

The message further that pursuant to 16 U.S.C. 431 note and the order of the House of January 5, 2011, the Speaker appoints the following Member of the House of Representatives to the Dwight D. Eisenhower Memorial Commission: Mr. BISHOP of Georgia.

The message also announced that pursuant to section 1002 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306) as amended by section 701(a)(3) of the Intelligence Authorization Act for Fiscal Year 2010, the Minority Leader appoints the following individuals to the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community: Honorable RUSH D. HOLT of New Jersey and Ms. Samantha Ravich of Clark, New Jersey.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 358. An act to amend the Patient Protection and Affordable Care Act to modify special rules relating to coverage of abortion services under such Act; to the Committee on Finance.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 2250. An act to provide additional time for the Administrator of the Environmental Protection Agency to issue achievable standards for industrial, commercial, and institutional boilers, process heaters, and incinerators, and for other purposes.

H.R. 2273. An act to amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

S. 1720. A bill to provide American jobs through economic growth.

S. 1723. A bill to provide for teacher and first responder stabilization.

S. 1726. A bill to repeal the imposition of withholding on certain payments made to vendors by government entities.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

H.R. 368. A bill to amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes.

By Mr. LEAHY, from the Committee on the Judiciary, with amendments:

H.R. 394. A bill to amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

H.R. 2633. A bill to amend title 28, United States Code, to clarify the time limits for appeals in civil cases to which United States officers or employees are parties.

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with amendments:

S. 473. A bill to extend the chemical facility security program of the Department of Homeland Security, and for other purposes.

By Mr. LEAHY, from the Committee on the Judiciary, with amendments:

S. 1014. A bill to provide for additional Federal district judgeships.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 1636. A bill to amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

S. 1637. A bill to clarify appeal time limits in civil actions to which United States officers or employees are parties.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mrs. GILLIBRAND:

S. 1714. A bill to extend the milk income loss contract program, to require the Secretary of Agriculture to conduct hearings to assess the implications of transitioning Federal milk marketing orders from end-product pricing to a competitive pay pricing system, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. GILLIBRAND:

S. 1715. A bill to replace current dairy product price support and milk income loss contract programs with a program to protect dairy producer income when the difference between milk prices and feed costs is less than a specified amount, to establish a dairy market stabilization program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SANDERS:

S. 1716. A bill to amend the Elementary and Secondary Education Act of 1965 to improve teacher quality and increase access to effective teachers; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BEGICH (for himself and Ms. MURKOWSKI):

S. 1717. A bill to prevent the escapement of genetically altered salmon in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. WYDEN (for himself, Mr. PORTMAN, Mr. NELSON of Nebraska, and Mr. BURR):

S. 1718. A bill to amend title XVIII of the Social Security Act with respect to the application of Medicare secondary payer rules for certain claims; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 1719. A bill to clarify that schools and local educational agencies participating in the school lunch program under the Richard B. Russell National School Lunch Act are authorized to donate excess food to local food banks or charitable organizations; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MCCAIN (for himself, Mr. PAUL, Mr. PORTMAN, Mr. MCCONNELL, Mr. CHAMBLISS, Mr. COATS, Mr. COCHRAN, Mr. CRAPO, Mr. DEMINT, Mr. GRASSLEY, Mr. HELLER, Mr. HOEVEN, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHANNIS, Mr. JOHNSON of Wisconsin, Mr. KIRK, Mr. LEE, Mr. LUGAR, Mr. ROBERTS, Mr. RUBIO, Mr. TOOMEY, Mr. WICKER, Mr. SHELBY, Mr. THUNE, Mr. GRAHAM, Mr. VITTER, Mr. ENZI, Mr. BARRASSO, Mr. BLUNT, Mr. BOOZMAN, and Mr. SESSIONS):

S. 1720. A bill to provide American jobs through economic growth; read the first time.

By Mr. SCHUMER (for himself, Mr. LEAHY, Mrs. GILLIBRAND, Mr. MENENDEZ, Mr. FRANKEN, and Ms. KLOBUCHAR):

S. 1721. A bill to amend section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to extend the eligibility period for supplemental security income benefits for refugees, asylees, and certain other humanitarian immigrants, and for other purposes; considered and passed.

By Mrs. BOXER:

S. 1722. A bill to improve early education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MENENDEZ (for himself, Ms. STABENOW, Mr. CASEY, Mr. REID, and Mr. HARKIN):

S. 1723. A bill to provide for teacher and first responder stabilization; read the first time.

By Ms. MURKOWSKI:

S. 1724. A bill to amend the Elementary and Secondary Education Act of 1965 regarding highly qualified teachers, growth models, adequate yearly progress, Native American language programs, and parental involvement, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. MURKOWSKI:

S. 1725. A bill to amend the Elementary and Secondary Education Act of 1965 regarding the accountability system for elementary and secondary schools, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MCCONNELL:

S. 1726. A bill to repeal the imposition of withholding on certain payments made to vendors by government entities; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. COONS (for himself, Mr. CARPER, Ms. MIKULSKI, and Mr. CARDIN):

S. Res. 294. A resolution commemorating the 182nd anniversary of the opening of the Chesapeake and Delaware Canal; considered and agreed to.

By Mr. HOEVEN (for himself, Mr. CONRAD, Mr. ROBERTS, Mr. SESSIONS, Mr. ISAKSON, Mr. BLUNT, and Mr. BOOZMAN):

S. Res. 295. A resolution designating October 26, 2011, as "Day of the Deployed"; considered and agreed to.

ADDITIONAL COSPONSORS

S. 165

At the request of Mr. VITTER, the name of the Senator from Missouri (Mr. BLUNT) was added as a cosponsor of S. 165, a bill to amend the Public Health Services Act to prohibit certain abortion-related discrimination in governmental activities.

S. 230

At the request of Mr. BEGICH, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 230, a bill to amend the Federal Food, Drug, and Cosmetic Act to prevent the approval of genetically-engineered fish.

S. 306

At the request of Mr. WEBB, the name of the Senator from Alaska (Mr.

BEGICH) was added as a cosponsor of S. 306, a bill to establish the National Criminal Justice Commission.

S. 504

At the request of Mr. DEMINT, the name of the Senator from Kansas (Mr. MORAN) was added as a cosponsor of S. 504, a bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities.

S. 556

At the request of Mrs. HUTCHISON, the names of the Senator from Kansas (Mr. MORAN) and the Senator from Missouri (Mr. BLUNT) were added as cosponsors of S. 556, a bill to amend the securities laws to establish certain thresholds for shareholder registration, and for other purposes.

S. 678

At the request of Mr. KOHL, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. 678, a bill to increase the penalties for economic espionage.

S. 738

At the request of Ms. STABENOW, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 738, a bill to amend title XVIII of the Social Security Act to provide for Medicare coverage of comprehensive Alzheimer's disease and related dementia diagnosis and services in order to improve care and outcomes for Americans living with Alzheimer's disease and related dementias by improving detection, diagnosis, and care planning.

S. 810

At the request of Ms. CANTWELL, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 810, a bill to prohibit the conducting of invasive research on great apes, and for other purposes.

S. 968

At the request of Mr. LEAHY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 968, a bill to prevent online threats to economic creativity and theft of intellectual property, and for other purposes.

S. 1002

At the request of Mr. KYL, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 1002, a bill to prohibit theft of medical products, and for other purposes.

S. 1131

At the request of Mrs. HAGAN, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1131, a bill to authorize the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, to establish and implement a birth defects prevention, risk reduction, and public awareness program.

S. 1154

At the request of Mr. BAUCUS, the name of the Senator from Louisiana

(Mr. VITTER) was added as a cosponsor of S. 1154, a bill to require transparency for Executive departments in meeting the Government-wide goals for contracting with small business concerns owned and controlled by service-disabled veterans, and for other purposes.

S. 1265

At the request of Mr. BINGAMAN, the names of the Senator from Minnesota (Mr. FRANKEN), the Senator from North Carolina (Mr. BURR) and the Senator from New Hampshire (Mrs. SHAHEEN) were added as cosponsors of S. 1265, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 1301

At the request of Mr. LEAHY, the names of the Senator from Ohio (Mr. PORTMAN), the Senator from Minnesota (Mr. FRANKEN) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of S. 1301, a bill to authorize appropriations for fiscal years 2012 to 2015 for the Trafficking Victims Protection Act of 2000, to enhance measures to combat trafficking in person, and for other purposes.

S. 1316

At the request of Mr. ENZI, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1316, a bill to prevent a fiscal crisis by enacting legislation to balance the Federal budget through reductions of discretionary and mandatory spending.

S. 1335

At the request of Mr. INHOFE, the names of the Senator from Mississippi (Mr. COCHRAN), the Senator from Tennessee (Mr. CORKER), the Senator from South Carolina (Mr. GRAHAM), the Senator from Iowa (Mr. GRASSLEY), the Senator from Illinois (Mr. KIRK) and the Senator from Alabama (Mr. SHELBY) were added as cosponsors of S. 1335, a bill to amend title 49, United States Code, to provide rights for pilots, and for other purposes.

S. 1451

At the request of Mr. VITTER, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 1451, a bill to prohibit the sale of billfish.

S. 1467

At the request of Mr. BLUNT, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 1467, a bill to amend the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services.

S. 1493

At the request of Ms. MIKULSKI, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1493, a bill to provide compensation to relatives of Foreign Service

members killed in the line of duty and the relatives of United States citizens who were killed as a result of the bombing of the United States Embassy in Kenya on August 7, 1998, and for other purposes.

S. 1507

At the request of Mr. HATCH, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1507, a bill to provide protections from workers with respect to their right to select or refrain from selecting representation by a labor organization.

S. 1523

At the request of Mr. GRAHAM, the names of the Senator from Texas (Mr. CORNYN), the Senator from Nevada (Mr. HELLER), the Senator from Alabama (Mr. SESSIONS) and the Senator from Pennsylvania (Mr. TOOMEY) were added as cosponsors of S. 1523, a bill to prohibit the National Labor Relations Board from ordering any employers to close, relocate, or transfer employment under any circumstance.

S. 1541

At the request of Mr. BENNET, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 1541, a bill to revise the Federal charter for the Blue Star Mothers of America, Inc. to reflect a change in eligibility requirements for membership.

S. 1651

At the request of Mr. SESSIONS, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1651, a bill to provide for greater transparency and honesty in the Federal budget process.

S. 1679

At the request of Mr. THUNE, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1679, a bill to ensure effective control over the Congressional budget process.

S. 1690

At the request of Mr. MCCAIN, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1690, a bill to preserve the multiple use land management policy in the State of Arizona, and for other purposes.

S. 1707

At the request of Mr. BURR, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 1707, a bill to amend title 38, United States Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes.

S.J. RES. 19

At the request of Mr. HATCH, the name of the Senator from Arkansas (Mr. BOOZMAN) was added as a cosponsor of S.J. Res. 19, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

STATEMENTS ON INTRODUCED
BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN (for himself, Mr. PORTMAN, Mr. NELSON of Nebraska, and Mr. BURR):

S. 1718. A bill to amend title XVIII of the Social Security Act with respect to the application of Medicare secondary payer rules for certain claims; to the Committee on Finance.

Mr. WYDEN. Mr. President, I rise today to advocate for increasing Medicare efficiency and effectiveness by introducing the Strengthening Medicare and Repaying Taxpayers, SMART, Act of 2011 with my colleagues, Senators PORTMAN, BEN NELSON, and BURR.

The SMART Act initiates common sense changes to the Medicare Secondary Payer, MSP, system, as a means of achieving that efficiency and effectiveness. This system kicks in whenever a Medicare beneficiary is injured and another party accepts responsibility to pay for the costs associated with that injury, making Medicare the "secondary payer." For example, if a Medicare beneficiary is injured when she slips in a store the store reimburses her for the costs of the injury. In this scenario the store becomes the party responsible for paying the costs associated with the injury, and if Medicare pays any of the costs associated with the injury, it has to be reimbursed. The purpose of this system is to ensure that Medicare does not pay claims that a third party is liable for. Although seemingly obvious, the system currently on the books is set up in manner that is unnecessarily burdensome to all parties involved in these claims.

At the heart of the problem is the lack of financial disclosure by the Center for Medicare and Medicaid Services, CMS. Under the current MSP system, CMS does not calculate the MSP amount owed to the Trust Fund until after a claim has settled, making it impossible for the parties to factor that amount into the settlement process. Even after the claim has been settled and reported to Medicare, it can take months for the parties to find out how much money is actually owed in reimbursement.

Does this make any sense at all? Of course not. The beneficiary has no idea what portion of the settlement will be left after the payment is made to Medicare, the third party responsible for the bill has no way of knowing whether or not the amount settled upon will be sufficient to fully reimburse Medicare, and the Medicare Trust Fund is denied much needed funds because of the uncertain settlement process.

It is clear that the repercussions of our inefficient MSP system are widespread. Individual beneficiaries and businesses large and small are left in the dark. On top of that, State and local governments that settle personal injury and worker compensation claims also fall victim to these long, drawn out settlements which costs a significant amount of money at a time when budgets are especially tight.

The legislation my colleagues and I are introducing today provides a straightforward and commonsense solution. The SMART Act would create a more effective and efficient MSP process for all parties involved, while speeding the return of Medicare Trust Fund dollars. This legislation will improve the flow of information so that beneficiaries and companies may determine how much money is owed to the Trust Fund before they settle a claim. This change will enable parties to calculate the MSP amount they owe and reimburse Medicare directly, and it will provide CMS with tools to ensure that Medicare is fully reimbursed.

Medicare beneficiaries and businesses will no longer be forced to play this real life version of "Price is Right," where Medicare plays the Bob Barker/Drew Carey role and the other parties are forced to guess at how much is owed.

The SMART Act will also preserve taxpayer resources by ensuring that Medicare does not spend more money pursuing these cases than the claim is actually worth. There have been reports of MSP demands as low as \$2—CMS should not be spending more money on postage than the Medicare Trust Fund will receive in reimbursement. Surely we can create a sensible threshold that will protect Medicare's interest and prevent parties from gaming the system without wasting government money chasing down elderly beneficiaries to collect a handful of quarters.

In addition to streamlining the MSP system the SMART Act will protect consumers by eliminating the requirement for businesses to collect Social Security Numbers or Medicare numbers during the claims process. This is in line with a recently launched Medicare campaign which encourages beneficiaries not to give out these numbers as an important tool in fighting health care fraud and identity theft. We should not be sending seniors mixed messages or punishing businesses that are unable to obtain this information, despite their best efforts, from understandably reticent seniors.

The SMART Act will provide much needed clarity to the MSP system and will relieve the burden that is currently placed on all parties involved in the process.

I urge my colleagues to join us in cosponsoring this important legislation.

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

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

S. 1718

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 "Strengthening Medicare And Repaying Taxpayers Act of 2011".

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Expediting Secretarial determination of reimbursement amount to improve program efficiency.
- Sec. 3. Fiscal efficiency and revenue neutrality.
- Sec. 4. Reporting requirement safe harbors.
- Sec. 5. Use of social security numbers and other identifying information in reporting.
- Sec. 6. Statute of limitations.

SEC. 2. EXPEDITING SECRETARIAL DETERMINATION OF REIMBURSEMENT AMOUNT TO IMPROVE PROGRAM EFFICIENCY.

Section 1862(b)(2)(B) of the Social Security Act (42 U.S.C. 1395y(b)(2)(B)) is amended by adding at the end the following new clause:

“(vii) **TIMELY NOTICE OF CONDITIONAL PAYMENT REIMBURSEMENT.**—

“(I) **REQUEST FOR CONDITIONAL PAYMENT STATEMENT.**—In the case of a payment made by the Secretary pursuant to clause (i) for items and services provided to the claimant, the claimant or applicable plan (as defined in paragraph (8)(F)) may at any time beginning 120 days before the reasonably expected date of a settlement, judgment, award, or other payment, notify the Secretary that a payment is reasonably expected, and request from the Secretary, in accordance with regulations, a statement of the conditional payment reimbursement amount (in this clause referred to as a ‘statement of reimbursement amount’) for any payments subject to reimbursement required under clause (ii). A claimant or applicable plan may request a statement under this subclause only once with respect to such settlement, judgment, award, or other payment.

“(II) **SECRETARIAL RESPONSE.**—

“(aa) **IN GENERAL.**—Not later than 65 days after the date of receipt of a request under subclause (I), the Secretary shall respond to such request with a statement of reimbursement amount, which shall constitute the conditional payment subject to recovery under clause (ii) related to such settlement, judgment, award or other payment.

“(bb) **CASE OF SECRETARIAL FAILURE.**—Subject to subclause (III), if the Secretary fails to provide such a statement of reimbursement amount for items or services subject to reimbursement required under clause (ii) in accordance with this subclause, the claimant, applicable plan, or an entity that receives payment from an applicable plan shall provide an additional notice to the Secretary of such failure. If the Secretary fails to provide a statement of reimbursement amount within 30 days of the date of such additional notice, the claimant, applicable plan, and an entity that receives payment from an applicable plan shall not be liable for and shall not be obligated to make payment subject to this section for any item or service related to the request unless the Secretary demonstrates (in accordance with regulations) that the failure was justified due to exceptional circumstances (as defined in such regulations). Such regulations shall define exceptional circumstances in a manner so that not more than 1 percent of the repayment obligations under this subclause would qualify as exceptional circumstances.

“(III) **NOTICE TO SECRETARY.**—In the event that a settlement, judgment, award, or other payment does not occur (or is no longer reasonably expected to occur) within 120 days of the date of an original request under subclause (I) with respect to a settlement, judgment, award, or other payment, the claimant or the applicable plan shall timely notify the Secretary, and the Secretary shall be exempt from any obligation under subclause (II) with respect to a statement of reimbursement amount relating to such settlement, judgment, award, or other payment related to the notice.