

health emergency in California and States across the country, particularly for seniors with chronic and debilitating diseases who rely on multiple medications every day to keep them alive.

It is incomprehensible to me that with all the money and time given to the Centers for Medicare and Medicaid Services, CMS, to implement this new drug benefit, stories emerge every day of seniors and disabled individuals being hospitalized because they are being told they have to pay hundreds of dollars for their medications which they cannot afford and thus don't take.

Because of severe glitches in the database run by CMS, these individuals are leaving pharmacies without their medications or are making undue sacrifices to pay for costs they should not have incurred in the first place.

So far, more than 24 States and the District of Columbia have stepped in to say they will cover the cost of prescription drugs for their residents who are dually eligible for Medicare and Medicaid and who cannot access lifesaving and life sustaining drugs as a result of Federal incompetence.

Earlier this week, the Governor of California and California's State legislative leaders announced a plan to make \$150 million available for 30 days to cover drug costs for dual eligible individuals who have fallen through the system. In California, these individuals account for more than 1 million of the State's 4 million total Medicare recipients.

Problems with the Bush administration's implementation of the drug benefit have cost California \$5.5 million to fill 63,000 prescriptions, as of January 18. I have no doubt these costs are just the beginning.

Unless these significant implementation errors are fixed immediately, the new drug benefit amounts to a massive unfunded mandate. The Bush administration must reimburse States, in full, for the drug costs they have absorbed as a result of major implementation errors that occurred on their watch.

The legislation I am introducing today with Senators LAUTENBERG, SNOWE, SCHUMER and COLEMAN will ensure that States are repaid in full by the Federal Government for all costs associated with prescription drugs for dual eligible individuals. The States did not create the crisis felt by our Nation's poorest and most vulnerable seniors and disabled and the States should not be responsible for costs associated with a Federal program that was intended to provide these individuals with comprehensive prescription drug coverage at little or no cost.

It is simply unacceptable for the Bush administration to tell States and the Congress not to worry because the private health insurance plans will reimburse States for the costs they've incurred. States should not be made to wait to be reimbursed because of implementation foul-ups caused by CMS.

I urge my colleagues to support this legislation.

By Mr. ROCKEFELLER (for himself, Mr. REID) Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. KENNEDY, Mrs. CLINTON, Mr. LAUTENBERG, Ms. STABENOW, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Mr. PRYOR, Mr. LEAHY, Mr. DAYTON, Mr. JEFFORDS, Mr. HARKIN, Ms. MIKULSKI, Mr. JOHNSON, Ms. CANTWELL, Mr. AKAKA, Mr. LIEBERMAN, Mr. KOHL, Ms. LANDRIEU, Mr. SARBANES, and Mrs. BOXER):

S. 2183. A bill to provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program; to the Committee on Finance.

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

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

S. 2183

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Requiring Emergency Pharmaceutical Access for Individual Relief (REPAIR) Act of 2006".

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Transition requirements.
- Sec. 3. Federal fallback for full-benefit dual eligible individuals for 2006.
- Sec. 4. Identifying full-benefit dual eligible individuals in data records.
- Sec. 5. Prohibition on conditioning Medicaid eligibility for individuals enrolled in certain creditable prescription drug coverage on enrollment in the Medicare part D drug program.
- Sec. 6. Ensuring that full-benefit dual eligible individuals are not overcharged.
- Sec. 7. Reimbursement of States for 2006 transition costs.
- Sec. 8. Facilitation of identification and enrollment through pharmacies of full-benefit dual eligible individuals in the Medicare part D drug program.
- Sec. 9. State health insurance program assistance regarding the new Medicare prescription drug benefit.
- Sec. 10. Additional Medicare part D informational resources.
- Sec. 11. GAO study and report on the imposition of co-payments under part D for full-benefit dual eligible individuals residing in a long-term care facility.
- Sec. 12. State coverage of non-formulary prescription drugs for full-benefit dual eligible individuals during 2006.
- Sec. 13. Protection for full-benefit dual eligible individuals from plan termination prior to receiving functioning access in a new part D plan.

SEC. 2. TRANSITION REQUIREMENTS.

(a) REQUIREMENT.—

(1) IN GENERAL.—Section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)) is amended by adding at the end the following new paragraph:

"(4) FORMULARY TRANSITION.—The sponsor of a prescription drug plan is required to provide at least a 30-day supply of any drug that a new enrollee in the plan was taking prior to enrolling in such plan. For individuals residing in a long-term care setting, the sponsor of a prescription drug plan is required to provide at least a 90-day supply of any drug such individual was taking prior to enrolling in such plan. A formulary transition supply provided under this section shall be made by the sponsor of a prescription drug plan without imposing any prior authorization requirements or other access restrictions for individuals stabilized on a course of treatment and at the dosage previously prescribed by a physician or recommended by a physician going forward.

"(5) CUSTOMER SERVICE.—The sponsor of a prescription drug plan is required to provide—

"(A) accessible and trained customer service representatives available for full business hours from coast to coast to provide knowledgeable assistance to individuals seeking help with Medicare Part D including, but not limited to, beneficiaries, caseworkers, SHIP counselors, pharmacists, doctors, and caregivers;

"(B) at least one dedicated phone line for pharmacists with sufficient staff to reduce wait times for pharmacists seeking Medicare Part D assistance to no more than 20 minutes; and

"(C) sufficient staff to reduce wait times for all Medicare Part D-related calls to plan phone lines to no more than 20 minutes."

(2) APPLICATION.—The requirements under paragraphs (4) and (5) of section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)), as added by subsection (a), shall apply to the plan serving as the national point of sale contractor under part D of title XVIII of such Act.

(b) EFFECTIVE DATE AND ENFORCEMENT.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) ENFORCEMENT.—The Secretary may impose a civil monetary penalty in an amount not to exceed \$15,000 for conduct that a sponsor of a prescription drug plan or an organization offering an MA-PD plan knows or should know is a violation of the provisions of paragraph (4) or (5) of section 1860D-4(b) of the Social Security Act (42 U.S.C. 1395w-104(b)), as added by subsection (a). The provisions of section 1128A of the Social Security Act (42 U.S.C. a-7a), other than subsections (a) and (b) and the second sentence of subsection (f), shall apply to a civil monetary penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under subsection (a) of such section 1128A(a).

SEC. 3. FEDERAL FALLBACK FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FOR 2006.

(a) IN GENERAL.—

(1) IN GENERAL.—If a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u-5(c)(6))), or an individual who is presumed to be such an individual pursuant to subsection (b), presents a prescription for a covered part D drug (as defined in section 1860D-2(e) of such Act (42 U.S.C. 1395w-102(e))) at a pharmacy in 2006 and the pharmacy is unable to locate or verify the individual's enrollment through a reasonable effort, including the use of the pharmacy billing system or by calling an official Medicare hotline, or to bill for the prescription through the plan serving as the national point of sale contractor, the pharmacy may provide a 30-day supply of the drug to the individual.

(2) REFILL.—The pharmacy may provide an additional 30-day supply of a drug if the

pharmacy continues to be unable to locate the individual's enrollment through such reasonable efforts or to bill for the prescription through the plan serving as the national point of sale contractor when a prescription is presented on or after the date that a prescription refill is appropriate, but in no case after December 31, 2006.

(3) **COST-SHARING.**—The cost-sharing for a prescription filled pursuant to this subsection shall be cost-sharing provided for under section 1860D-14(a) of the Social Security Act (42 U.S.C. 1395w-114(a)).

(b) **PRESUMPTIVE ELIGIBILITY.**—An individual shall be presumed to be a full-benefit dual eligible individual (as so defined) if the individual presents at the pharmacy with—

(1) a government issued picture identification card;

(2) reliable evidence of Medicaid enrollment, such as a Medicaid card, recent history of Medicaid billing in the pharmacy patient profile, or a copy of a current Medicaid award letter; and

(3) reliable evidence of Medicare enrollment, such as a Medicare identification card, a Medicare enrollment approval letter, a Medicare Summary Notice, or confirmation from an official Medicare hotline.

(c) **PAYMENTS TO PHARMACISTS.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services shall reimburse pharmacists, to the extent that such pharmacists are not otherwise reimbursed by States or plans, for the costs incurred in complying with the requirements under subsection (a), including acquisition costs, dispensing costs, and other overhead costs. Such payments shall be made in a timely manner from the Medicare Prescription Drug Account under section 1860D-16 of the Social Security Act (42 U.S.C. 1395w-116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) **RETROACTIVE APPLICATION TO BEGINNING OF 2006.**—The costs incurred by a pharmacy which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(d) **RECOVERY OF COSTS FROM PLANS BY SECRETARY NOT PHARMACIES.**—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (c)(1) from prescription drug plans (as defined in section 1860D-1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w-101(a)(3)(C))) and MA-PD plans (as defined in section 1860D-41(a)(14) of such Act (42 U.S.C. 1395w-151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (c)(1).

SEC. 4. IDENTIFYING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN DATA RECORDS.

(a) **IN GENERAL.**—The Secretary of Health and Human Services and a prescription drug plan or an MA-PD plan shall clearly identify all full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u-5(c)(6))) and reflect the low-income subsidy status of such individual for each calendar year (beginning with 2006) in every data record file used to enroll or adjudicate claims for such individuals.

(b) **ENROLLMENT.**—For each calendar year (beginning with 2006) and for each Medicaid beneficiary who is a full-benefit dual eligible individual (as so defined), the Secretary of Health and Human Services shall—

(1) identify in the Medicare enrollment database that such individual has dual eligible status that has been verified with a State or the District of Columbia; and

(2) ensure that such dual eligible status is reflected in each data file necessary to ensure that such status is transmitted to a prescription drug plan or an MA-PD plan when the Secretary certifies the enrollment of such an individual in a plan.

(c) **DEFINITION OF MA-PD PLAN AND PRESCRIPTION DRUG PLAN.**—For purposes of this section, the terms “MA-PD plan” and “prescription drug plan” have the meaning given such terms in sections 1860D-1(a)(3)(C) and 1860D-41(a)(14) of the Social Security Act (42 U.S.C. 1395w-101(a)(3)(C); 1395w-151(a)(14)), respectively.

SEC. 5. PROHIBITION ON CONDITIONING MEDICAID ELIGIBILITY FOR INDIVIDUALS ENROLLED IN CERTAIN CREDITABLE PRESCRIPTION DRUG COVERAGE ON ENROLLMENT IN THE MEDICARE PART D DRUG PROGRAM.

(a) **IN GENERAL.**—Section 1935 of the Social Security Act (42 U.S.C. 1396v) is amended by adding at the end the following:

“(f) **PROHIBITION ON CONDITIONING ELIGIBILITY FOR MEDICAL ASSISTANCE FOR INDIVIDUALS ENROLLED IN CERTAIN CREDITABLE PRESCRIPTION DRUG COVERAGE ON ENROLLMENT IN MEDICARE PRESCRIPTION DRUG BENEFIT.**—

“(1) **IN GENERAL.**—A State shall not condition eligibility for medical assistance under the State plan for a part D eligible individual (as defined in section 1860D-1(a)(3)(A)) who is enrolled in creditable prescription drug coverage described in any of subparagraphs (C) through (H) of section 1860D-13(b)(4) on the individual's enrollment in a prescription drug plan under part D of title XVIII or an MA-PD plan under part C of such title.

“(2) **COORDINATION OF BENEFITS WITH PART D FOR OTHER INDIVIDUALS.**—Nothing in this subsection shall be construed as prohibiting a State from coordinating medical assistance under the State plan with benefits under part D of title XVIII for individuals not described in paragraph (1).”

(b) **NULLIFICATION OF STATE PLAN AMENDMENTS, REDETERMINATION OF ELIGIBILITY.**—In the case of a State that, as of the date of enactment of this Act, has an approved amendment to its State plan under title XIX of the Social Security Act with a provision that conflicts with section 1935(f) of such Act (as added by subsection (a)), such provision is, as of such date of enactment, null and void. The State shall redetermine any applications for medical assistance that have been denied solely on the basis of the application of such a State plan amendment not later than 90 days after the date of enactment of this Act.

SEC. 6. ENSURING THAT FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.

(a) **IN GENERAL.**—Section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

“(d) **ENSURING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS ARE NOT OVERCHARGED.**—

“(1) **IN GENERAL.**—The Secretary shall, as soon as possible after the date of enactment of this subsection, establish processes for the following:

“(A) **TRACKING INAPPROPRIATE PAYMENTS.**—The Secretary shall track full-benefit dual eligible individuals enrolled in a prescription drug plan or an MA-PD plan to determine whether such individuals were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D-14.

“(B) **REDUCTION IN PAYMENTS TO PLANS AND REFUNDS TO INDIVIDUALS.**—If the Secretary determines under subparagraph (A) that an individual was overcharged, the Secretary shall—

“(i) reduce payments to the sponsor of the prescription drug plan under section 1860D-15 or to the organization offering the MA-PD plan under section 1853 that inappropriately charged the individual by an amount equal to the inappropriate charges; and

“(ii) refund such amount to the individual within 60 days of the determination that the individual was inappropriately charged.

If the Secretary does not provide for the refund under clause (i) within the 60 days provided for under such clause, interest at the rate established under section 6621(a)(1) of the Internal Revenue Code of 1986 shall be payable from the end of such 60-day period until the date of the refund.

“(2) **REQUIREMENT.**—The processes established under paragraph (1) shall provide for the ability of an individual to notify the Secretary if the individual believes that they were inappropriately subject under the plan to a deductible or cost-sharing that is greater than is required under section 1860D-14.”

(b) **REPORT TO CONGRESS.**—Not later than January 1, 2007, the Secretary of Health and Human Services shall submit a report to Congress on the implementation of the processes established under subsection (d) of section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114), as added by subsection (a).

SEC. 7. REIMBURSEMENT OF STATES FOR 2006 TRANSITION COSTS.

(a) **REIMBURSEMENT.**—

(1) **IN GENERAL.**—Notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396u-5(d) or any other provision of law, the Secretary of Health and Human Services shall reimburse States for 100 percent of the costs incurred by the State during 2006 for covered part D drugs (as defined in section 1860D-2(e) of such Act (42 U.S.C. 1395w-102(e))) for part D eligible individuals (as defined in section 1860D-1(a)(3)(A) of the Social Security Act (42 U.S.C. 1394w-101(a)(3)(A))) which the State reasonably expected would have been covered under such part but were not because the individual was unable to access on a timely basis prescription drug benefits to which they were entitled under such part. Such payments shall be made from the Medicare Prescription Drug Account under section 1860D-16 of the Social Security Act (42 U.S.C. 1395w-116) and shall be deemed to be payments from such Account under subsection (b) of such section.

(2) **RETROACTIVE APPLICATION TO BEGINNING OF 2006.**—The costs incurred by a State which may be reimbursed under paragraph (1) shall include costs incurred during the period beginning on January 1, 2006, and before the date of enactment of this Act.

(b) **RECOVERY OF COSTS FROM PLANS BY SECRETARY NOT STATES.**—The Secretary of Health and Human Services shall establish a process for recovering the costs described in subsection (a)(1) from prescription drug plans (as defined in section 1860D-1(a)(3)(C) of the Social Security Act (42 U.S.C. 1394w-101(a)(3)(C))) and MA-PD plans (as defined in section 1860D-41(a)(14) of such Act (42 U.S.C. 1395w-151(a)(14))) if the Secretary determines that such plans should have incurred such costs. Amounts recovered pursuant to the preceding sentence shall be deposited in the Medicare Prescription Drug Account described in subsection (a)(1).

(c) **STATE.**—For purposes of this section, the term “State” includes the District of Columbia.

SEC. 8. FACILITATION OF IDENTIFICATION AND ENROLLMENT THROUGH PHARMACIES OF FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN THE MEDICARE PART D DRUG PROGRAM.

(a) **IN GENERAL.**—The Secretary of Health and Human Services shall provide for outreach and education to every pharmacy that has participated in the Medicaid program

under title XIV of the Social Security Act, particularly independent pharmacies, on the following:

(1) The needs of full-benefit dual eligible individuals and the challenges of meeting those needs.

(2) The processes for the transition from Medicaid prescription drug coverage to coverage under such part D for such individuals.

(3) The processes established by the Secretary to facilitate, at point of sale, identification of drug plan assignment of such population or enrollment of previously unidentified or new full-benefit dual eligible individuals into Medicare part D prescription drug coverage, including how pharmacies can use such processes to help ensure that such population makes a successful transition to Medicare part D without a lapse in prescription drug coverage.

(b) HOLDING PHARMACIES HARMLESS FOR CERTAIN COSTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for such payments to pharmacies as may be necessary to reimburse pharmacies fully for—

(A) transaction fees associated with the point-of-sale facilitated identification and enrollment processes referred to in subsection (a)(3); and

(B) costs associated with technology or software upgrades necessary to make any identification and enrollment inquiries as part of the processes under subsection (a)(3).

(2) TIME.—Payments under paragraph (1) shall be made with respect to fees and costs incurred during the period beginning on December 1, 2005, and ending on June 1, 2006.

(3) PAYMENTS FROM ACCOUNT.—Payments under paragraph (1) shall be made from the Medicare Prescription Drug Account under section 1860D-16 of the Social Security Act (42 U.S.C. 1395w-116) and shall be deemed to be payments from such Account under subsection (b) of such section.

SEC. 9. STATE HEALTH INSURANCE PROGRAM ASSISTANCE REGARDING THE NEW MEDICARE PRESCRIPTION DRUG BENEFIT.

During the period beginning on the date that is 7 days after the date of enactment of this Act and ending on May 15, 2006 (or a later date if determined appropriate by the Secretary of Health and Human Services), the Secretary shall ensure that an employee of the Centers for Medicare & Medicaid Services is stationed at each State health insurance counseling program (receiving funding under section 4360 of the Omnibus Budget Reconciliation Act of 1990) in order to—

(1) assist Medicare beneficiaries and counselors under such program in better understanding the Medicare prescription drug benefit under part D of title XVIII of the Social Security Act; and

(2) act as a liaison to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services regarding issues related to oversight and enforcement of provisions under the Medicare prescription drug benefit.

SEC. 10. ADDITIONAL MEDICARE PART D INFORMATIONAL RESOURCES.

(a) 1-800-MEDICARE.—The Secretary of Health and Human Services shall increase the number of trained employees staffing the toll-free telephone number 1-800-MEDICARE in order to ensure that the average wait time for a caller does not exceed 20 minutes.

(b) PHARMACY HOTLINE.—The Secretary of Health and Human Services shall—

(1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under title XVIII of the Social Security Act to pharmacists; and

(2) staff such telephone number in order to ensure that the average wait time for a caller does not exceed 20 minutes.

(c) STATE HEALTH INSURANCE PROGRAM HOTLINE.—The Secretary of Health and Human Services shall—

(1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under title XVIII of the Social Security Act to counselors working in State health insurance counseling programs (receiving funding under section 4360 of the Omnibus Budget Reconciliation Act of 1990); and

(2) staff such telephone number in order to ensure that the average wait time for a caller does not exceed 20 minutes.

SEC. 11. GAO STUDY AND REPORT ON THE IMPOSITION OF CO-PAYMENTS UNDER PART D FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS RESIDING IN A LONG-TERM CARE FACILITY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on how mental health patients who are full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u-5(c)(6))) and who reside in long-term care facilities, including licensed assisted living facilities, will be affected by the imposition of co-payments for covered part D drugs under part D of title XVIII of such Act. Such study shall include a review of issues that relate to the potential harm of displacement due to an inability to access needed medications because of such co-payments.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the study conducted under subsection (a) together with recommendations for such legislation as the Comptroller General determines is appropriate.

SEC. 12. STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.

(a) STATE COVERAGE OF NON-FORMULARY PRESCRIPTION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS DURING 2006.—For prescriptions filled during 2006, notwithstanding section 1935(d) of the Social Security Act (42 U.S.C. 1396v(d)), a State (as defined for purposes of title XIX of such Act) may provide (and receive Federal financial participation for) medical assistance under such title with respect to prescription drugs provided to a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6))) that are not on the formulary of the prescription drug plan under part D or the MA-PD plan under part C of title XVIII of such Act in which such individual is enrolled.

(b) APPLICATION.—

(1) MEDICARE AS PRIMARY PAYER.—Nothing in subsection (a) shall be construed as changing or affecting the primary payer status of a prescription drug plan under part D or an MA-PD plan under part C of title XVIII of the Social Security Act with respect to prescription drugs furnished to any full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6))) during 2006.

(2) THIRD PARTY LIABILITY.—Nothing in subsection (a) shall be construed as limiting the authority or responsibility of a State under section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) to seek reimbursement from a prescription drug plan, an MA-PD plan, or any other third party, of the costs incurred by the State in providing prescription drug coverage during 2006.

SEC. 13. PROTECTION FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS FROM PLAN TERMINATION PRIOR TO RECEIVING FUNCTIONING ACCESS IN A NEW PART D PLAN.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of

Health and Human Services shall not terminate coverage of a full-benefit dual eligible individual (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396v(c)(6))) unless such individual has functioning access to a prescription drug plan under part D or an MA-PD plan under part C of title XVIII of such Act. Such access shall include entry of the individual into the computer system of such plan and an acknowledgment by the plan that the individual is eligible for a full premium subsidy under section 1860D-14 of such Act (42 U.S.C. 1395w-114).

(b) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 349—CONDEMNING THE GOVERNMENT OF IRAN FOR VIOLATING THE TERMS OF THE 2004 PARIS AGREEMENT, AND EXPRESSING SUPPORT FOR EFFORTS TO REFER IRAN TO THE UNITED NATIONS SECURITY COUNCIL FOR ITS NONCOMPLIANCE WITH INTERNATIONAL ATOMIC ENERGY AGENCY OBLIGATIONS

Mr. SANTORUM (for himself and Mr. KYL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 349

Whereas the International Atomic Energy Agency (IAEA) reported in November 2003 that Iran had been developing an undeclared nuclear enrichment program for 18 years and had covertly imported nuclear material and equipment, carried out over 110 unreported experiments to produce uranium metal, separated plutonium, and concealed many other aspects of its nuclear facilities;

Whereas, in November 2004, the Governments of the United Kingdom, France, and Germany entered into an agreement with Iran on Iran's nuclear program (commonly known as the "Paris Agreement"), successfully securing a commitment from the Government of Iran to voluntarily suspend uranium enrichment operations in exchange for discussions on economic, technological, political, and security issues;

Whereas Article XII.C of the Statute of the IAEA requires the IAEA Board of Governors to report the noncompliance of any member of the IAEA with its IAEA obligations to all members and to the Security Council and General Assembly of the United Nations;

Whereas Article III.B-4 of the Statute of the IAEA specifies that "if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security";

Whereas, in September 2005, the IAEA Board of Governors adopted a resolution declaring that Iran's many failures and breaches constitute noncompliance in the context of Article XII.C of the Statute of the IAEA;

Whereas, on January 3, 2006, the Government of Iran announced that it planned to restart its nuclear research efforts in direct violation of the Paris Agreement;

Whereas, in January 2006, Iranian officials, in the presence of IAEA inspectors, began to remove United Nations seals from the enrichment facility in Natanz, Iran;

Whereas Foreign Secretary of the United Kingdom Jack Straw warned Iranian officials that they were “pushing their luck” by removing the United Nations seals that were placed on the Natanz facility by the IAEA 2 years earlier;

Whereas President of France Jacques Chirac said that the Governments of Iran and North Korea risk making a “serious error” by pursuing nuclear activities in defiance of international agreements;

Whereas Foreign Minister of Germany Frank-Walter Steinmeier said that the Government of Iran had “crossed lines which it knew would not remain without consequences”;

Whereas Secretary of State Condoleezza Rice stated, “It is obvious that if Iran cannot be brought to live up to its international obligations, in fact, the IAEA Statute would indicate that Iran would have to be referred to the U.N. Security Council.”;

Whereas President of Iran Mahmoud Ahmadinejad stated, “The Iranian government and nation has no fear of the Western ballyhoo and will continue its nuclear programs with decisiveness and wisdom.”;

Whereas the United States has joined with the Governments of Britain, France, and Germany in calling for a meeting of the IAEA to discuss Iran’s non-compliance with its IAEA obligations;

Whereas President Ahmadinejad has stated that Israel should be “wiped off the map”;

Whereas the international community is in agreement that the Government of Iran should not seek the development of nuclear weapons;

Now, therefore, be it

Resolved, That the Senate—

(1) condemns the decisions of the Government of Iran to remove United Nations seals from its uranium enrichment facilities and to resume nuclear research efforts;

(2) commends the Governments of Britain, France, and Germany for their efforts to secure the 2004 Paris Agreement, which resulted in the brief suspension in Iran of nuclear enrichment activities;

(3) supports the referral of Iran to the United Nations Security Council under Article XII.C and Article III.B-4 of the Statute of the IAEA for violating the Paris Agreement; and

(4) condemns actions by the Government of Iran to develop, produce, or acquire nuclear weapons.

SENATE RESOLUTION 350—EXPRESSING THE SENSE OF THE SENATE THAT SENATE JOINT RESOLUTION 23 (107TH CONGRESS), AS ADOPTED BY THE SENATE ON SEPTEMBER 14, 2001, AND SUBSEQUENTLY ENACTED AS THE AUTHORIZATION FOR USE OF MILITARY FORCE DOES NOT AUTHORIZE WARRANTLESS DOMESTIC SURVEILLANCE OF UNITED STATES CITIZENS

Mr. LEAHY (for himself and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 350

Whereas the Bill of Rights to the United States Constitution was ratified 214 years ago;

Whereas the Fourth Amendment to the United States Constitution guarantees to the American people the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”;

Whereas the Fourth Amendment provides that courts shall issue “warrants” to authorize searches and seizures, based upon probable cause;

Whereas the United States Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a “search and seizure” within the meaning of the Fourth Amendment;

Whereas Congress was concerned about the United States Government unconstitutionally spying on Americans in the 1960s and 1970s;

Whereas Congress enacted the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), commonly referred to as “FISA”, to provide a legal mechanism for the United States Government to engage in searches of Americans in connection with intelligence gathering and counterintelligence;

Whereas Congress expressly enacted the Foreign Intelligence Surveillance Act of 1978, and specified provisions of the Federal criminal code (including those governing wiretaps for criminal investigations), as the “exclusive means by which domestic electronic surveillance . . . may be conducted” pursuant to law (18 U.S.C. 2511(2)(f));

Whereas the Foreign Intelligence Surveillance Act of 1978 establishes the Foreign Intelligence Surveillance Court (commonly referred to as the “FISA court”), and the procedures by which the United States Government may obtain a court order authorizing electronic surveillance (commonly referred to as a “FISA warrant”) for foreign intelligence collection in the United States;

Whereas Congress created the FISA court to review wiretapping applications for domestic electronic surveillance to be conducted by any Federal agency;

Whereas the Foreign Intelligence Surveillance Act of 1978 provides specific exceptions that allow the President to authorize warrantless electronic surveillance for foreign intelligence purposes (1) in emergency situations, provided an application for judicial approval from a FISA court is made within 72 hours; and (2) within 15 calendar days following a declaration of war by Congress;

Whereas the Foreign Intelligence Surveillance Act of 1978 makes criminal any electronic surveillance not authorized by statute;

Whereas the Foreign Intelligence Surveillance Act of 1978 has been amended over time by Congress since the September 11, 2001, attacks on the United States;

Whereas President George W. Bush has confirmed that his administration engages in warrantless electronic surveillance of Americans inside the United States and that he has authorized such warrantless surveillance more than 30 times since September 11, 2001; and

Whereas Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and House Joint Resolution 64 (107th Congress), as adopted by the House of Representatives on September 14, 2001, together enacted as the Authorization for Use of Military Force (Public Law 107-40), to authorize military action against those responsible for the attacks on September 11, 2001, do not contain legal authorization nor approve of domestic electronic surveillance, including domestic electronic surveillance of United States citizens, without a judicially approved warrant: Now, therefore, be it

Resolved, That Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force (Public Law 107-40) does not authorize warrantless domestic surveillance of United States citizens.

Mr. LEAHY. Mr. President, today I am submitting this resolution expressing the sense of the Senate that the Authorization for Use of Military Force, which Congress passed to authorize military action against those responsible for the attacks on September 11, 2001, did not authorize warrantless eavesdropping on American citizens.

As Justice O'Connor underscored recently, even war “is not a blank check for the President when it comes to the rights of the Nation’s citizens.”

Now that the illegal spying of Americans has become public and the President has acknowledged the 4-year-old program, the Bush administration’s lawyers are contending that Congress authorized it. The September 2001 Authorization to Use Military Force did no such thing. Republican Senators also know it and a few have said so publicly. We all know it. The liberties and rights that define us as Americans and the system of checks and balances that serve to preserve them should not be sacrificed to threats of terrorism or to the expanding power of the government. In the days immediately following those attacks, I said, and I continue to believe, that the terrorists win if they frighten us into sacrificing our freedoms and what defines us as Americans.

I well remember the days immediately after the 9/11 attacks. I helped open the Senate to business the next day. I said then, on September 12, 2001:

“If we abandon our democracy to battle them, they win. . . . We will maintain our democracy, and with justice, we will use our strength. We will not lose our commitment to the rule of law, no matter how much the provocation, because that rule of law has protected us throughout the centuries. It has created our democracy. It has made us what we are in history. We are a just and good Nation.”

I joined with others, Republican and Democrats, and we engaged in round-the-clock efforts over the next months in connection with what came to be the USA PATRIOT Act. During those days the Bush administration never asked us for this surveillance authority or to amend the Foreign Intelligence Surveillance Act to accommodate such a program.

Just as we cannot allow ourselves to be lulled into a sense of false comfort when it comes to our national security, we cannot allow ourselves to be lulled into a blind trust regarding our freedoms and rights. The Framers built checks and balances into our system specifically to counter such abuses and undue assertions of power. We must remain vigilant on all fronts or we stand to lose these rights forever. Once lost or eroded, liberty is difficult if not impossible to restore. The Bush administration’s after-the-fact claims about the breadth of the Authorization to Use Military Force—as recently as this week, in a document prepared at the White House’s behest by the Department of Justice—are the latest in a long line of manipulations of the law.