

fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

S. 525

At the request of Mr. LEVIN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 525, a bill to amend the Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990 to reauthorize and improve that Act.

S. 656

At the request of Mr. REED, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 656, a bill to provide for the adjustment of status of certain nationals of Liberia to that of lawful permanent residence.

S. 678

At the request of Mr. AKAKA, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 678, a bill to amend chapter 10 of title 39, United States Code, to include postmasters and postmasters organizations in the process for the development and planning of certain policies, schedules, and programs, and for other purposes.

S. 695

At the request of Ms. COLLINS, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 695, a bill to amend the Internal Revenue Code of 1986 to increase the above-the-line deduction for teacher classroom supplies and to expand such deduction to include qualified professional development expenses.

S. 780

At the request of Mr. LOTT, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 780, a bill to award a congressional gold medal to Chief Phillip Martin of the Mississippi Band of Choctaw Indians.

S. 818

At the request of Mr. KERRY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 818, a bill to ensure the independence and nonpartisan operation of the Office of Advocacy of the Small Business Administration.

S. 894

At the request of Mr. WARNER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 894, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 230th Anniversary of the United States Marine Corps, and to support construction of the Marine Corps Heritage Center.

S. 899

At the request of Mrs. HUTCHISON, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 899, a bill to amend title XVIII of the Social Security Act to restore the full market basket percentage increase applied to payments to hospitals for inpatient hospital serv-

ices furnished to medicare beneficiaries, and for other purposes.

S. 1001

At the request of Mr. BIDEN, the names of the Senator from Oregon (Mr. SMITH) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1001, a bill to make the protection of women and children who are affected by a complex humanitarian emergency a priority of the United States Government, and for other purposes.

S. 1108

At the request of Mrs. CLINTON, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 1108, a bill to establish within the National Park Service the 225th Anniversary of the American Revolution Commemorative Program, and for other purposes.

S. 1120

At the request of Mr. BAUCUS, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1120, a bill to establish an Office of Trade Adjustment Assistance, and for other purposes.

S. 1127

At the request of Ms. STABENOW, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1127, a bill to establish administrative law judges involved in the appeals process provided for under the medicare program under title XVIII of the Social Security Act within the Department of Health and Human Services, to ensure the independence of, and preserve the role of, such administrative law judges, and for other purposes.

S. 1136

At the request of Mr. SPECTER, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1136, a bill to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

S. 1143

At the request of Mrs. HUTCHISON, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of S. 1143, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 1206

At the request of Mr. BOND, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 1206, a bill to amend title XVIII of the Social Security Act to provide for special treatment for certain drugs and biologicals under the prospective payment system for hospital outpatient department services under the medicare program.

S. 1236

At the request of Mr. CAMPBELL, the names of the Senator from Utah (Mr. HATCH) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of

S. 1236, a bill to direct the Secretary of the Interior to establish a program to control or eradicate tamarisk in the western States, and for other purposes.

S. 1247

At the request of Mr. KERRY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1247, a bill to increase the amount to be reserved during fiscal year 2003 for sustainability grants under section 29(1) of the Small Business Act.

S. 1255

At the request of Mr. KERRY, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1255, a bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a pilot program to provide regulatory compliance assistance to small business concerns, and for other purposes.

S. CON. RES. 25

At the request of Mr. VOINOVICH, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. Con. Res. 25, a concurrent resolution recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an "American Jewish History Month", and for other purposes.

S. CON. RES. 55

At the request of Ms. SNOWE, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. Con. Res. 55, a concurrent resolution expressing the sense of the Congress regarding the policy of the United States at the 55th Annual Meeting of the International Whaling Commission.

S. RES. 153

At the request of Mrs. MURRAY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. Res. 153, a resolution expressing the sense of the Senate that changes to athletics policies issued under title IX of the Education Amendments of 1972 would contradict the spirit of athletic equality and the intent to prohibit sex discrimination in education programs or activities receiving Federal financial assistance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY:

S. 1269. A bill to amend the Internal Revenue Code of 1986 to clarify the status of professional employer organizations and to promote and protect the interests of professional employer organizations, their customers, and workers; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today I am reintroducing the Professional Employer Organization Workers Benefits Act of 2003—legislation that I sponsored in the last Congress. This legislation clarifies certain tax rules

for Professional Employer Organizations, PEOs, and will allow PEOs to provide retirement and health benefits for workers at small and medium-sized businesses. By eliminating uncertainty in the current rules, it will also improve the administration of our tax system.

The PEO legislation makes it clear that a PEO that is certified by the IRS as meeting certain rigorous standards will be able to offer employee benefits and remit Federal employment taxes for workers performing services for the PEO's business customers. The bill has won the support of representatives of the small business community, including the National Federation of Independent Business (NFIB), and has been endorsed by an array of employee benefits experts, such as the American Benefits Council, ABC, the American Society of Pension Actuaries, ASPA, and the Employers Council on Flexible Compensation, ECFC. The legislation also has the support of the National Association of Professional Employer Organizations, Napeo—the largest organization representing the interests of PEOs. Significantly, then-Internal Revenue Service Commissioner Rossotti stated last year that the IRS believes that the PEO bill could provide useful clarification of the federal employment tax and employee benefits obligations of PEOs and their clients.

A well-run PEO provides the expertise and the economies of scale necessary to provide health, retirement and other services to small businesses in an affordable and efficient manner. For many of these workers, the PEO's pension or health plan represents benefits that the worker would not have received from the small business directly because they were too costly for the small business to afford on its own.

We must take every opportunity to encourage businesses to provide retirement and health benefits to their employees through whatever means possible. PEOs offer one creative way to bridge the gap between what workers need and what small businesses can afford to provide them. For example, Merit Resources, based in Iowa, is a PEO that has provided important benefits to many workers in my state. The clarifications provided in the bill I am introducing today would provide PEOs like Merit with the certainty they need. Certainty that will ensure that they can continue to serve small businesses and provide benefits to the workers at those businesses.

I look forward to working with the Administration and my colleagues, on both sides of the aisle, on these important issues. 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. 1269

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Professional Employer Organization Workers Benefits Act of 2003".

SEC. 2. NO INFERENCE.

Nothing contained in this Act or the amendments made by this Act shall be construed to create any inference with respect to the determination of who is an employee or employer—

(1) for Federal tax purposes (other than the purposes set forth in the amendments made by section 3), or

(2) for purposes of any other provision of law.

SEC. 3. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

(a) EMPLOYMENT TAXES.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by adding at the end the following new section:

"SEC. 3511. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

"(a) GENERAL RULES.—For purposes of the taxes imposed by this subtitle—

"(1) a certified professional employer organization shall be treated as the employer (and no other person shall be treated as the employer) of any work site employee performing services for any customer of such organization, but only with respect to remuneration remitted by such organization to such work site employee, and

"(2) the exemptions and exclusions which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.

"(b) SUCCESSOR EMPLOYER STATUS.—For purposes of sections 3121(a) and 3306(b)(1)—

"(1) a certified professional employer organization entering into a service contract with a customer with respect to a work site employee shall be treated as a successor employer and the customer shall be treated as a predecessor employer, and

"(2) a customer whose service contract with a certified professional employer organization is terminated with respect to a work site employee shall be treated as a successor employer and the certified professional employer organization shall be treated as a predecessor employer.

"(c) LIABILITY WITH RESPECT TO INDIVIDUALS PURPORTED TO BE WORK SITE EMPLOYEES.—

"(1) GENERAL RULES.—Solely for purposes of its liability for the taxes imposed by this subtitle—

"(A) the certified professional employer organization shall be treated as the employer of any individual (other than a work site employee or a person described in subsection (e)) who is performing services covered by a contract meeting the requirements of section 7705(e)(2)(F), but only with respect to remuneration remitted by such organization to such individual, and

"(B) the exemptions and exclusions which would (but for subparagraph (A)) apply shall apply with respect to such taxes imposed on such remuneration.

"(d) SPECIAL RULE FOR RELATED PARTY.—Subsection (a) shall not apply in the case of a customer which bears a relationship to a certified professional employer organization described in section 267(b) or 707(b). For purposes of the preceding sentence, such sections shall be applied by substituting '10 percent' for '50 percent'.

"(e) SPECIAL RULE FOR CERTAIN INDIVIDUALS.—For purposes of the taxes imposed under this subtitle, an individual with net earnings from self-employment derived from the customer's trade or business (including a partner in a partnership that is a customer), is not a work site employee with respect to

remuneration paid by a certified professional employer organization.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) EMPLOYEE BENEFITS.—Section 414 of such Code (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(w) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—

"(1) PLANS MAINTAINED BY CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—

"(A) IN GENERAL.—Except as otherwise provided in this subsection, in the case of a plan or program established or maintained by a certified professional employer organization to provide employee benefits to work site employees, then, for purposes of applying the provisions of this title applicable to such benefits—

"(i) such plan shall be treated as a single employer plan established and maintained by the organization,

"(ii) the organization shall be treated as the employer of the work site employees eligible to participate in the plan, and

"(iii) the portion of such plan covering work site employees shall not be taken into account in applying such provisions to the remaining portion of such plan or to any other plan established or maintained by the certified professional employer organization providing employee benefits (other than to work site employees).

"(B) SPECIAL EXCEPTIONS IN APPLYING RULES TO BENEFITS.—

"(i) IN GENERAL.—In applying any requirement listed in clause (iii) to a plan or program established by the certified professional employer organization—

"(I) the portion of the plan established by the certified professional employer organization which covers work site employees performing services for a customer shall be treated as a separate plan of the customer (including for purposes of any disqualification or correction),

"(II) the customer shall be treated as establishing and maintaining the plan, as the employer of such employees, and as having paid any compensation remitted by the certified professional employer organization to such employees under the service contract entered into under section 7705, and

"(III) a controlled group that includes a certified professional employer organization shall not include in the controlled group any work site employees performing services for a customer.

For purposes of subclause (III), all persons treated as a single employer under subsections (b), (c), (m), and (o) shall be treated as members of the same controlled group.

"(ii) SELF-EMPLOYED INDIVIDUALS.—A work site employee who would be treated as a self-employed individual (as defined in section 401(c)(1)), a disqualified person (as defined in section 4975(e)(2)), a 2-percent shareholder (as defined in section 1372(b)(2)), or a shareholder-employee (as defined in section 4975(f)(6)(C)), but for the relationship with the certified professional employer organization, shall be treated as a self-employed individual, disqualified person, a 2-percent shareholder, or shareholder-employee for purposes of rules applicable to employee benefit plans maintained by such certified professional employer organization.

"(iii) LISTED REQUIREMENTS.—The requirements listed in this clause are:

"(I) NONDISCRIMINATION AND QUALIFICATION.—Sections 79(d), 105(h), 125(b), 127(b)(2) and (3), 129(d)(2), (3), (4), and (5), 132(j)(1), 274(j)(3)(B), 401(a)(4), 401(a)(17), 401(a)(26), 401(k)(3) and (12), 401(m)(2) and (11), 404 (in

the case of a plan subject to section 412, 410(b), 412, 414(q), 415, 416, 419, 422, 423(b), 505(b), 4971, 4972, 4975, 4976, 4978, and 4979.

“(II) SIZE.—Sections 220, 401(k)(11), 401(m)(10), 408(k), and 408(p).

“(III) ELIGIBILITY.—Section 401(k)(4)(B).

“(IV) AUTHORITY.—Such other similar requirements as the Secretary may prescribe.

“(iv) WELFARE BENEFIT FUNDS.—With respect to a welfare benefit fund maintained by a certified professional employer organization for the benefit of work site employees performing services for a customer, section 419 shall be treated as not listed in clause (iii)(I) if the fund provides only 1 or more of the following:

“(i) Medical benefits other than retiree medical benefits.

“(ii) Disability benefits.

“(iii) Group term life insurance benefits which do not provide for any cash surrender value or other money that can be paid, assigned, borrowed or pledged for collateral for a loan.

“(v) EXCISE TAXES.—Notwithstanding clause (iii), the certified professional employer organization and the customer contracting for work site employees to pay services shall be jointly and severally liable for the tax imposed by section 4971 with respect to failure to meet the minimum funding requirements and the tax imposed by section 4976 with respect to funded welfare benefit plans.

“(vi) CONTINUATION COVERAGE REQUIREMENTS.—For purposes of applying the provisions of section 4980B with respect to a group health plan maintained by a certified professional employer organization for the benefit of work site employees:

“(I) TERMINATION OF EMPLOYMENT EVENTS.—Each of the following events shall constitute a termination of employment of a work site employee for purposes of section 4980B(f)(3)(B):

“(aa) The work site employee ceasing to provide services to any customer of such certified professional employer organization.

“(bb) The work site employee ceasing to provide services to one customer of such certified professional employer organization and becoming a work site employee with respect to another customer of such certified professional employer organization; and

“(cc) The termination of a service contract between the certified professional employer organization and the customer with respect to which the work site employee performs services, provided, however, that such a contract termination shall not constitute a termination of employment under section 4980B(f)(3)(B) for such work site employee if, at the time of such contract termination, such customer maintains a group health plan (other than a plan providing only excepted benefits within the meaning of sections 9831 and 9832 or a plan covering less than two participants who are employees).

“(II) TERMINATION EVENT CONSTITUTING A QUALIFYING EVENT.—If an event described in subparagraph (vi)(I) also constitutes a qualifying event under section 4980B(f)(3) with respect to the group health plan maintained by the certified professional employer organization for the affected work site employee, such plan shall no longer be required to provide continuation coverage as of any new coverage date.

“(III) NEW COVERAGE DATE WHEN TERMINATION EVENT CONSTITUTES QUALIFYING EVENT.—For purposes of subclause (II), a new coverage date shall be the first date on which—

“(aa) the customer maintains a group health plan other than a plan described in section 4980B(d), a plan providing only excepted benefits within the meaning of sec-

tions 9831 and 9832, or a plan covering less than two participants who are employees, or

“(bb) a service contract between such customer and another certified professional employee organization becomes effective under which worksite employees performing services for such customer are covered under a group health plan of such other certified professional employee organization, other than a plan described in section 4980B(d), a plan providing only excepted benefits within the meaning of sections 9831 and 9832, or a plan covering less than two participants who are employees.

“(IV) EFFECT OF CUSTOMER-MAINTAINED PLAN.—As of a new coverage date described in subclause (III)(aa), the customer shall be required to make continuation coverage available to any qualified beneficiary who was receiving (or was eligible to elect to receive) continuation coverage under a certified professional employer organization's group health plan and who is, or whose qualifying event occurred in connection with, a person whose last employment prior to such employee's qualifying event was as a work site employee providing services to such customer pursuant to a service contract with such certified professional employer organization.

“(C) EFFECT OF NEW SERVICE CONTRACT WITH CERTIFIED PEO.—As of a new coverage date described in subclause (III)(bb), the second certified professional employer organization shall be required to make continuation coverage available to any qualified beneficiary who was receiving (or was eligible to elect to receive) continuation coverage under the first certified professional employer organization's group health plan and who is, or whose qualifying event occurred in connection with, a person whose last employment prior to such employee's qualifying event was as a work site employee providing services to the customer pursuant to a service contract with the first certified professional employer organization.

“(vii) CONTINUED COVERAGE FOR QUALIFIED BENEFICIARIES.—As of the date that a certified professional employer organization's group health plan first provides coverage to one or more work site employees providing services to a customer, such group health plan shall be required to make continuation coverage available to any qualified beneficiary who was receiving (or was eligible to receive or elect to receive) continuation coverage under a group health plan sponsored by such customer if, in connection with coverage being provided by the organization's plan, such customer terminates each of its group health plans, other than a plan or plans providing only excepted benefits within the meaning of sections 9831 and 9832 or covering less than two participants who are employees.

“(viii) EFFECT OF TERMINATION OF PEO STATUS.—The termination of a professional employer organization's status as a certified professional employer organization—

“(I) shall constitute an event described in section 4980B(f)(3)(B) for any work site employee performing services pursuant to a contract between a customer and such professional employer organization, but

“(II) no loss of coverage within the meaning of section 4980B(f)(3) occurs unless, in connection with such termination of status as a certified professional employer organization, the individual formerly treated as a work site employee performing services for the customer pursuant to a contract with such professional employer organization ceases to be covered under the arrangement of the professional employer organization that had been, prior to such termination of status, the group health plan of such organization.

“(ix) PERSON LIABLE FOR TAX.—For purposes of the liability for tax under section 4980B, the person or entity required to provide continuation coverage under this clause (vi) shall be deemed to be the employer under section 4980B(e)(1)(A).

“(2) PLANS MAINTAINED BY CUSTOMERS OF CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—If a customer of a certified professional employer organization provides (other than through such organization) any employee benefits, then with respect to such benefits—

“(A) work site employees of the organization who perform services for the customer shall be treated as leased employees of such customer,

“(B) such customer shall be treated as a recipient for purposes of subsection (n), and paragraphs (4) and (5) of subsection (n) shall not apply for such purposes, and

“(C) with respect to such work site employees, sections 105(h), 403(b)(12), 422, and 423 shall be treated as a benefit listed in subsection (n)(3)(C).

“(3) PLANS MAINTAINED BY COMPANIES IN SAME CONTROLLED GROUP AS CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION.—In applying any requirement listed in paragraph (1)(B)(iii), a controlled group which includes a certified professional employer organization shall not include in such controlled group any work site employees performing services for a customer. For purposes of this paragraph, all persons treated as a single employer under subsections (b), (c), (m) and (o) shall be treated as members of the same controlled group.

“(4) RULES APPLICABLE TO PLANS MAINTAINED BY CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS AND PLANS MAINTAINED BY THEIR CUSTOMERS.—

“(A) SERVICE CREDITING FOR PARTICIPATION AND VESTING PURPOSES.—In the case of a plan maintained by a certified professional employer organization or a customer, for purposes of determining a work site employee's service for eligibility to participate and vesting under sections 410(a) and 411, rules similar to the rules of paragraphs (1) and (3) of section 413(c) shall apply to service for the certified professional employer organization and customer.

“(B) COMPENSATION.—

“(i) IN GENERAL.—Except as provided in clause (ii), for purposes of subsection (s) and section 415(c)(3), or other comparable provisions of this title based on compensation which affects employee benefit plans, compensation received from the customer with respect to which the work site employee performs services shall be taken into account together with compensation received from the certified professional employer organization.

“(ii) EXCEPTION.—For purposes of applying sections 404 and 412 to a plan maintained by a certified professional employer organization, only compensation received from the certified professional employer organization shall be taken into account.

“(C) ELIGIBLE EMPLOYERS.—The provisions of sections 457(f)(1)(A) and (B) apply to a work site employee performing services for a customer that is an eligible employer as defined in section 457(e)(1). The preceding sentence shall not apply in the case of a plan described in section 401(a) which includes a trust exempt from tax under section 501(a), an annuity plan or contract described in section 403, the portion of a plan which consists of a transfer of property described in section 83, the portion of a plan which consists of a trust to which section 402(b) applies, or a qualified governmental excess benefit arrangement described in section 415(m).

“(5) SPECIAL RULES WHERE MULTIPLE PLANS.—

“(A) IN GENERAL.—For purposes of applying section 415 with respect to a plan maintained by a certified professional employer organization, the organization and customers of such organization shall be treated as a single employer, except that if plans are maintained by a certified professional employer organization and a customer with respect to a work site employee, any action required to be taken by such plans shall be taken first with respect to the plan maintained by the customer.

“(B) MINIMUM BENEFIT.—If a minimum benefit is required to be provided under section 416, such benefit shall, to the extent possible, be provided through the plan maintained by the certified professional employer organization.

“(6) TERMINATION OF SERVICE CONTRACT BETWEEN CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION AND CUSTOMER.—

“(A) IN GENERAL.—

“(i) TREATMENT OF SUCCESSOR PLAN.—If a service contract between a customer and a certified professional employer organization is terminated and work site employees of the customer were covered by a plan maintained by the organization, then, except as provided in regulations, any plan of another certified professional employer organization or the customer which covers such work site employees shall be treated as a successor plan for purposes of any rules governing in-service distributions.

“(ii) TREATMENT AS SEVERANCE FROM EMPLOYMENT AND SEPARATION FROM SERVICE.—If a service contract between a customer and a certified professional employer organization is terminated, and there is no plan treated as a successor plan under clause (i), then such termination shall be treated as a plan termination with respect to each work site employee of such customer.

“(B) DISTRIBUTION RULES APPLICABLE TO SUBPARAGRAPH (A)(ii).—Except as otherwise required by this title, in any case to which subparagraph (A)(ii) applies, the certified professional employer organization plan may distribute—

“(i) during the 2-year period beginning on the date of such termination (in accordance with plan terms) only—

“(I) elective deferrals and earnings attributable thereto,

“(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)) and earnings attributable thereto, and

“(III) matching contributions described in section 401(k)(3)(D)(ii)(I) and earnings attributable thereto,

of former work site employees associated with the terminated customer only in a direct rollover described in section 401(a)(31), and

“(ii) after such 2-year period, amounts in such plan in accordance with plan terms.”.

(c) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION DEFINED.—Chapter 79 of such Code (relating to definitions) is amended by adding at the end the following new section: “SEC. 7705. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

“(a) IN GENERAL.—For purposes of this title, the term ‘certified professional employer organization’ means a person who applies to be treated as a certified professional employer organization for purposes of sections 414(w) and 3511 and who has been certified by the Secretary as meeting the requirements of subsection (b).

“(b) CERTIFICATION.—A person meets the requirements of this subsection if such person—

“(1) demonstrates that such person (and any owner, officer, and such other persons as may be specified in regulations) meets such requirements as the Secretary shall estab-

lish with respect to tax status, background, experience, business location, and annual financial audits,

“(2) represents that it will satisfy the bond and independent financial review requirements of subsections (c) on an ongoing basis,

“(3) represents that it will satisfy such reporting obligations as may be imposed by the Secretary,

“(4) represents that it will maintain a qualified plan (as defined in section 408(p)(2)(D)(ii)) or an arrangement to provide simple retirement accounts (within the meaning of section 408(p)) which benefit at least 95 percent of all work site employees who are not highly compensated employees for purposes of section 414(q),

“(5) computes its taxable income using an accrual method of accounting unless the Secretary approves another method,

“(6) agrees to verify the continuing accuracy of representations and information which was previously provided on such periodic basis as the Secretary may prescribe, and

“(7) agrees to notify the Secretary in writing of any change that materially affects the continuing accuracy of any representation or information which was previously made or provided.

“(c) REQUIREMENTS.—

“(1) IN GENERAL.—An organization meets the requirements of this paragraph if such organization—

“(A) meets the bond requirements of subparagraph (2), and

“(B) meets the independent financial review requirements of subparagraph (3).

“(2) BOND.—

“(A) IN GENERAL.—A certified professional employer organization meets the requirements of this paragraph if the organization has posted a bond for the payment of taxes under subtitle C (in a form acceptable to the Secretary) that is in an amount at least equal to the amount specified in subparagraph (B).

“(B) AMOUNT OF BOND.—

“(i) IN GENERAL.—For the period April 1 of any calendar year through March 31 of the following calendar year, the amount of the bond required is equal to the greater of:

“(I) 5 percent of the organization’s liability for taxes imposed by this subtitle during the preceding calendar year (but not to exceed \$1,000,000), or

“(II) \$50,000.

“(ii) SPECIAL RULE FOR NEWLY CREATED PROFESSIONAL EMPLOYER ORGANIZATIONS.—During the first three full calendar years that an organization is in existence, subsection (I) of clause (i) shall not apply. For this purpose—

“(I) under rules provided by the Secretary, an organization is treated as in existence as of the date that such organization began providing services to any client which were comparable to the services being provided with respect to worksite employees, regardless of whether such date occurred before or after the organization is certified under section 7705, and

“(II) an organization with liability for taxes imposed by this subtitle during the preceding calendar year in excess of \$5,000,000 shall no longer be described in this clause (ii) as of April 1 of the year following such calendar year.

“(3) INDEPENDENT FINANCIAL REVIEW REQUIREMENTS.—A certified professional employer organization meets the requirements of this subparagraph if such organization—

“(A) has, as of the most recent audit date, caused to be prepared and provided to the Secretary (in such manner as the Secretary may prescribe) an opinion of an independent certified public accountant as to whether the certified professional employer organiza-

tion’s financial statements are presented fairly in accordance with generally accepted accounting principles, and

“(B) provides to the Secretary an assertion regarding Federal employment tax payments and an examination level attestation on such assertion from an independent certified public accountant not later than the last day of the second month beginning after the end of each calendar quarter. Such assertion shall state that the organization has withheld and made deposits of all taxes imposed by chapters 21, 22, and 24 of the Internal Revenue Code in accordance with regulations imposed by the Secretary for such calendar quarter and such examination level attestation shall state that such assertion is fairly stated, in all material respects.

“(4) SPECIAL RULE FOR SMALL CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—The requirements of paragraph (3)(A) shall not apply with respect to a fiscal year of an organization if such organization’s liability for taxes imposed by subtitle C during the calendar year ending on (or concurrent with) the end of the fiscal year were \$5,000,000 or less.

“(5) FAILURE TO FILE ASSERTION AND ATTESTATION.—If the certified professional employer organization fails to file the assertion and attestation required by paragraph (3) with respect to a particular quarter, then the requirements of paragraph (3) with respect to such failure shall be treated as not satisfied for the period beginning on the due date for such attestation.

“(6) AUDIT DATE.—For purposes of paragraph (3)(A), the audit date shall be six months after the completion of the organization’s fiscal year.

“(d) SUSPENSION AND REVOCATION AUTHORITY.—The Secretary may suspend or revoke a certification of any person under subsection (b) for purposes of section 414(w) or 3511, or both, if the Secretary determines that such person is not satisfying the representations or requirements of subsections (b) or (c), or fails to satisfy applicable accounting, reporting, payment, or deposit requirements.

“(e) WORK SITE EMPLOYEE.—For purposes of this title—

“(1) IN GENERAL.—The term ‘work site employee’ means, with respect to a certified professional employer organization, an individual who—

“(A) performs services for a customer pursuant to a contract which is between such customer and the certified professional employer organization and which meets the requirements of paragraph (2), and

“(B) performs services at a work site meeting the requirements of paragraph (3).

“(2) SERVICE CONTRACT REQUIREMENTS.—A contract meets the requirements of this paragraph with respect to an individual performing services for a customer if such contract is in writing and provides that the certified professional employer organization shall—

“(A) assume responsibility for payment of wages to the individual, without regard to the receipt or adequacy of payment from the customer for such services,

“(B) assume responsibility for reporting, withholding, and paying any applicable taxes under subtitle C, with respect to the individual’s wages, without regard to the receipt or adequacy of payment from the customer for such services,

“(C) assume responsibility for any employee benefits which the service contract may require the certified professional employer organization to provide, without regard to the receipt or adequacy of payment from the customer for such services,

“(D) assume shared responsibility with the customer for firing the individual and for recruiting and hiring any new worker,

“(E) maintain employee records relating to the individual, and

“(F) agree to be treated as a certified professional employer organization for purposes of sections 414(w) and 3511 with respect to such individual.

“(3) WORK SITE COVERAGE REQUIREMENT.—

“(A) IN GENERAL.—The requirements of this paragraph are met with respect to an individual if at least 85 percent of the individuals performing services for the customer at the work site where such individual performs services are subject to 1 or more contracts with the certified professional employer organization which meet the requirements of paragraph (2).

“(B) SPECIAL RULES.—For purposes of subparagraph (A)—

“(i) WORK SITE.—The term ‘work site’ means a physical location at which an individual generally performs service for the customer or, if there is no such location, the location from which the individual receives job assignments from the customer.

“(ii) CONTIGUOUS LOCATIONS.—For purposes of clause (i), work sites which are contiguous locations shall be treated as a single physical location.

“(iii) NONCONTIGUOUS LOCATIONS.—For purposes of clause (i), noncontiguous locations shall be treated as separate work sites, except that each work site within a reasonably proximate area must satisfy the 85 percent test under subparagraph (A) for the individuals performing services for the customer at such work site. In determining whether noncontiguous locations are reasonably proximate, all facts and circumstances shall be taken into account.

“(iv) WORK SITES 35 MILES OR MORE APART.—Any work site which is separated from all other customer work sites by at least 35 miles shall not be treated as reasonably proximate under clause (iii).

“(v) DIFFERENT INDUSTRY.—A work site shall not be treated as reasonably proximate to another work site under clause (iii) if the work site operates in a different industry or industries from such other work site as determined by the Secretary.

“(f) EMPLOYER AGGREGATION RULES.—

“(1) IN GENERAL.—For purposes of subsections (c)(2)(B)(ii), (c)(4) and (e), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 person.

“(2) PLANS MAINTAINED BY COMPANIES IN SAME CONTROLLED GROUP AS CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION.—For purposes of subsection (b)(4), if certified professional employer organizations are part of a controlled group, then the certified professional employer organizations (but no other member of the controlled group) shall be treated as 1 person.

“(3) QUALIFIED PLANS.—For purposes of subsection (b)(4)—

“(A) a qualified plan (as defined in section 408(p)(2)(D)(ii)) which is maintained by, or an arrangement to provide a simple retirement account (within the meaning of section 408(p)) to, a customer with respect to a work site employee performing services for such customer shall be treated as if it were maintained by the applicant, and

“(B) work site employees who do not meet the minimum age and service requirements of section 410(a)(1)(A) (or who are excludable from consideration under section 410(b)(3)) shall not be taken into account.

“(g) DETERMINATION OF EMPLOYMENT STATUS.—Except to the extent necessary for purposes of section 414(w) or 3511, nothing in this section shall be construed to affect the determination of who is an employee or employer for purposes of this title.

“(h) REGULATIONS.—The Secretary shall prescribe such regulations as may be nec-

essary or appropriate to carry out the purposes of this section and sections 414(w) and 6503(k).”.

(d) CONFORMING AMENDMENTS.—

(1) Section 45(B) of such Code (relating to credit for portion of employer social security taxes paid with respect to employees with cash tips) is amended by adding at the end the following new subsection:

“(e) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—For purposes of this section, in the case of a certified professional employer organization that is treated, under section 3511, as the employer of a worksite employee who is a tipped employee, the credit determined under this section does not apply to such organization, but does apply to the customer of such organization. For this purpose the customer shall take into account any remuneration and taxes remitted by the certified professional employer organization.”.

(2) Section 707 of such Code is amended by adding at the end the following new subsection:

“(d) PAYMENTS TO CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—If a partnership that is a customer of a certified professional employer organization (as defined in section 7705) makes a payment to such an organization on behalf of a partner, and the payment, if made directly to the partner, would be treated as a guaranteed payment under section 707(c), the partnership shall treat the payment as if it were a guaranteed payment made to a partner. To the extent that the relevant partner receives all or any portion of such a payment, such partner shall be treated as receiving a guaranteed payment for services under section 707(c).”.

(3) Section 3302 of such Code is amended by adding at the end the following new subsection:

“(h) TREATMENT OF CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—If a certified professional employer organization (as defined in section 7705) (or a client of such organization) makes a payment to the State’s unemployment fund with respect to a work site employee, such organization shall be eligible for the credits available under this section with respect to such payment.”.

(4) Section 3303(a) of such Code is amended—

(A) by inserting ‘and’ at the end of paragraph (3),

(B) by inserting immediately after paragraph (3) the following new paragraph:

“(4) a certified professional employer organization (as defined in section 7705) is permitted to collect and remit, in accordance with paragraphs (1), (2), and (3), contributions during the taxable year to the State unemployment fund with respect to a work site employee.”, and

(C) in the last sentence—

(i) by striking “paragraphs (1), (2), and (3)” and inserting “paragraphs (1), (2), (3), and (4)”, and

(ii) by striking “paragraph (1), (2), or (3)” and inserting “paragraph (1), (2), (3), or (4)”.

(5) Section 6053 of such Code (relating to reporting of tips) is amended by adding at the end of subsection (c) the following new paragraph:

“(8) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—For purposes of any report required by this section, in the case of a certified professional employer organization that is treated, under section 3511, as the employer of a worksite employee, the customer with respect to whom a worksite employee performs services shall be the employer for purposes of reporting under this section and the certified professional employer organization shall furnish to the customer any information necessary to complete such reporting no later than such time as the Secretary shall prescribe.”.

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

“Sec. 3511. Certified professional employer organizations.”.

(2) The table of sections for chapter 79 of such Code is amended by inserting after the item relating to section 7704 the following new item:

“Sec. 7705. Certified professional employer organizations.”.

(f) REPORTING REQUIREMENTS AND OBLIGATIONS.—The Secretary of the Treasury shall develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance with the amendments made by this Act with respect to entities applying for certification as certified professional employer organizations or entities that have been so certified. Such rules shall be designed in a manner which streamlines, to the extent possible, the application of requirements of such amendments, the exchange of information between a certified professional employer organization and its customers, and the reporting and recordkeeping obligations of the certified professional employer organization.

(g) USER FEES.—Subsection (b) of section 10511 of the Revenue Act of 1987 (relating to fees for requests for ruling, determination, and similar letters) is amended by adding at the end thereof the following new paragraph:

“(4) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—The fee charged under the program in connection with the certification by the Secretary of a professional employer organization under section 7705 of the Internal Revenue Code of 1986 shall not exceed \$500.”.

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this Act shall take effect on the later of—

(A) January 1, 2005, or

(B) the January 1st of the first calendar year beginning more than 12 months after the date of the enactment of this Act.

(2) CERTIFICATION PROGRAM.—The Secretary of the Treasury shall establish the certification program described in section 7705(b) of the Internal Revenue Code of 1986 not later than 3 months before the effective date determined under paragraph (1).

(3) TRANSITION ISSUES.—For years beginning before the effective date specified in paragraph (1), subject to such conditions as the Secretary of the Treasury may prescribe, employee benefit plans in existence on the date of the enactment of this Act shall not be treated as failing to meet the requirements of the Internal Revenue Code of 1986 merely because such plans were maintained by an organization prior to such organization becoming a certified professional employer organization (as defined by section 7705 of such Code (as added by subsection (c) of this section)).

By Mr. JOHNSON (for himself and Mr. COCHRAN):

S. 1270. A bill to amend title XVIII of the Social Security Act to provide for coverage of medication therapy management services under Part B of the Medicare program; to the Committee on Finance.

Mr. JOHNSON. Mr. President, I am pleased to introduce legislation today that will provide for important health care quality and medication safety improvements in the Medicare program. The Medication Therapy Management

Services Coverage Act of 2003 will enhance the Medicare program by providing coverage of pharmacists' medication therapy management services for those beneficiaries at risk for potential medication problems due to the presence of multiple or complex chronic diseases. These services, which are coordinated in direct collaboration with physicians and other health care professionals, help patients make the best possible use of their medications.

The members of this body know very well the vital role that today's powerful and effective medications play in the maintenance of health and well-being of our Nation's seniors. The substantial and important discussion now underway on how best to craft and implement a prescription drug benefit for Medicare beneficiaries is an explicit recognition of this vital role. But access to the medications, even at the most affordable prices possible, is only one part of the solution to achieving the kinds of health care outcomes that patients and their health care providers desire. That is where today's pharmacists play a pivotal role.

In addition to the important and continuing responsibility for assuring accurate, safe medication dispensing and counseling services, pharmacists now provide many direct patient care, consultative, and educational services. Forty states, the Veterans Administration, and the Indian Health Service, among others, all recognize the value of collaborative medication therapy management services as a way to provide optimal patient care using the specialized education and training of pharmacists. In addition, several state Medicaid programs have active demonstration projects or waiver programs in place that deliver these important services to their citizens.

More specifically, in its June 2002 report to the Congress, the Medicare Payment Advisory Commission noted that it "sees potential for a Medicare drug therapy management benefit to facilitate access to an important health care service for some beneficiaries" and recommended to Congress that the Secretary of Health and Human Services "... assess models for collaborative drug therapy management services in outpatient settings." This is a very important recommendation, because there is no more vulnerable group than our Nation's seniors when it comes to the potential for medication-related problems and the presence of multiple chronic diseases. If other health care systems and programs provide such services, Medicare must be reformed to provide them as well. Indeed, Medicare should be the leader in this regard.

The pharmacist's specialized training in medication therapy management has been demonstrated repeatedly to improve the quality of care patients receive and to control health care costs associated with medication complications. As an essential infrastructure component of any type of Medicare

prescription drug benefit, it makes sense to take this proven initial step to improve the medication use process for our seniors. This will serve all Medicare beneficiaries by ensuring that each precious dollar, regardless of who is paying the "bills for the pills," is spent wisely on a safe and effective medication regimen. This is a benefit that we can all support and deliver now, as we work to also resolve the economic and political challenges in crafting a truly effective and affordable prescription drug benefit.

Because pharmacists improve the efficacy and cost-effectiveness of medication regimens and reduce medication-related problems and adverse effects, the addition of their services represents real value and enhances the prospects of achieving both an affordable Medicare drug benefit and improved health outcomes for Medicare beneficiaries. In fact, numerous studies over the past decade have demonstrated returns on investments of up to \$17.00 for every single dollar invested in the provision of pharmacists' clinical and patient care services.

Our legislation provides a logical and very affordable first step in establishing the essential infrastructure of a Medicare prescription drug benefit. As the 1999 Institute of Medicine report "To Err is Human: Building a Safer Health System" stated:

Because of the immense variety and complexity of medications now available, it is impossible for nurses and doctors to keep up with all of the information required for safe medication use. The pharmacist has become an essential resource . . . and thus access to his or her expertise must be possible at all times.

Our legislation will assure that the Medicare program leads, rather than follows, on this important health care quality issue. Pharmacists' collaborative medication therapy management services can and will make a real difference in the lives of Medicare beneficiaries. I urge my colleagues on both sides of the aisle to give this proposal their very serious consideration.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 171—RECOGNIZING THAT THE SAN ANTONIO SPURS ARE THE 2002–2003 NATIONAL BASKETBALL ASSOCIATION CHAMPIONS AND CONGRATULATING THE TEAM FOR ITS OUTSTANDING EXCELLENCE, DISCIPLINE, AND DOMINANCE

Mr. CORNYN (for himself and Mrs. HUTCHISON) submitted the following resolution; which was considered and agreed to:

S. RES. 171

Whereas the San Antonio Spurs are the undisputed 2002–2003 National Basketball Association champions and thus the basketball champions of the world;

Whereas the San Antonio Spurs are one of America's preeminent sports franchises and have now won their second NBA Championship in 5 years;

Whereas this exceptionally gifted team is guided by Greg Popovich, one of the most successful coaches in the last decade of professional basketball, who has now led the San Antonio Spurs to NBA championships twice in the last 5 years, who was named the winner of the Red Auerbach Trophy as the NBA Coach of the Year for the 2002–2003 season, and who is the first Spurs coach in franchise history to earn the Auerbach Trophy;

Whereas the San Antonio Spurs National Basketball Association championship was characterized by a remarkable team effort, led by the series' Most Valuable Player, Tim Duncan;

Whereas it is appropriate and fitting to congratulate David Robinson, who will now retire after 14 years with the San Antonio Spurs; and

Whereas it is appropriate and fitting to now offer these athletes, their coaches, and the great fans of the City of San Antonio and Bexar County, Texas, the attention and accolades they have earned: Now, therefore, be it

Resolved, That the Senate congratulates the entire 2002–2003 San Antonio Spurs team and its coach Greg Popovich for their remarkable achievement, and their excellence, discipline, and dominance.

AMENDMENTS SUBMITTED & PROPOSED

SA 927. Mr. EDWARDS (for himself, Mr. HARKIN, and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table.

SA 928. Mr. CORNYN (for Mr. CRAPO) proposed an amendment to the bill S. 520, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho.

TEXT OF AMENDMENTS

SA 927. Mr. EDWARDS (for himself, Mr. HARKIN, and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

"MINIMUM STANDARDS FOR ELIGIBLE ENTITIES

"SEC. 1860 . (a) IN GENERAL.—The Secretary shall not award a contract to an eligible entity under this part unless the Secretary finds that the eligible entity agrees to comply with such terms and conditions as the Secretary shall specify, including the following:

"() DISCLOSURE REQUIREMENTS:

"(a) ACCESS TO NEGOTIATED PRICES.—
"DISCLOSURE.—The eligible entity shall disclose to the Administrator (at the time of bid submission under section 1860F and annually thereafter for the duration of the contract, in a manner specified by the Administrator) all discounts or rebates or other remuneration of price concessions made available to the eligible entity or an agent thereof by any source. The provisions of section