

On page 94, line 7, after “(1)” insert “not to exceed”.

On page 94, line 13, after “(2)” insert “not to exceed”.

On page 94, line 19, after “(3)” insert “not to exceed”.

On page 95, line 1, after “(4)” insert “not to exceed”.

On page 95, line 4, after “(5)” insert “not to exceed”.

On page 95, beginning in line 10, strike “The amounts payable” and insert “Any amounts that are to be paid”.

On page 95, line 12, after the period insert “Any amount in the Fund that is not obligated under subsection (c) by that date shall be transferred to the general fund of the Treasury.”.

**SA 2421.** Mr. BURNS (for himself and Mr. BROWNBACK) submitted an amendment intended to be proposed by him to the bill S. 1932, to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95); which was ordered to lie on the table; as follows:

On page 122, strike line 23 and all that follows through page 124, line 10, and insert the following:

(3) **EFFECTIVE DATE.**—The amendments made by this subsection take effect with respect to a State on the date on which a positive certification is made by the Secretary under paragraph (4)(B)(ii).

(4) **PHARMACY REIMBURSEMENT STUDY.**—

(A) **STUDY AND REPORT.**—

(i) **STUDY.**—The Secretary shall conduct a pharmacy reimbursement study comparing weighted AMP (as determined under section 1927(k)(1)(C) of the Social Security Act, as added by subsection (a)) to actual retail pharmacy acquisition costs and the cost of dispensing a prescription. The study shall include an analysis of the range in variation that can occur related to acquisition and dispensing costs with respect to chain and independent rural and urban pharmacies.

(ii) **REPORT.**—Not later than October 1, 2006, the Secretary shall submit a report to Congress on the results of the study conducted under this subparagraph that includes recommendations on dispensing fee levels that would adequately reimburse pharmacies and encourage the use of cost-effective generic drugs when appropriate.

(B) **CERTIFICATION.**—

(i) **DETERMINATION.**—Upon review of the findings of the study conducted under subparagraph (A), the Secretary shall make a determination as to whether the amendments made by this subsection would have a negative impact on access to healthcare.

(ii) **POSITIVE CERTIFICATION.**—If the Secretary makes a determination under clause (i) that the amendments made by this subsection will not have such negative impact, the Secretary shall submit a positive certification to that effect.

(c) **INTERIM UPPER PAYMENT LIMIT.**—

(1) **IN GENERAL.**—With respect to a State program under title XIX of the Social Security Act, during the period that begins on January 1, 2006, and ends on the date on which a positive certification is made by the Secretary under subsection (b)(4)(B)(ii), the Secretary shall—

(A) apply the Federal upper payment limit established under section 447.332(b) of title 42, Code of Federal Regulations to the State by substituting “125 percent” for “150 percent”; and

(B) in the case of covered outpatient drugs under title XIX of such Act that are marketed as of July 1, 2005, and are subject to

Federal upper payment limits that apply under section 447.332 of title 42, Code of Federal Regulations, use average wholesale prices, direct prices, and wholesale acquisition costs for such drugs that do not exceed such prices and costs as of such date to determine the Federal upper payment limits that apply under section 447.332 of title 42, Code of Federal Regulations to such drugs during such period.

(2) **APPLICATION TO NEW DRUGS.**—Paragraph (1)(A) shall apply to a covered outpatient drug under title XIX of the Social Security Act that is first marketed after July 1, 2005, but before the date on which a positive certification is made by the Secretary under subsection (b)(4)(B)(ii), and is subject to the Federal upper payment limit established under section 447.332(b) of title 42, Code of Federal Regulations.

**SA 2422.** Mr. CONRAD (for himself and Mr. SALAZAR) proposed an amendment to the bill S. 1932, to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95); as follows:

On page 121, after line 25, add the following:

“(5) **RULES APPLICABLE TO CRITICAL ACCESS RETAIL PHARMACIES.**—

“(A) **REIMBURSEMENT LIMITS.**—Notwithstanding paragraph (2)(A), in the case of a critical access retail pharmacy (as defined in subparagraph (C)), the upper payment limit—

“(i) for the ingredient cost of a single source drug, is the lesser of—

“(I) 108 percent of the average manufacturer price for the drug; or

“(II) the wholesale acquisition cost for the drug; and

“(ii) for the ingredient cost of a multiple source drug, is the lesser of—

“(I) 140 percent of the weighted average manufacturer price for the drug; or

“(II) the wholesale acquisition cost for the drug.

“(B) **APPLICATION OF OTHER PROVISIONS.**—The preceding provisions of this subsection shall apply with respect to reimbursement to a critical access retail pharmacy in the same manner as such provisions apply to reimbursement to other retail pharmacies except that, in establishing the dispensing fee for a critical access pharmacy the Secretary, in addition to the factors required under paragraph (4), shall include consideration of the costs associated with operating a critical access retail pharmacy.

“(C) **CRITICAL ACCESS RETAIL PHARMACY DEFINED.**—For purposes of subparagraph (A), the term ‘critical access retail pharmacy’ means an retail pharmacy that is not within a 20-mile radius of another retail pharmacy.”.

(2) **INCREASE IN BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.**—Section 1927(c)(1)(B)(i)(VI) (42 U.S.C. 1396r-8(c)(1)(B)(i)(VI), as added by section 6002(a)(3), is amended by striking “17” and inserting “18.1”.

#### AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on November 3, 2005, at a time to be deter-

mined, to conduct a vote on the nomination of Mr. Matthew Slaughter, of New Hampshire, to be a member of the Council of Economic Advisers; Ms. Katherine Baicker, of New Hampshire, to be a member of the Council of Economic Advisers; Mr. Orlando J. Cabrera, of Florida, to be an Assistant Secretary of Housing and Urban Development; Ms. Gigi Hyland, of Virginia, to be a member of the National Credit Union Administration Board; and Mr. Rodney E. Hood, of North Carolina, to be a member of the National Credit Union Administration Board.

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

COMMITTEE ON THE JUDICIARY

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, November 3, 2005 at 12:15 p.m. in Senate Dirksen Office Building Room 226.

#### Agenda

I. Nominations: Wan Kim, to be an Assistant Attorney General, Civil Rights Division; Steven G. Bradbury, to be an Assistant Attorney General for the Office of Legal Counsel; Sue Ellen Wooldridge, to be an Assistant Attorney General, Environment and Natural Resources Division; Thomas O. Barnett, to be an Assistant Attorney General, Antitrust Division; James O’Gara, to be Deputy Director for Supply Reduction, Office of National Drug Control Policy; Emilio Gonzalez, to be Director of the Bureau of Citizenship and Immigration Services, Department of Homeland Security; Julie L. Myers, to be an Assistant Secretary of Homeland Security.

II. Bills: S. 1088, Streamline Procedures Act of 2005; Kyl, Cornyn, Grassley, Hatch; S. 1789, Personal Data Privacy and Security Act of 2005; Specter, Leahy, Feinstein, Feingold; S. 751, Notification of Risk to Personal Data Act, Feinstein, Kyl; S. 1699, Stop Counterfeiting in Manufactured Goods Act, Specter, Leahy, Hatch, DeWine, Cornyn, Brownback, Feingold, Durbin, Kyl; S. 1095, Protecting American Goods and Services Act of 2005, Cornyn, Leahy; H.R. 683, Trademark Dilution Revision Act of 2005, Smith—TX; S. 1787, Relief to Victims of Hurricane Katrina and Other Natural Disaster Act of 2005, Vitter, Grassley, Cornyn, DeWine; S. 1647, Hurricane Katrina Bankruptcy Relief and Community Protection Act of 2005, Feingold, Leahy, Durbin, Kennedy, Feinstein.

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

#### PRIVILEGES OF THE FLOOR

Mr. LEAHY. Mr. President, I ask unanimous consent that Molly Barrett of my staff be given the privilege of the floor throughout the day and the votes that occur today.

The PRESIDENT pro tempore. Without objection, it is so ordered.