

signed to improve legal and administrative proceedings regarding the investigation and prosecution of sexual child abuse cases (Rept. No. 99-123).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute.

S. 1027. A bill for the relief of Kenneth David Franklin.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs:

Constance Horner, of the District of Columbia, to be Director of the Office of Personnel Management for a term of four years.

(The above nomination was reported from the Committee on Governmental Affairs with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. BYRD:

S. 1533. A bill to amend section 232 of the Trade Expansion Act of 1962 to improve its administration, and for other purposes; to the Committee on Finance.

By Mr. MATSUNAGA:

S. 1534. A bill for the relief of Masoyoshi Goda, his wife Nobuko Goda, and their children Maki Goda and Eri Goda; to the Committee on the Judiciary.

S. 1535. A bill for the relief of Yasumasu Muraoka; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself and Mr. COHEN):

S. 1536. A bill to amend title 38, United States Code, to provide that per diem subsidies paid by the Veterans' Administration for the care of veterans in State homes shall not be used to offset payments that are made under the Medicaid Program for the purposes of assisting eligible veterans; to the Committee on Veterans' Affairs.

By Mr. NICKLES (for himself and Mr. PELL):

S. 1537. A bill to amend title IV of the Higher Education Act of 1965 to provide standards for students for maintaining satisfactory progress as a condition for assistance under that title; to the Committee on Labor and Human Resources.

By Mr. METZENBAUM (for himself, Mr. HUMPHREY, Mr. PROXMIER, Mr. BRADLEY, and Mr. EVANS):

S. 1538. A bill to replace the Synthetic Fuels Corporation with a more fiscally responsible scaled down synthetic fuels assistance program; to the Committee on Energy and Natural Resources.

By Mr. ROTH:

S. 1539. A bill to amend the Internal Revenue Code of 1954 to repeal the earned income limitation on the deduction for retirement savings and the age 70½ limitation

on the deduction and distribution of retirement savings; to the Committee on Finance.

By Mr. DODD:

S. 1540. A bill providing a statutory basis for a budget that requires that any increase in outlays be financed by an equivalent increase in revenues, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977.

By Mr. HEINZ:

S. 1541. A bill for the relief of Hayden C. Jones of Pennsylvania; to the Committee on the Judiciary.

By Mr. McCURE (by request):

S. 1542. A bill to amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System; to the Committee on Energy and Natural Resources.

By Mr. MATHIAS (for himself, Mr. LAUTENBERG, Mr. LAXALT, Mr. DECONCINI, Mr. SPECTER, Mr. DENTON, and Mr. DIXON):

S. 1543. A bill to protect patent owners from importation into the United States of goods made overseas by use of a U.S. patented process; to the Committee on the Judiciary.

By Mr. ROTH (for himself, Mr. MOYNIHAN, Mr. HEINZ, Mr. CHAFEE, Mr. SYMMS, Mr. DANFORTH, Mr. BRADLEY, Mr. MITCHELL, Mr. GRASSLEY, Mr. MATSUNAGA, Mr. COHEN, Mr. KERRY, and Mr. GORE):

S. 1544. A bill to extend the Trade Adjustment Assistance Program to place such program on a sound financial basis and to reform such program to emphasize the retraining of workers; to the Committee on Finance.

By Mr. MITCHELL:

S. 1545. A bill to strengthen the Nation's competitive position in international trade and to improve its ability to respond to unfair and injurious foreign trade practices; to the Committee on Finance.

By HEINZ (for himself and Mr. SPECTER):

S. 1546. A bill to amend the Internal Revenue Code of 1954 to allow an individual a credit against income tax for certain expenditures for the purpose of reducing radon levels in the principal residence of the individual; to the Committee on Finance.

By Mr. INOUE:

S. 1547. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary stores and post exchanges; to the Committee on Armed Services.

By Mr. MOYNIHAN (for himself and Mr. BAUCUS):

S. 1548. A bill to require the Secretary of the Treasury and the Chairman of the Federal Reserve Board to develop a "Strategic Foreign Currency Reserve"; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BYRD (for himself and Mr. METZENBAUM):

S.J. Res. 183. Joint resolution to provide for the designation of the week of October 6 through October 12, 1985, as "Myasthenia Gravis Awareness Week"; placed on the calendar.

By Mr. DENTON:

S.J. Res. 184. Joint resolution to authorize the Korean War Memorial, Inc. to erect a memorial in the District of Columbia or its environs; to the Committee on Energy and Natural Resources.

By Mr. MOYNIHAN (for himself, Mr. D'AMATO, Mr. BAUCUS, Mr. McCURE,

Mr. BRADLEY, Mr. ZORINSKY, Mr. INOUE, Mr. MATSUNAGA, Mr. EXON, and Mr. NUNN):

S.J. Res. 185. Joint resolution to designate August 13, 1985, as "National Flowers-by-Wire Day"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. PROXMIER:

S. Con. Res. 58. Concurrent resolution expressing the sense of the Congress that Medicare patients are entitled to accurate and timely information regarding their Medicare benefits; to the Committee on Finance.

By Mr. TRIBLE:

S. Con. Res. 59. Concurrent resolution expressing the sense of the Congress that food producers who permit gleaning of their fields and nonprofit organizations which glean fields and distribute the resulting harvest to help alleviate hunger should be commended for their efforts, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DANFORTH (for himself, Mr. DODD, Mr. EAGLETON, Mr. CHAFEE, Mr. GORTON, Mr. MOYNIHAN, Mr. BRADLEY, Mr. KENNEDY, Mr. PELL, Mr. HEINZ, Mr. FORD, Mr. RIEGLE, Mr. HOLLINGS, Mr. LAUTENBERG, Mr. SASSER, and Mr. COHEN):

S. Con. Res. 60. Concurrent resolution to strengthen support for the national investment in research and advanced education capabilities; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BYRD:

S. 1533. A bill to amend section 232 of the Trade Expansion Act of 1962 to improve its administration, and for other purposes; to the Committee on Finance.

(The remarks of Mr. Byrd and the text of the legislation appear earlier in today's Record.)

By Mr. MITCHELL (for himself and Mr. COHEN):

S. 1536. A bill to amend title 38, United States Code, to provide that per diem subsidies paid by the Veterans' Administration for the care of veterans in State homes shall not be used to offset payments that are made under the Medicaid Program for the purpose of assisting eligible veterans; to the Committee on Veterans' Affairs.

PER DIEM PAYMENTS TO STATE VETERANS HOMES

● Mr. MITCHELL. Mr. President, today I am introducing legislation with my colleague, Mr. COHEN, to change the present treatment of Veterans' Administration per diem payments to State veterans homes under Medicaid. While only a small number of State homes would be affected by

this legislation, correcting the present treatment of the payments under Medicaid is extremely important to the affected homes.

The term, "State home" means a home established by a State for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. The term also includes a home which furnishes nursing home care for veterans. The establishment, control, and administration of a State home is the responsibility of the State which it serves.

The VA promotes the care and treatment of veterans in State veterans homes as one means of developing and maintaining the highest possible quality of care for this Nation's elderly veterans. Congress has established two programs under which the VA provides assistance to State homes.

The first is a grant program authorized by title 38 U.S.C. 5031-5037. Grants under this program, go to construct new homes or to expand, remodel, or alter existing facilities and may not exceed 65 percent of the cost of construction.

The second is a per diem payment program authorized by title 38 U.S.C. 641-643. Under this program, the VA contributes funds directly to recognized State homes to help meet the cost of care for eligible veterans in the homes. Per diem payments under this program are made for domiciliary care, nursing home, and hospital care at set rates, but may not exceed one-half the cost of the veterans' care in the home.

State homes are established through legislation enacted by the State legislature, which also determines how the State will fund its share of the home's operation. Generally, that support is a direct appropriation from the State. Under such an arrangement, the home's revenues consist of State appropriations and the VA per diem payments.

But a small number of States, including my State of Maine, have chosen to fund the home's operation through the Medicaid Program. Under such an arrangement, the home's revenues consist of Medicaid and VA per diem payments.

As my colleagues know, the Federal and participating State governments share the cost of Medicaid by means of a variable matching formula. States with Medicaid veterans homes then do not directly support their homes with State revenue, except for the funds allocated to cover the State's share of the Medicaid payments to the homes.

In determining the extent of medical assistance Medicaid may provide for an individual applicant or recipient, States must consider whether there exists any "third party" liability for the individual's care and services that

arises out of injury, disease, or disability.

If a State discovers that a third party is in fact liable for some portion of a Medicaid applicant's or recipient's care, the State must reduce its Medicaid payments to the extent of such third-party liability. The Office of General Counsel in the Department of Health and Human Services has recently ruled that VA per diem payments to State homes must be treated as a third party liability for purposes of Medicaid.

The result of this ruling is that State agencies which are entrusted with the responsibility of administering Medicaid, in the case of my State, the Maine Department of Human Services, are forced to reduce the Medicaid payments to the home by an amount equal to the VA per diem payments made on behalf of the Medicaid-eligible veterans residing in the home.

But the veterans throughout Maine argue that the VA per diem should not be considered a resource of the individual because the VA makes the payment to the home, not the individual veteran. Under Medicaid statutes, 42 U.S.C. 1396a(25) third-party liability is to be considered "as a resource of the individual on whose behalf the care and services are made available."

Veterans in my State have repeatedly and strongly voiced their objection to the present arrangement. They argue that it makes no sense for the Congress to authorize the Veterans' Administration to make payments to State veterans homes on behalf of veterans only to have those funds used by State agencies to replace State and Federal Medicaid dollars, with no benefit to the veteran.

The legislation I am introducing today with Senator COHEN is simple and straight-forward. It says that payments made to State veteran homes under section 641 of title 38 shall not be considered to be a third-party liability under Medicaid.

Mr. President, this question first came to my attention in December 1983. It is a question which has taken a great deal of my time since then as the debate on this question has raged in my State.

During the months of 1984 and 1985, the board of directors of the Maine Veterans Home has worked many, many hours in trying to get the present situation reversed. They have made their case to the Maine Department of Human Services and the Maine Legislature without success. The board has solicited the support of the Veterans' Administration and the Department of Health and Human Services. But all to no avail.

The introduction of this legislation stands as a testimony to the dedication the Maine veterans community, especially the board of directors of the

Maine Veterans Home, toward Maine's elderly veterans and their spouses.

The home's board has persevered. For 2 years they have argued their case convincingly to me and the other members of the Maine congressional delegation. The introduction of this legislation is an important first step. I look forward to its enactment.

Mr. President, I ask unanimous consent that the text of the bill and a letter from the Congressional Budget Office regarding the impact the enactment of the bill would have on the Federal Medicaid Program be printed in the RECORD.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 641 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Payments made to States pursuant to this section—

"(1) shall not be considered to be a third-party liability for any purpose under section 1902(a)(26) of title XIX of the Social Security Act; and

"(2) shall, for purposes of determining under title XIX of the Social Security Act the reasonable costs of services provided by a State home, not be deducted directly or indirectly from the operating or other costs of such State home."

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 14, 1985.
Hon. GEORGE J. MITCHELL,
U.S. Senate, Washington, DC.

DEAR SENATOR: As you requested in your letter of May 6, 1985, we have reviewed your proposed legislation to amend Title 38, United States Code, to provide that per diem subsidies paid by the Veterans Administration for the care of veterans in State homes shall not be used to offset reimbursements to the home under the Medicaid program. Based on our analysis, we estimate that enactment would increase Federal Medicaid costs by \$2 million a year. State Medicaid costs would increase by a similar amount.

Our estimate is based on current Medicaid enrollment at those homes that would be affected by this proposal. Currently only four Medicaid-certified state nursing homes care for veterans who are Medicaid recipients: Homelake, Colorado has 17 such veterans; Augusta, Maine has 86; Oxford, New York has 109; and King, Wisconsin has 280. If the Veterans Administration subsidies were not considered third-party liabilities, then the Medicaid program would be required to pick up these costs. Depending upon the match rate, the federal government would pay varying shares of the costs in each state. The estimate assumes that no additional state homes would apply for Medicaid certification as a result of this proposal. If additional state homes did apply, the costs could be significantly above those estimated.

We would be pleased to respond to any questions you might have on this estimate. Your staff may contact Anne Manley (226-2820) with detailed questions.

With best wishes,
Sincerely,

ERIC HANUSHEK,
(for Rudolph G. Penner.)

• Mr. COHEN. Mr. President, for some 4 years, the Maine Veterans Home has provided essential care to older veterans in Maine. Founded through the cooperative efforts of the Maine veterans community, Maine State officials, the Veterans' Administration, and the Maine congressional delegation, the home has earned much respect for the quality services it provides. The administrators of the home, however, are now concerned that a series of legal rulings may impair the future ability of the home to offer its veteran residents the high quality of care to which the home is committed.

The Maine Veterans Home is an intermediate care facility licensed by the State of Maine and provides services to Medicaid-eligible individuals under the Maine Medical Assistance Program. The home is certified by the Veterans' Administration to provide intermediate care to veterans and, as such, receives a per diem subsidy from the VA for each day of care provided to each veteran patient. The subsidy is authorized by 38 U.S.C., section 641.

The State of Maine Department of Human Services is the sole agency in the State of Maine authorized to administer the Medicaid Program. The Department last year ruled that the portion of the VA subsidy received by the home based on care provided to its Medicaid patients constitutes a third-party liability as defined in 42 USC, section 1396(a)(25) and 42 CFR, sections 433.135 through 433.154. Because the Department views the VA subsidy as a third-party liability, it has offset Medicaid payments otherwise due the home by the amount of the VA subsidy.

The administrators of the Maine Veterans Home questioned this offset practice on two grounds. First, the Maine Department of Human Services' ruling was based on a 1979 Federal decision whose legality the home questioned. That decision was made by the U.S. Department of Health and Human Services' Audit Office with regards to the Wisconsin Veterans Home. Second, the home argued that the offset practice was not in consonance with the intent of Congress with regards to the VA subsidy program.

To ensure a full hearing on the first of these questions raised by the administrators of the Maine Veterans Home, the Maine congressional delegation asked Secretary Heckler to review whether the VA subsidy should be considered a third-party liability which must be offset. Earlier this summer, Secretary Heckler affirmed the consistency of the offset practice with HHS's interpretation of the applicable law and regulations.

This leaves the question of whether this interpretation is consistent with the intent of Congress. After careful consideration, the Maine congressional delegation has decided that the most appropriate means to evaluate this and to obtain timely congressional oversight of the situation as it affects other Medicaid-certified State veterans nursing homes would be through hearings to consider legislation to alter this offset practice.

Accordingly, Senator Mitchell and I are introducing legislation today which would provide that VA per diem subsidies authorized under 38 USC, section 641 not be considered a third-party liability under section 1902(a)(26) of title XIX of the Social Security Act. This legislation further states that such VA subsidies shall not be deducted directly or indirectly from the operating or other costs of a State home when determining, under title XIX of the Social Security Act, the reasonable costs of services provided by a State home. Our colleagues in the House, Representatives McKERNAN and SNOWE are introducing identical legislation today regarding this matter.

This legislation will serve as a catalyst for a timely congressional evaluation of the implications for Medicaid-certified State veterans homes of this offset practice, as well as for clarification of congressional intent regarding the treatment of the VA per diem subsidy.

In so doing, we will take an important step toward ensuring that these State veterans nursing homes are able to provide the level of care to veterans that the Congress intended when it wrote the relevant laws.

By Mr. NICKLES (for himself and Mr. PELL):

S. 1537. A bill to amend title IV of the Higher Education Act of 1965 to provide standards for students for maintaining satisfactory progress as a condition for assistance under that title; to the Committee on Labor and Human Resources.

HIGHER EDUCATION SATISFACTORY PROGRESS ACT

Mr. NICKLES. Mr. President, today I am pleased to join with my distinguished colleague, Senator PELL, in re-introducing a bill which makes some commonsense changes in Federal student aid programs. This legislation establishes a requirement that students receiving Federal student assistance maintain a "C" average as a condition for continued eligibility.

CURRENT LAW

Presently, a student continues to receive student assistance from the Federal Government as long as the educational institution which he or she attends will confirm that the student is in good standing. It is left up to the

discretion of each educational institution to define good standing.

Unfortunately, this policy has resulted in serious mismanagement and use of Federal student aid resources. The General Accounting Office released a study in December 1981 which found that 20 percent of the students receiving Pell grants at 19 randomly selected institutions had less than a "C" average, half of which—10 percent—had an "F" average. Clearly, this lax discretion and judgment by some educational institutions is significant enough to merit congressional action.

PROPOSED LEGISLATION

The legislation that Senator PELL and I offer today gives a student receiving Federal financial assistance a 1-year period to establish an academic record. At the conclusion of this first year, the student's grade point is reviewed. If the student has less than a "C" average, then he or she is given a warning measure by being placed on probation for one grading period. If, during that grading period, the student again fails to make a "C" average or better, then he or she is no longer eligible for Federal financial assistance.

The legislation contains an "undue hardship" clause which provides for special difficulties that a student may encounter during the academic year. This clause is intended to allow the institution to give the student another probationary period if it determines that the student has to contend with unusually severe circumstances during the academic grading period in question. Examples of the kinds of extenuating circumstances which might be cited and accepted are the death of a close relative or serious personal injury or illness.

A student who, for academic reasons, has lost eligibility for Federal student assistance may again become eligible if he can demonstrate, in two consecutive grading periods, his academic commitment by maintaining a "C" average or better. Upon establishing such a record, he may again apply for Federal assistance.

Implementation of this legislation will simplify current law by creating a consistent and fair standard for students receiving Federal aid. It adds no new bureaucratic steps, in that an institution must already verify that a student is in good standing. This legislation simply asks for a GPA as part of that verification process.

PUBLIC COMMENT

In the 97th Congress, when we first introduced the Higher Education Satisfactory Progress Act, my office received a number of letters from throughout the country on this legislation. The correspondence represents a broad cross-section of people: teachers, student aid administrators, college