

“(ii) States that enacted, prior to the date of enactment of the Patient Protection and Affordable Care Act, any cap on non-economic damages; and

“(iii) States that have enacted, prior to the date of enactment of the Patient Protection and Affordable Care Act, a requirement that the complainant obtain an opinion regarding the merit of the claim, although the substance of such opinion may have no bearing on whether the complainant may proceed with a case.

“(3) MEASURES.—The evaluations under paragraph (2) shall analyze and make comparisons on the basis of—

“(A) the nature and number of disputes over injuries allegedly caused by health care providers or health care organizations;

“(B) the nature and number of claims in which tort litigation was pursued despite the existence of an alternative under subsection (a);

“(C) the disposition of disputes and claims, including the length of time and estimated costs to all parties;

“(D) the medical liability environment;

“(E) health care quality;

“(F) patient safety in terms of detecting, analyzing, and helping to reduce medical errors and adverse events;

“(G) patient and health care provider and organization satisfaction with the alternative under subsection (a) and with the medical liability environment; and

“(H) impact on utilization of medical services, appropriately adjusted for risk.

“(4) FUNDING.—The Secretary shall reserve 5 percent of the amount appropriated in each fiscal year under subsection (k) to carry out this subsection.

“(h) MEDPAC AND MACPAC REPORTS.—

“(1) MEDPAC.—The Medicare Payment Advisory Commission shall conduct an independent review of the alternatives to current tort litigation that are implemented under grants under subsection (a) to determine the impact of such alternatives on the Medicare program under title XVIII of the Social Security Act, and its beneficiaries.

“(2) MACPAC.—The Medicaid and CHIP Payment and Access Commission shall conduct an independent review of the alternatives to current tort litigation that are implemented under grants under subsection (a) to determine the impact of such alternatives on the Medicaid or CHIP programs under titles XIX and XXI of the Social Security Act, and their beneficiaries.

“(3) REPORTS.—Not later than December 31, 2016, the Medicare Payment Advisory Commission and the Medicaid and CHIP Payment and Access Commission shall each submit to Congress a report that includes the findings and recommendations of each respective Commission based on independent reviews conducted under paragraphs (1) and (2), including an analysis of the impact of the alternatives reviewed on the efficiency and effectiveness of the respective programs.

“(i) OPTION TO PROVIDE FOR INITIAL PLANNING GRANTS.—Of the funds appropriated pursuant to subsection (k), the Secretary may use a portion not to exceed \$500,000 per State to provide planning grants to such States for the development of demonstration project applications meeting the criteria described in subsection (c). In selecting States to receive such planning grants, the Secretary shall give preference to those States in which State law at the time of the application would not prohibit the adoption of an alternative to current tort litigation.

“(j) DEFINITIONS.—In this section:

“(1) HEALTH CARE SERVICES.—The term ‘health care services’ means any services provided by a health care provider, or by any individual working under the supervision of a health care provider, that relate to—

“(A) the diagnosis, prevention, or treatment of any human disease or impairment; or

“(B) the assessment of the health of human beings.

“(2) HEALTH CARE ORGANIZATION.—The term ‘health care organization’ means any individual or entity which is obligated to provide, pay for, or administer health benefits under any health plan.

“(3) HEALTH CARE PROVIDER.—The term ‘health care provider’ means any individual or entity—

“(A) licensed, registered, or certified under Federal or State laws or regulations to provide health care services; or

“(B) required to be so licensed, registered, or certified but that is exempted by other statute or regulation.

“(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this section for each of fiscal years 2011 through 2015.

“(l) CURRENT STATE EFFORTS TO ESTABLISH ALTERNATIVE TO TORT LITIGATION.—Nothing in this section shall be construed to limit any prior, current, or future efforts of any State to establish any alternative to tort litigation.

“(m) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting states’ authority over or responsibility for their state justice systems.”.

**SA 3264.** Mr. WYDEN (for himself, Mr. BROWN, Mr. SPECTER, Mr. KOHL, and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 999, between lines 16 and 17, insert the following:

**SEC. 3402. LIMITATION ON HOSPICE SPENDING.**

Section 1814(i)(1)(C) of the Social Security Act, as amended by sections 3132 and 3401, is further amended—

(1) in each of clauses (ii)(VII) and (iii), by striking “clause (iv)” and inserting “clauses (iv) and (v)”;

(2) in clause (iv)—

(A) in subclause (II)—

(i) by striking “subject to clause (v).”; and

(ii) by striking “0.5 percentage point” and inserting “0.25 percentage point”; and

(B) by striking the flush sentence following subclause (II); and

(3) by striking clause (v) and inserting the following new clauses:

“(v) After determining the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, with respect to fiscal years 2014 through 2019, if the Secretary determines there is excess hospice spending (as defined in clause (vi)) for the fiscal year, the Secretary shall reduce such percentage by the amount of such excess hospice spending. The application of this clause may not result in the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, being less than 0.0 for a fiscal year.

“(vi) For purposes of clause (v), the term ‘excess hospice spending’ means—

“(I) for fiscal year 2014, the excess (expressed as a percentage) of—

“(aa) the aggregate amount of payments for hospice care under this title for fiscal year 2011; over

“(bb) the aggregate amount of such payments for fiscal year 2010 increased by the medical care component of the Consumer Price Index for fiscal year 2011, plus 3.0 percentage points; and

“(II) for fiscal year 2015 through 2019, the excess (expressed as a percentage) between—

“(aa) the aggregate amounts of such payments for the fiscal year 3 years prior to the fiscal year involved; over

“(bb) the aggregate amount of such payments for the fiscal year 4 years prior to the fiscal year involved increased by the medical care component of the Consumer Price Index for the fiscal year 3 years prior to the fiscal year involved, plus 3.0 percentage points.”.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON ARMED SERVICES**

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on December 17, 2009, at 9:30 a.m.

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

**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on December 17, 2009, in room 253 of the Russell Senate Office Building.

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

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on December 17, 2009, at 10 a.m., to conduct a hearing entitled “Safeguarding the American Dream: Prospectus for Our Economic Future and Proposals to Secure It.”

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

**COMMITTEE ON INDIAN AFFAIRS**

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on December 17, 2009, at 2:15 p.m., in room 628 of the Dirksen Senate Office Building.

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

**COMMITTEE ON THE JUDICIARY**

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on December 17, 2009, at 10 a.m., in SD-226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

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

COMMITTEE ON SMALL BUSINESS AND  
ENTREPRENEURSHIP

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate on December 17, 2009, at 1:30 p.m.

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

AD HOC SUBCOMMITTEE ON CONTRACTING  
OVERSIGHT

Mr. DURBIN. Mr. President, I ask unanimous consent that the Ad Hoc Subcommittee on Contracting Oversight of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on December 17, 2009, at 2 p.m., to conduct a hearing entitled, "Afghanistan Contracts: An Overview."

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on December 17, 2009, at 2:30 a.m.

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

SUBCOMMITTEE ON CONSUMER PROTECTION,  
PRODUCT SAFETY, AND INSURANCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Subcommittee on Consumer Protection, Product Safety, and Insurance of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on December 17, 2009, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests be authorized to meet during the session of the Senate to conduct a hearing on December 17, 2009, at 2:30 p.m., in room SD-366 of the Dirksen Senate Office Building.

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

PRIVILEGES OF THE FLOOR

Mr. LEVIN. Mr. President, first, on behalf of Senator DODD, I ask unanimous consent that a military fellow in his office, CPT Joslyn Hemler, be granted floor privileges during the consideration of the 2010 Department of Defense appropriations bill.

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

RECESS UNTIL 12:01 A.M.  
TOMORROW

Mr. REID. Mr. President, I now move to recess until 12:01 a.m.

Mr. McCONNELL. Parliamentary inquiry.

The PRESIDING OFFICER (Mr. DURBIN). The Republican leader.

Mr. McCONNELL. Before we proceed to the vote, I would like to make a parliamentary inquiry: I believe it is the case that a simple motion to recess or adjourn is not amendable; is that correct?

The PRESIDING OFFICER. The Republican leader is correct.

Mr. McCONNELL. Further inquiry. I also believe that a motion to recess or adjourn to a time certain is amendable with time changes.

The PRESIDING OFFICER. The Republican leader is correct.

Mr. McCONNELL. I will not offer an amendment to change the time to convene later, but so everybody will know, with regard to their own personal schedules, this vote could occur at any time tomorrow. It wouldn't have to be at 1 a.m. The majority leader has the discretion to do that. We are, of course, prepared to talk around the clock and happy to have a vote at 1 o'clock. I just want everybody to understand it is my understanding that the majority leader does have the ability to set the vote later than 1 a.m.

The PRESIDING OFFICER. The majority leader.

Mr. REID. I ask for the yeas and nays on my motion.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Wyoming (Mr. ENZI) and the Senator from Georgia (Mr. CHAMBLISS).

The PRESIDING OFFICER (Mr. BEGICH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 38, as follows:

[Rollcall Vote No. 380 Leg.]

YEAS—59

Akaka	Durbin	Leahy
Baucus	Feingold	Levin
Bayh	Feinstein	Lieberman
Begich	Franken	Lincoln
Bennet	Gillibrand	McCaskill
Bingaman	Hagan	Menendez
Boxer	Harkin	Merkley
Brown	Inouye	Mikulski
Burr	Johnson	Murray
Cantwell	Kaufman	Nelson (NE)
Cardin	Kerry	Nelson (FL)
Carper	Kirk	Pryor
Casey	Klobuchar	Reed
Conrad	Kohl	Reid
Dodd	Landrieu	Rockefeller
Dorgan	Lautenberg	Sanders

Schumer	Tester	Webb
Shaheen	Udall (CO)	Whitehouse
Specter	Udall (NM)	Wyden
Stabenow	Warner	

NAYS—38

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bennett	Graham	Murkowski
Bond	Grassley	Risch
Brownback	Gregg	Roberts
Bunning	Hatch	Sessions
Burr	Hutchison	Shelby
Coburn	Inhofe	Snowe
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kyl	Voivovich
Cornyn	LeMieux	Wicker
Crapo	Lugar	

NOT VOTING—3

Byrd	Chambliss	Enzi
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The motion was agreed to.

The PRESIDING OFFICER. The Senate stands in recess until 12:01, a.m., Friday, December 18, 2009.

Thereupon, the Senate, at 6:52 p.m., recessed until Friday, December 18, 2009, at 12:01 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF TRANSPORTATION

DAVID T. MATSUDA, OF THE DISTRICT OF COLUMBIA, TO BE ADMINISTRATOR OF THE MARITIME ADMINISTRATION, VICE SEAN T. CONNAUGHTON, RESIGNED.

NATIONAL COUNCIL ON DISABILITY

GARY BLUMENTHAL, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2010, VICE ANNE RADER, TERM EXPIRED.

CHESTER ALONZO FINN, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2012, VICE KATHLEEN MARTINEZ, TERM EXPIRED.

SARA A. GELSER, OF OREGON, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2011, VICE PATRICIA POUND, TERM EXPIRED.

ARI NE'EMAN, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2012, VICE ROBERT DAVILA, TERM EXPIRED.

DONGWOO JOSEPH PAK, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2012, VICE TONY J. WILLIAMS, TERM EXPIRED.

CAROL JEAN REYNOLDS, OF COLORADO, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2010, VICE LISA MATTHEISS, TERM EXPIRED.

FERNANDO TORRES-GILL, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2011, VICE GRAHAM HILL, TERM EXPIRED.

JONATHAN M. YOUNG, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2012, VICE KATHERINE O. MCCARY, TERM EXPIRED.

BARRY GOLDWATER SCHOLARSHIP &  
EXCELLENCE IN EDUCATION FOUNDATION

GWENDOLYN E. BOYD, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION FOR A TERM EXPIRING AUGUST 11, 2014, VICE DONALD J. SUTHERLAND, TERM EXPIRED.

PEGGY GOLDWATER-CLAY, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION FOR A TERM EXPIRING JUNE 5, 2012. (REAPPOINTMENT)

SMALL BUSINESS ADMINISTRATION

MARIE COLLINS JOHNS, OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION, VICE JOVITA CARRANZA, RESIGNED.