EC–4874. A communication from the Acting Assistant General Counsel for Regulations, Department of Education, transmitting, pursuant to law, the report of a rule entitled, ''Notice of Final Funding Priorities for Fiscal Years 1998–1999 for Certain Centers and Projects'' received on May 6, 1998; to the Committee on Labor and Human Resources.

EC–4875. A communication from the Director of Regulations Policy and Management Staff, Office of Policy, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Radiology Devices; Classifications for Five Medical Image Management Devices'' (Docket 96N–0320) received on May 6, 1998; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany the bill (S. 1723) to amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of United States' firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers and for other purposes (Rept. No. 105–186).

By Mr. THOMPSON, from the Committee on Governmental Affairs, with amendments:

S. 1364: A bill to eliminate unnecessary and wasteful Federal reports (Rept. No. 105–187).

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

S. 981: A bill to provide for analysis of major rules (Rept. No. 105–188).

By Mr. THURMOND, from the Committee on Armed Services, without amendment:

S. 2060. An original bill to authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes (Rept. No. 105–189).

By Mr. HATCH, from the Committee on the Judiciary: Report to accompany the bill (S. 2037) to amend title 17, United States Code, to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, to provide limitations on copyright liability relating to material online, and for other purposes (Rept. No. 105–190).

By Mr. THURMOND, from the Committee on Armed Services, without amendment:

S. 2057: An original bill to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

S. 2058. An original bill to authorize appropriations for fiscal year 1999 for defense activities of the Department of Energy, and for other purposes.

S. 2059. An original bill to authorize appropriations for the fiscal year 1999 for military construction, and for other purposes.

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. THURMOND:

S. 2057. An original bill to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; from the Committee on Armed Services; placed on the calendar.

S. 2058. An original bill to authorize appropriations for fiscal year 1999 for defense activities of the Department of Energy, and for other purposes; from the Committee on Armed Services; placed on the calendar.

S. 2059. An original bill to authorize appropriations for the fiscal year 1999 for military construction, and for other purposes; from the Committee on Armed Services; placed on the calendar.

S. 2060. An original bill to authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. GRAHAM (for himself, Mr. CHAFEE, Mr. JOHNSON, Mr. HARKIN, and Mr. GRASSLEY):

S. 2061. A bill to amend title XIX of the Social Security Act to prohibit transfers or discharges of residents of nursing facilities; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM (for himself, Mr. CHAFEE, Mr. JOHNSON, Mr. HARKIN, and Mr. GRASSLEY):

S. 2061. A bill to amend title XIX of the Social Security Act to prohibit transfers or discharges of residents of nursing facilities; to the Committee on Finance.

NURSING HOME PATIENT PROTECTION ACT

Mr. GRAHAM. Mr. President, along with Senators CHAFEE, JOHNSON, GRASSLEY, and HARKIN, I will be introducing today the Nursing Home Patient Protection Act. This is legislation to protect our Nation's seniors from indiscriminate patient dumping from nursing homes.

Approximately one month ago, it looked like 93-year-old Adela Mongiovi might have to spend her 61st Mother's Day away from the assisted living facility that she had called home for the last four years.

At least that's what her son Nelson and daughter-in-law Gina feared when officials at the Rehabilitation and Health Care Center of Tampa told them that their Alzheimer's disease-afflicted mother would have to be relocated so that the nursing home could complete ''renovations.''

As the Mongiovis told me when I met with them and visited their mother in Tampa last month, the real story far exceeded their worst fears. The supposedly temporary relocation was actually a permanent eviction—a permanent eviction of all 52 residents whose housing and care were paid for by the Medicaid program.

The nursing home chain that owns the Tampa facility, and several others across the United States, wanted to purge its nursing homes of Medicaid residents, ostensibly to take more private insurance payers and Medicare beneficiaries, which pay more per resident.

While this may have been a good financial decision in the short run, its effects on our Nation's senior citizens, if practiced on a widespread basis, would be nothing short of disastrous.

In an April 7, 1998, Wall Street Journal article, several nursing home executives argued that State governments and Congress are to blame for these evictions because they have set Medicaid reimbursement rates too low.

While Medicaid reimbursements to nursing homes may need to be revisited, playing Russian roulette with elderly patients' lives is hardly the way to send that message to Congress or to state legislatures. While I am willing to engage in a discussion as to the equity of nursing home reimbursement rates, I and my colleagues are not willing to allow nursing homes to dump patients indiscriminately.

The fact that some nursing home companies are willing to sacrifice elderly Americans for the sake of their own economic bottom line is bad enough. What is even worse is their attempt to evade blame for Medicaid evictions.

The starkest evidence of this shirking of responsibility is found in the shell game many companies play to justify evictions. Current law allows nursing homes to discharge patients for—among other reasons—inability to pay.

If a facility decreases its number of Medicaid beds, the State and Federal governments are no longer authorized to pay the affected residents' nursing home bills. The nursing home can then conveniently, and unceremoniously, dump its former Medicaid patients for—you guessed it—their inability to pay.

Evictions of nursing home residents have a devastating effect on the health and well-being of some of society's most vulnerable members.

A recent University of Southern California study indicated that those who are uprooted from their homes undergo a phenomenon known as ''transfer trauma.'' For these seniors, the consequences of transfer trauma are stark. The death rate among seniors is 2 to 3 times higher than for individuals who receive continuous care.

Those of us who believe that our mothers, fathers, and grandparents are safe because Medicaid affects only low-income Americans, we need to think again.

A three-year stay in a nursing home can cost upwards of $125,000. As a result of this extreme cost, nearly half of all nursing home residents who enter as private-paying patients exhaust their personal savings, lose their health insurance coverage during their stay, and become Medicaid beneficiaries. Medicaid is, for most retirees, the last refuge of financial support.

On April 10, the Florida Medicaid Bureau responded to evidence of Medicaid dumping in Tampa by levying a steep $260,000 fine against the Tampa nursing home. That was strong and appropriate action, but it was only a partial solution. Medicaid funding is a shared responsibility—shared between the States and the Federal Government.

While the most egregious incident occurred in Florida, Medicaid dumping is not the problem of a single State. While nursing homes were once locally run and family-owned, they are increasingly administered by multi-State, multi-facility corporations that have the power to affect seniors across the United States.

Mr. President, let me also point out that the large majority of nursing homes in America treat their residents well, and they are responsible community citizens. Our bill is designed solely to prevent potential future abuses by the bad actors.

This bill is simple and fair. It would prohibit current Medicaid beneficiaries, or those who ''spend down'' to Medicaid from being evicted from their homes. That is a crucial point, Mr. President.

Adela Mongiovi is not just a ''beneficiary''; she is a mother and she is a grandmother. And to Adela Mongiovi, the Rehabilitation and Health Care Center of Tampa is not an ''assisted living facility.'' To Adela Mongiovi, it is home.

This is the place where she wants, and deserves—like all seniors—to live the rest of her life with the security of knowing that she will not be evicted. Through the passage of this bill, we can provide that security to Adela Mongiovi and to all of our Nation's seniors.

Mr. President, I ask unanimous consent that the article to which I referred from the April 7, 1998, Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, Apr. 7, 1998]

FOR MEDICAID PATIENTS, DOORS SLAM CLOSED

(By Michael Moss and Chris Adams)

INDIANAPOLIS—On Monday, Jan. 26, right after lunch, Betty Nelson and dozens of other residents of Wildwood Health Care Center were brought into the activity room and told they were being evicted.

Rumors about an impending change had circulated at the nursing home for weeks, but the news delivered on this wintry day stunned the elderly patients as they stood at their walkers or sat in their wheelchairs. The facility was ending its relationship with Medicaid, the state-run health subsidy for the poor. Nearly 60 of its 150 residents would have to find new places to live.

Most had worked all of their lives, and many had started out paying their own way at Wildwood, which charged them $3,000 or more a month. But eventually they had run through their savings and had turned to Medicaid to help pay their bills.

There among the crowd were 88-year-old Della Arthur, a glove maker who later served nearly two decades as a Red Cross volunteer; 73-year-old Art Biech, a former postal carrier who handed out Wildwood's mail; and Gregory Dale, a retired pipe fitter with Ford Motor Co. who would turn 90 in two weeks. Some of the residents wept. Others, suffering from dementia, couldn't comprehend what was being said. Mrs. Nelson, who is 72, understood; as the news sank in, she cried out from her wheelchair, ''You're kicking us out because we don't have enough money.''

Wildwood is among the many nursing homes nationwide that Vencor Inc. is emptying of Medicaid recipients. A publicly traded company based in Louisville, Ky., Vencor ran hospitals before buying a 310-facility nursing-home chain three years ago, to become the nation's fourth largest nursing-home chain. It says it now wants to attract wealthier patients who can afford the higher levels of medical care it plans to provide.

Vencor also says it fears that a growing number of successful lawsuits against nursing-home owners will hold the company to ever-higher standards of care that it can't sustain under Medicaid rates. In Florida, where the state attorney general has retained outside counsel to build a sweeping Medicaid fraud and abuse case against the entire industry, Vencor says it might withdraw all 21 of its homes from Medicaid as a defensive move.

Overall, the company, which hasn't previously detailed its plans publicly, says it has withdrawn or begun withdrawing 13 homes in nine states from Medicaid. It says another 25 homes are candidates to be withdrawn because they are in cities where Vencor wants to link long-term hospitals it already owns with specialized nursing homes aimed at higher-paying patients. Vencor may eventually open 90 non-Medicaid, specialized nursing homes, many of them built from scratch, the rest transformed from existing Medicaid facilities.

In addition, the company says it is doing all it can to maximize the number of non-Medicaid patients coming through its doors—something it regularly trumpets to Wall Street. In nearly all circumstances, a Vencor nursing home with an empty bed will turn a Medicaid resident away in the hopes that a private patient will soon come along and take the space.

''We'll go out of Medicaid in all 300 buildings if we don't start to see a little change in the Medicaid program,'' says Michael Barr, Vencor's chief operating officer. He says Vencor is losing money on its Medicaid patients—a standard complaint by nursing-home owners. States say they cover all ''reasonable'' costs and contend that homes can make a profit from Medicaid.

Relinquishing the reliable income of Medicaid—which at least ensures that few beds remain empty—is a gamble. But with big public companies racing into the nursing-home industry and pursuing more aggressive pricing strategies, many other companies also are targeting the higher end of the market. And industry analysts predict that some may follow Vencor's lead in jettisoning Medicaid recipients.

Only a few states, including California and Tennessee, currently bar mass evictions. These states instead require companies seeking to withdraw from Medicaid to wait until patients die or choose to leave. Nearly all other states leave the matter entirely up to the nursing-home owner's discretion.

Economics aside, evicting old people can create hard feelings in the community, as Vencor learned at Wildwood. There, little assistance or planning preceded the eviction notice to the residents. Many families were informed only after the residents were told. Management also kept the news secret from most staff members, many of whom were distraught as weeping residents wheeled or walked from the room after the brief eviction meeting. ''It just broke my heart,'' says Valerie Lynch, a former activities assistant who says she was prompted by the evictions to find a new job.

Panic spread in the next few days as waiting lists sprang up at other homes in the Indianapolis area. Even those who found comparable surroundings say they suffered disorientation and the pain of losing their closest friends. Many blamed themselves, including the pipe fitter, Mr. Dale, whose family waited until two days after his 90th birthday on Feb. 11 to move him out. ''Dad felt he had done something wrong,'' says his daughter, Jackie Vukovits. ''The day we took him, he kept saying, 'Why do I have to leave here. They were good to me.' ''

Mr. Dale had just made the Wildwood newsletter, his name ringed in stars. the write-up ended: ''Greg, we are very happy you chose to live at Wildwood. Congratulations on being chosen Resident of the Month.

Vencor officials stand by their decision to evict Wildwood's Medicaid residents but say they have come to realize that mistakes were made. ''We really are doing this for what I consider to be the right reasons. Our goal is to turn this into the best medical nursing facility in that market,'' says Mr. Barr. ''In hindsight, we probably could have done a better job of notifying residents and families.'' Mr. Barr says he decided last week to send company vice presidents to oversee all forthcoming evictions.

After meeting yesterday with Mr. Barr, local advocates for the elderly and some former residents said they would seek to ''increase the pressure'' on Vencor, possibly through picketing and by seeking legislation to prohibit evictions. ''If Vencor is allowed to get away with this, it opens the floodgates not only for Vencor but other nursing-home chains in this country,'' says Michelle Niemier, deputy director of United Senior Action, a statewide senior advocacy organization.

The changes were particularly wrenching, residents and staff say, because Wildwood—founded by a local concern in 1988—had a reputation as one of the city's best homes and had remained nearly full in a state with below-average nursing-home occupancies. The residents were a close-knit group, having decided this was where they would live the rest of their lives. One year, residents sold crafts to pay for a gazebo.

Last summer, two years after it purchased the facility, Vencor hired Edward Hastings to run it. A 16-year veteran of nursing-home administration, Mr. Hastings had been a regional administrator for a nursing-home chain and then worked as a consultant for the state of Indiana, monitoring nursing homes that failed their health-care inspections.

In November, only weeks before the eviction announcement, Wildwood residents were cheered by a makeover of the facility: fresh paint, new floor tiles, sleek name plates for residents' doors. Then gossip spread that this fresh look was not meant to benefit everyone. It was left to Mr. Hastings to break the news.

While a handful of nursing homes in some states have always made do without Medicaid residents, the vast majority of nursing homes nationwide have come to rely on the government program for a good chunk of their revenue. Medicaid recipients play a big role in keeping a facility's census up. Even if the reimbursement is much lower than the private rate, it is usually perceived by owners as superior to empty beds.

''It's highly unusual to pull out of Medicaid,'' says Lori Owen Smetanka, an attorney for the National Citizens' Coalition for Nursing Home Reform, an advocacy group in Washington, D.C. Even in Kentucky, Vencor's home state, state Cabinet for Health Services spokeswomen Barbara Hadley Smith says nursing homes ''are fighting to get into Medicaid.'' Vencor has one Kentucky home, Hermitage Nursing and Rehabilitation Center in Owensboro, that is now in the process of moving its Medicaid residents out.

A review of U.S. Health Care Financing Administration records shows that 127 homes officially pulled out of the Medicaid program in the past two years—nearly all because they closed their doors entirely, merged with other homes or were threatened with termination because of low quality. Only one home indicated to federal officials that it pulled out of Medicaid because of ''dissatisfaction with reimbursement.''

But it is likely to happen more. In addition to Vencor, other nursing home operators, both large and small, are weighing whether to opt out of their state's Medicaid programs. Dick Richardson, chief executive officer of Renaissance Healthcare Corp., says his nursing home in Holyoke, Mass., dropped out of Medicaid last year due to low reimbursement.

Mr. Richardson says the relatively small home would lose money if it filled all 61 beds with Medicaid residents. So he evicted his Medicaid residents, dropping the census to five non-Medicaid people. He now has 20 private-pay and Medicare patients and says the home will break even at about 32 private patients. ''I know there are going to be other homes up here that do the same,'' he says. ''It's unfortunate for Medicaid patients, but for business it might be good.''

Vencor, too, contends that it loses money on Medicaid, which, at Wildwood, pays it $82 a day for providing the same intermediate level of care for which private patients are charged $125. But Vencor's average daily take from Medicaid has increased 16% at Wildwood since 1995. And two months ago, the state, sued by Indiana's nursing-home trade group, said it would build a new rate system allowing for more generous payments for sicker patients.

Even with the current Medicaid plan, Wildwood as a whole had an operating profit of $797,410 on revenue of $7.5 million in its most recent fiscal year, its filing to the state shows. That 10.7% margin is higher than the average for nursing homes in Indiana and nationwide. According to H-CIA Inc., a Baltimore health-information concern, the national average margin for nursing homes was less than 5% in 1995, the most recent year for which figures are available.

From its base as an operator of specialty long-term hospitals, Vencor rapidly expanded from 1985 to 1995. Its stock, after an initial public offering in 1989, shot up severalfold in a little more than two years. But regulatory changes and competitive pressures have hurt. Three years ago, Vencor's stock stood at $37; yesterday, it closed at $29.50 a share, up 18.75 cents in composite trading on the New York Stock Exchange.

Now it is hoping that higher fees from private patients will help it make a comeback. Wildwood now charges $168 a day for top-level care. And Vencor has ambitions of higher prices still at Wildwood and its other homes.

New federal rules will help: Changes expected May 1 will allow Medicare rates to go as high as $600 a day for the most intensive level of care, industry analysts say.

What complicates the process of phasing out Medicaid patients is the fact that many start out as paying residents and only later switch to Medicaid. Thus, a nursing-home company that bars Medicaid patients at the door could end up dealing with Medicaid eventually.

At Wildwood, Mr. Dale's story offers an example. After breaking his neck in a fall in 1992, he paid a caretaker $7 an hour to watch over him at home. When he entered Wildwood in 1994, Mr. Dale paid his bills with savings, Social Security and a pension. His daughter, Mrs. Vukovits, says the facility led them to believe that it would gladly allow him to shift over to Medicaid when necessary, and he did so, eventually to supplement his dwindling funds. Even so, she says, he continued to cover a large portion of his $80-a-day bill at Wildwood by turning over his Social Security and pension income.

Vencor says it never really considered letting people like Mr. Dale stay on. ''My philosophy is that if you have to do something you're better off to face up to it and do it,'' Vencor's Mr. Barr says. ''This is like having to go through an amputation. If you have to cut your hand off, do you cut it off a finger at a time or just cut your hand off and go on?''

Families of Wildwood residents say they worried most about the difficulties involved in relocation. Three months earlier, Mr. Dale had been moved from Room 400 to Room 303 to accommodate the renovations. ''It doesn't seem like a big move, but it really is,'' says Mrs. Vukovits. ''He went downhill. He fell going to the bathroom. It was a longer distance to the dining room, so he had to start using a wheelchair. He stopped going to activities.''

''He was just getting over that,'' she says, when the evictions were announced.

Mr. Hastings says the evictions were scheduled to occur hallway by hallway over five months. ''We didn't want to shock everybody,'' he says. But when news about waiting lists got around, he says. ''People panicked a little bit and left.''

Joining in the exodus were some residents who still paid the higher private rates but who realized that they, too, might eventually need Medicaid, and Wildwood's occupancy plunged from 150 to 78. Mr. Hastings says it has rebounded into the 90s.

Most who left found homes through their own searching. Many sought help from Kay Mercer, a 62-year-old stroke victim who had been resident council president. ''They followed me here,'' she says at her new home, the Oaks Rehabilitation and Health Care Center, where several Wildwood residents including Mrs. Nelson and Mr. Biech moved. Mr. Dale moved to another home, where he has adjusted to the new view from his window. ''I don't think I bother anybody. I hope,'' he say one warm spring day, eating lunch.

Others didn't fare so well. Two days after Wildwood resident Jane Van Duyn moved into another nursing home, the 57-year-old woman with severe multiple sclerosis slipped into a coma. She died within the week. Her husband, Ed Van Duyn, says he can't blame her death on the move, since she was already quite weak, but he notes that the disease leaves its victims vulnerable to stress and even slight temperature changes. ''Every trauma they get sets them back.'' . . .

Asked about the death, Mr. Barr said, ''We're dealing with old people who are fragile, who already have been moved out of their own home, and are in a different home, and there certainly is absolutely no easy way to deal with displacing them again.''

Residents and families say that a final insult was that they had to pay expenses connected with the eviction, including the $45 telephone reconnection charges. Mr. Van Duyn says Vencor refused even to pay the $200 ambulance fee for moving his wife. Mr. Barr says Vencor would reconsider this decision.

Residents and their families say they were too overwhelmed at first to fight back. But Lou Ann Newman, Mrs. Nelson's daughter, wrote to Vencor and state agencies on Feb. 6 asking for an investigation. ''This matter was handled in a most cold, calloused and unprofessional way,'' she wrote. She says she didn't get a response.

Mr. Hastings, the administrator, who was familiar with Mrs. Newman's letter, says, ''If I was in her position, I'm sure some people thought it was cold and callous because we were throwing them out.''

Vencor's Mr. Barr says a regional official overseeing Wildwood was reprimanded for not responding to the letter. Last week, that official resigned. Mr. Barr adds: ''I don't want to be defensive of a comedy of errors here because it appears that there were some bad judgments made here. And I'm in a situation right now where I'd like to go up and choke the administrator [Mr. Hastings] and pound his head on the floor a couple of times and tell him not to do it again. I don't want him to use the kind of bad manners that it looks like we used here by not thinking through the whole process with these patients.''

On a recent tour of Wildwood, the upbeat Mr. Hastings pointed to the renovations and said, ''What you're seeing is only going to get better.'' Among his ideas, which the company says are preliminary: a day-care center for the elderly, a hospice for patients expected to die within six months and the novel idea of overnight stays for patients who usually live elsewhere. ''With the midnight care, you could drop off your father at dinner and pick him up in the morning,'' Mr. Hastings said. ''We're looking for a niche we could fill.''

In Room 006, Ms. Arthur was waiting to move. Weeks ago, she packed her belongings into six boxes and stacked them in the bathroom. But she has no immediate family, and she says her guardian had been out of town. The adjoining rooms—formerly occupied by her friends, Mrs. Mercer, Mrs. Nelson, Mr. Dale, Mr. Biech—were vacant.

Holding her big white purse, Ms. Arthur sat in a corner beneath the bare walls, and said she didn't know why she had to leave. ''Everyone I've talked to, they've had tears in their eyes. Many here had to go and I miss them so. They were wonderful,'' she says. ''If there was anything I could do to turn it different, I would. I like it here very, very much. It's good. Oh me, why? All these fine buildings and fine furniture. Whatever the cause, I can't figure.''

Mr. GRAHAM. Mr. President, I submit the bill and ask for its immediate referral.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

ADDITIONAL COSPONSORS

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 358

At the request of Mr. DEWINE, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 358, a bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.