

have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

“(6) **FAILURE TO COMPLY WITH ORDER.**—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

“(7) **CIVIL ACTION TO REQUIRE COMPLIANCE.**—“(A) **IN GENERAL.**—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

“(B) **AWARD.**—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys’ and expert witness fees) to any party whenever the court determines such award is appropriate.

“(c) **EFFECT OF SECTION.**—

“(1) **OTHER LAWS.**—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

“(2) **RIGHTS OF EMPLOYEES.**—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

“(d) **ENFORCEMENT.**—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

“(e) **LIMITATION.**—Subsection (a) shall not apply with respect to an employee of an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food who, acting without direction from such entity (or such entity’s agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, rule, regulation, standard, or ban under this Act.”

#### **SEC. 403. JURISDICTION; AUTHORITIES.**

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes, regulations, or agreements regarding products eligible for voluntary inspection under the Agricultural Marketing Act (7 U.S.C. 1621 et seq.);

(2) alter the jurisdiction between the Administration of the Alcohol and Tobacco Tax and Trade Bureau and the Secretary of Health and Human Services, under applicable statutes and regulations;

(3) limit the authority of the Secretary of Health and Human Services to issue regulations related to the safety of food under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(4) impede, minimize, or affect the authority of the Secretary of Agriculture to prevent, control, or mitigate a plant or animal health emergency, or a food emergency or foodborne illness outbreak involving products regulated under the Federal Meat Inspection Act, the Poultry Prod-

ucts Inspection Act, the Egg Products Inspection Act, or agreements regarding voluntary inspection under the Agricultural Marketing Act (7 U.S.C. 1621 et seq.).

#### **SEC. 404. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.**

Nothing in this Act (or an amendment made by this Act) shall be construed in a manner inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

#### **SEC. 405. UPDATING GUIDANCE RELATING TO FISH AND FISHERIES PRODUCTS HAZARDS AND CONTROLS.**

The Secretary shall, not later than 180 days after the date of enactment of this Act, update the Fish and Fisheries Products Hazards and Control Guidance to take into account advances in technology that have occurred since the previous publication of such Guidance by the Secretary.

#### **SEC. 406. FOOD TRANSPORTATION STUDY.**

The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall conduct a study of the transportation of food for consumption in the United States, including transportation by air, that includes an examination of the unique needs of rural and frontier areas with regard to the delivery of safe food.

Mr. REID. Mr. President, are we on the bill now?

The PRESIDING OFFICER. Yes, we are.

#### **THE VETERANS’, SENIORS’, AND CHILDREN’S HEALTH TECHNICAL CORRECTIONS ACT OF 2010**

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 465, H.R. 5712.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5712) to provide for certain clarifications and extensions under Medicare, Medicaid, and the Children’s Health Insurance Program.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the substitute amendment, which is at the desk, be considered and that it be agreed to; that the bill, as amended, be read three times and then passed and the motion to reconsider be laid upon the table; that the title amendment, which is also at the desk, be considered and agreed to, and the motion to reconsider be laid upon the table.

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

The amendment (No. 4711) in the nature of a substitute, was agreed to, as follows:

Strike all after the enacting clause and insert the following:

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “The Physician Payment and Therapy Relief Act of 2010”.

#### **SEC. 2. PHYSICIAN PAYMENT UPDATE.**

Section 1848(d)(11) of the Social Security Act (42 U.S.C. 1395w-4(d)(11)) is amended—

(1) in the heading, by striking “NOVEMBER” and inserting “DECEMBER”;

(2) in subparagraph (A), by striking “November 30” and inserting “December 31”; and

(3) in subparagraph (B)—

(A) in the heading, by striking “REMAINING PORTION OF 2010” and inserting “2011”; and

(B) by striking “the period beginning on December 1, 2010, and ending on December 31, 2010, and for”.

#### **SEC. 3. TREATMENT OF MULTIPLE SERVICE PAYMENT POLICIES FOR THERAPY SERVICES.**

(a) **SMALLER PAYMENT DISCOUNT FOR CERTAIN MULTIPLE THERAPY SERVICES.**—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by adding at the end the following new paragraph:

“(7) **ADJUSTMENT IN DISCOUNT FOR CERTAIN MULTIPLE THERAPY SERVICES.**—In the case of therapy services furnished on or after January 1, 2011, and for which payment is made under fee schedules established under this section, instead of the 25 percent multiple procedure payment reduction specified in the final rule published by the Secretary in the Federal Register on November 29, 2010, the reduction percentage shall be 20 percent.”.

(b) **EXEMPTION OF PAYMENT REDUCTION FROM BUDGET-NEUTRALITY.**—Section 1848(c)(2)(B)(v) of the Social Security Act (42 U.S.C. 1395w-4(c)(2)(B)(v)) is amended by adding at the end the following new subclause:

“(VII) **REDUCED EXPENDITURES FOR MULTIPLE THERAPY SERVICES.**—Effective for fee schedules established beginning with 2011, reduced expenditures attributable to the multiple procedure payment reduction for therapy services (as described in subsection (b)(7)).”.

#### **SEC. 4. DETERMINATION OF BUDGETARY EFFECTS.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

The amendment (No. 4712) was agreed to, as follows:

Amend the file so as to read: An act entitled “The Physician Payment and Therapy Relief Act of 2010.”

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 5712) was read the third time and passed.

Mr. REID. Mr. President, I appreciate everyone’s cooperation. This is the SGR extension for 30 days to allow us to spend more time on this and make sure the doctors are able to be compensated. These Medicare patients are extremely important, as are the doctors.

#### **FDA FOOD SAFETY MODERNIZATION ACT—Continued**

Mr. REID. Mr. President, I ask unanimous consent that there now be a time for debate only for a period of 20 minutes, with Senator BROWNBACK being recognized for a period of up to 10 minutes and that I be recognized when he completes his statement.

For the benefit of all Members, Senator MCCONNELL and I are trying to work through some procedural issues we have here to give more definition to what we are doing. We are trying to work something out on food safety and

on the Lew nomination. We don't have that done yet, but we have made progress. So we hope everyone will be patient and stay around so they will know what we are going to wind up doing. It is a delicate time here. Everyone has to be calm and cool. We have a lot to do in the next few weeks and we would like to be able to expedite some of this tonight.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Kansas.

FAREWELL TO THE SENATE

Mr. BROWNBACK. Mr. President, I thank the majority leader for setting up this period of time. This will be my last speech, probably, to the body. It is a speech I wish to give in talking about leaving the Senate of the United States.

I was just elected to be Governor of Kansas, and I am very excited about that post. I have served here a period of 14 years, which has been a wonderful chance to be able to serve the people of Kansas—the people of the United States. I love this body and I love this country.

A lot of folks, when they leave, talk about partisanship and the bickering. I like to think about the beauty of the country and the ability to come together because it does happen. The predecessor of the person sitting in the Presiding Officer's seat and I worked on one of the flagship pieces of legislation on human rights protection. It was on human trafficking, the initial bill. That was with Senator Paul Wellstone, who was from Minnesota. He was a delightful individual. It was a great chance for us to work together on something, and we couldn't have been further apart. I think he was ranked the second most liberal Member of the Senate. He aspired to be No. 1, but he was second. But he was a delightful man and he dealt from the heart and we got things done.

I say that because I think that is how we work in this place; that we fight on about 20 percent of the issues—and they are important, big issues—and then we cooperate and work together on a whole host of broad bipartisan issues, such as dealing with things like human trafficking. You do that primarily with people who deal from the heart—people such as Paul Wellstone, Ted Kennedy, and Jesse Helms. There are a lot of others, and many people get many things done in this body, but I think it is best when people deal from the heart. When they do that, then there is a chance for us to come together around key and heartfelt things. This has been a great body to serve in and I have delighted in being able to do that.

There is much to be done, much to be done for the country. We have to deal with the creation of jobs in America. We have to deal with our debt and our deficit. We have many issues to deal with. My hope for here, and my hope for our country, is that we go back to

the virtues of the “greatest generation” and look to them for ways to move forward. It is looking back at the old path of what worked in tough times and moving it forward on the new path.

I came into this seat after Bob Dole served in this body. He served in this seat. Senator Dole from Kansas is the iconic figure of the World War II generation, of that “greatest generation.” He just got out of Walter Reed Hospital. He has been very sick and ill this year. He is coming back, recuperating. I think he is 87 years old this year.

Most everybody in America would agree about the “greatest generation.” They would say that World War II generation hit the mark of what it is to be an American, what it is to sacrifice, what it is to fight for a good cause. They did it with a set of virtues that are timeless, that are known, and I think we have to emulate this time for us to deal with the problems we have now. They were courageous; they were selfless; they were courteous; they were people who would fight for a cause. They were the ones who exhibited charity, thrift. That was certainly known in that generation. I think these are things we have to bring back—hard work, compassion.

It seems to me, when I think of that generation—and nobody is perfect and that generation is not perfect—those are ideals I saw in practice, whether it was them on the battlefield in World War II or if it was them raising their families at home or if it was their educating of their families, if it was saving for future generations; that is what they did.

I don't know, if you ask people of that generation, did you do this on purpose, they might say we did or didn't. Most of them would say this was the right thing to do and it is the thing we needed to do. I think it is what we need to do now. I think we need to emulate those virtues of the “greatest generation” and apply them to our problems.

Their problems were more foreign than ours. Ours I believe are more domestic, dealing with our own debt and deficit as a country and as a society and as individuals and individual households; us creating and saving for that next generation in the country and investing to do that, and being selfless and sacrificial in doing that. Building family structure and doing that which is for the good of our families is what we need to do, and that virtue and that old, ancient path they followed, that they said we did because it was a thing we needed to do, I think we have to do the same thing. I hope we will as a country.

There has been a debate that started in America that I do not agree with, and it is whether this is a special country and whether America is an exceptional land. I for one fully embrace the notion that this is a special place. I believe in American exceptionalism and I have been in many places over the world where you see this in action. I have been in many places in America

where you see this in action, where somebody selflessly takes care of other individuals.

Last night I was at the Korean Embassy and we were talking about what is taking place in North Korea, and one of the people working there at the South Korean Embassy was amazed that people in the United States would care what happens to people in North Korea. I said one of the people with me was saying that is how we look at the world. If somebody else is in bondage, if somebody else is in difficulty, we feel that and we want to help to deal with it. That, to me, is part of what American exceptionalism is all about.

This is a special place and has a special calling. If it is not us doing it, in many cases around the world it does not get done. I have been in the Sudan and they are not calling on the Chinese to lead Sudan into a freer time period. I have been in other places—in Africa, on the North Korean border. If you are looking for somebody to solve the problem, it is the Americans who go in and do it.

Our task now is to not only do that around the world, but it is to do it domestically. I think we have to look more and more at ourselves and say we are a special place and I think we have to look at ourselves as the baby boomer generation that I am a part of and say you have to prove and earn your exceptionalism. I think we have to step up to the mark as the “greatest generation” did and be willing to serve in a tough way, in a sacrificial way, in the best interests of the future of our country. We have to do it and now is the time to do it.

I am appreciative that the President had a deficit task force he appointed and that they came up with some ideas, with some of which I agree, with some of which I disagree. But I am glad they started the discussion and the debate. If the figures I have seen are accurate, half the American households receive an entitlement check from the Federal Government—half of the American households. We have a deficit and debt that is structural. It is not based upon one-time war funding, although war funding has contributed to it, but it is structural in that we have more going out than we have coming in. It is time this is dealt with. I think that is part of the message from this last election cycle. The American people are ready to have an intelligent discussion, a difficult discussion of what we are going to do to be able to save ourselves fiscally. Now is the time to do it.

We actually have the structure set up to do it. With a Republican House, Democratic Senate, Democratic Presidency. This would be the time and the structure to talk about this sort of difficult issue. Our generation should step up and deal with it. I am not going to be here for that discussion and debate, but it is time we have it and it is time we bring back these timeless virtues to deal with our domestic problems the way we have dealt with international problems in the “greatest generation.”

As I leave this body, one of the rites of passage is to sign your desk, and I just did that. I did it in pencil. I figure that all of us will fade with time and that signature will fade with time as well. But the things you remember are what you touched and that touched you and the souls that are touched. It is people who deal from the heart who are the ones who touch your life and the ones who touch your soul. I want to express my deep appreciation to my colleagues who have touched my heart. I hope I have been a positive statement to many of them.

The psalm that comes to mind is one that says: "And his place knew him no more."

The psalmist wrote: "His place knew him no more." After a period of time you sign the desk, you move on, and then you look back and see the signatures in the desk and you don't recognize many of them. The place will know us no more. But the hearts that we touch, the hearts that touch ours, we will remember forever, and I certainly will.

I thank you and my colleagues in the Senate for letting me serve with you. It has been a great joy. It is a fabulous nation, the greatest Nation on the face of the Earth, and it was an honor to serve here.

God bless America.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 1118, the nomination of Jack Lew to be Director of the Office of Management and Budget, and that the nomination be confirmed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

#### EXECUTIVE OFFICE OF THE PRESIDENT

Jacob J. Lew, of New York, to be Director of the Office of Management and Budget.

Mr. REID. Mr. President, we have been working for several days—actually longer—trying to work things out on the situation involving the State of Louisiana. The State of Louisiana has struggled. They had the hurricane. The economic situation in Louisiana was going very well when the BP oil spill occurred. As a result, action taken by the administration, and other situations that developed, have hurt signifi-

cantly the economic viability of the State of Louisiana.

The Senator from Louisiana has worked tirelessly to get the work going again in the shallow water off the coast of Louisiana. She will be able to speak on the record better than I can—and I have been in some of the negotiations—the progress she has made regarding that. Not only has the administration stepped forward but industries have stepped forward.

I ask unanimous consent that the Senator from Louisiana be recognized to make a statement on the matter regarding Jack Lew.

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

Ms. LANDRIEU. Mr. President, I thank the majority leader. His day has been much busier than mine, but both of our days have been filled with quite a few matters before us.

The vote that will take place in the Senate would not have taken place without my acquiescence. I thought it was important to speak briefly on my hold on Jack Lew.

Jack Lew is a terrific nominee, and he has the support of many people in this body for his new position, and we are grateful to him for wanting to be the budget director for a country that has serious economic challenges. We are very grateful.

As you know, we have extremely serious economic challenges right now in the Gulf of Mexico. It has been 5 years since Katrina. Three weeks later, we had Rita, and then Gustav and Ike—four of the toughest storms the gulf coast has faced. Then a few years later, we had an oil spill, with more than 5 million barrels of oil spilled in the gulf, which was bad enough. But then this administration placed a hold—or a moratorium, if you will—on an entire industry because of that accident. It was a horrible accident, but I think to place a moratorium on an entire industry because one company and its contractors made some serious and terrible mistakes is really unprecedented, it is unwise, and it is extremely harmful to the gulf coast.

I tried many things over the last several months to call attention to this matter. I called several hearings in Louisiana, several hearings here in Washington, and I sent several letters, set up several meetings, and nothing seemed to be getting through to this administration about the catastrophe they were causing along the gulf coast. So I put this hold on a nominee. It was, in many ways, unprecedented. I didn't know that when I did it. I was told later that it had never been done on a budget director. I figured it would get their attention, and I think it has.

I have had three meetings in the last 24 hours with the Secretary himself. We have talked through some of these issues in a way that I think we can make progress. In the last week, there have been two permits issued. I am told there will be additional permits issued in the next few days. The Secretary has

also committed to me that he himself will be in the gulf coast—in Louisiana, actually—on Monday, expressing his commitment, and in no uncertain terms, to the future robustness of this industry.

Mr. President, this isn't just about Louisiana and the importance to Louisiana. I will submit this report for the RECORD, "The Economic Impact of the Gulf of Mexico Offshore Oil and Natural Gas Industry and the Role of the Independents," released in July of 2010. I will read only one figure, but it is big enough that it should capture people's attention. People are looking for money in this Chamber to solve our budget issues and bring this budget into balance. One figure I will cite from this report is that the independents—not big oil—I am not talking about Chevron, Shell, or BP; I am talking about independent oil and gas operators that are sidelined because of this policy by the administration—independents will bring in more than \$147 billion in Federal, State, and local revenue in the next 10 years. So the stakes are very high, which is why I took the action I did and why today I have released the hold, because notable progress has been made, permits have been issued, and the Secretary has committed, on Monday, to be in the State to give a path forward for this industry.

I am convinced that, at this moment, that was the right thing to do for the country and the gulf coast. But we have more progress that needs to be made. This industry is a valuable, critical, important industry to this Nation. It has been for over 100 years, and it will be for the next 100 years. We have to realize the importance of producing oil and gas here at home. Yes, it was a terrible accident. Yes, we need to have safety and rules and regulations that are in force. But there has to be a way to accomplish that without shutting down the entire industry and putting hundreds of thousands of jobs at risk. Again, this isn't about big oil specifically; it is about contractors and small businesses all along the gulf coast and throughout the United States.

I appreciate the Secretary's commitment, his renewed focus, and his understanding of the urgency of the situation. I thank my colleagues, many of whom were supportive of this action, as we have worked through these last 6 weeks. I appreciate the courtesy of the majority leader.

I ask unanimous consent to have printed in the RECORD "How Big an Impact?" from the study "The Economic Impact of the Gulf of Mexico Offshore Oil and Natural Gas Industry and the Role of the Independents" done by IHS Global Insight (USA), Inc., dated July 21, 2010.

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