLLINGS, about the passing of Senator Thurmond. This is something I really don't know how to put in words. All of us from South Carolina knew Senator Thurmond in so many ways. But his colleagues in this body, the vast majority of you, have served with him for many years. You have great admiration and fondness for Senator Thurmond but I stand before you as his successor. I often state back home that we change Senators every 50 years and that so many people have been waiting to take Senator Thurmond's place. The jokes just go on and on about what a rich life he has lived.

Tonight his family is mourning his passing. Whether a person lives to be 100 or 200, it is difficult to lose your father. If you lose someone you love, it is always difficult. But when you think about Senator Thurmond, you always have a smile on your face.

He lived a rich life. He lived at times a controversial life. But the biggest testament I can give to Senator Thurmond is that he changed. He changed with the times.

Those of you who embraced him during difficult times your love was much appreciated. Recently people have tried to freeze Senator Thurmond in time which is unfair to him or anyone else. Those who knew him best understood that he changed with the times. And his legacy in my State across party lines, across racial lines, and across regional lines was that he was the go-to guy. If you had a problem with your family or with your business, the first thought in your mind, if the Government was involved, or if somebody was treating you unfairly, was get on the phone and call Senator Thurmond. You would get a phone call back, and he would go to bat for you. Whether you owned the company, or you were the janitor, whether you were black, white, rich or poor, his office and he as a person had a reputation of going to bat for individuals. To me, that is his greatest legacy.

I stand before you as his successor—but not only that, as his friend. He embraced my campaign in 1995. He came to campaign for me when he was 93 years of age. And I was worried to death about if he could make it through the day. Three days later I was glad to see him leave because he about killed me.

He had enthusiasm and passion like no one I have ever met in my life. He did things he didn't have to do. He was a sitting judge in South Carolina in his 40s. He left the judgeship to go volunteer for the Army. He landed in a glider on D-Day, he was shot up, the pilot was killed, and he fought the Germans until they quit, and then he went over to Japan and fought until they quit.

This man, your friend, my friend, South Carolina's favorite son, is gone but he will never be forgotten. His biggest legacy is in the small things he did—not the large things he did. There are so many large things he accomplished. But he lives on in families.

Great relationships were established, and good constituent service. He won his last election by getting more African-American votes than any Republican in the South.

All I can say about Senator Thurmond is that we pray for his family, we mourn his loss, but we thank God that He provided us a great public servant.

Well done, Senator Thurmond.

Thank you, Mr. President.

Mr. NICKLES. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on today's executive calendar:

Calendar No. 252, the nomination of Joshua Bolten to be Director of the Office of Management and Budget. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The nomination was considered and confirmed.

LEGISLATIVE SESSION

The PRESIDENT pro tempore. Under the previous order, the Senate will return to legislative session.

PRESCRIPTION DRUG AND MEDICARE IMPROVEMENT ACT OF 2003—Continued

Mr. BAUCUS. Mr. President, will the Chair state the regular order?

The PRESIDENT pro tempore. The pending amendment numbered 1060, as modified is the regular order.

Mr. BAUCUS. Mr. President, is that the Nickles-Feinstein amendment?

The PRESIDENT pro tempore. It is.

Mr. BAUCUS. Mr. President, I move to table the Nickles-Feinstein amendment, and I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 59, as follows:

[Rollcall Vote No. 261 Leg.]

YEAS—38

Akaka	Edwards	Murray
Baucus	Grassley	Nelson (FL)
Bayh	Harkin	Nelson (NE)
Bingaman	Hollings	Pryor
Boxer	Inouye	Reed
Breaux	Johnson	Reid
Byrd	Kennedy	Rockefeller
Cantwell	Lautenberg	Sarbanes
Clinton	Leahy	Schumer
Corzine	Levin	Snowe
Daschle	Lincoln	Specter
Dorgan	Mikulski	Stabenow
Durbin	Miller	

NAYS—59

Alexander	Dayton	Landrieu
Allard	DeWine	Lott
Allen	Dodd	Lugar
Bennett	Dole	McCain
Biden	Domenici	McConnell
Bond	Ensign	Murkowski
Brownback	Enzi	Nickles
Bunning	Feingold	Roberts
Burns	Feinstein	Santorum
Campbell	Fitzgerald	Sessions
Carper	Frist	Shelby
Chafee	Graham (FL)	Smith
Chambliss	Graham (SC)	Stevens
Cochran	Gregg	Sununu
Coleman	Hagel	Talent
Collins	Hatch	Thomas
Conrad	Hutchison	Voinovich
Cornyn	Jeffords	Warner
Craig	Kohl	Wyden
Crapo	Kyl	

NOT VOTING—3

Inhofe	Kerry	Lieberman
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The motion was rejected.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, what is the business before the Senate?

The PRESIDENT pro tempore. Amendment No. 1060, as modified.

Mr. GRASSLEY. I urge adoption of the amendment.

The PRESIDENT pro tempore. Is there further debate?

Mr. BAUCUS. Mr. President, will the Chair identify the sponsors of that amendment?

The PRESIDENT pro tempore. Senator BAUCUS for Senator FEINSTEIN, amendment No. 1060, Part B premium, subtitle (d).

Mr. BAUCUS. Mr. President, the Senate is ready to vote.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 1060), as modified, was rejected.

Mr. BAUCUS. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I have a unanimous consent request to correct a previous unanimous consent request. In a previous unanimous consent request, I referred to amendment No. 990 when I meant to refer to the previously adopted Murray amendment No. 961.

I ask unanimous consent to make that change.

I referred to the Kyl amendment No. 1128 when I meant to refer to Kyl amendment No. 1121.

I also ask unanimous consent to make that change.

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 1133

Mr. GRASSLEY. Mr. President, I send an amendment to the desk.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 1133.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(The amendment, No. 1133, is printed in today's RECORD under "Amendments Submitted.")

Mr. GRASSLEY. Mr. President, is there no discussion necessary on the amendment?

The PRESIDENT pro tempore. Who seeks recognition?

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I would just like to say that we have help for our teaching hospitals in the managers' amendment. It is not much. But I am working with all of the managers, the ranking member as well as the chairman, to try to increase funding for teaching hospitals.

I want to point out our teaching hospitals must have the support that is in this bill at a higher percentage if we are going to keep the young physicians trained and if our country will keep the greatest health care system in the world.

I thank the managers for helping me put that in the managers' amendment.