

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2738

To provide for the reimbursement under the medicaid program under title XIX of the Social Security Act of nursing facilities that are located on an Indian reservation in the State of South Dakota and owned or operated by an Indian tribe or tribal organization, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 17, 2002

Mr. JOHNSON (for himself and Mr. DASCHLE) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To provide for the reimbursement under the medicaid program under title XIX of the Social Security Act of nursing facilities that are located on an Indian reservation in the State of South Dakota and owned or operated by an Indian tribe or tribal organization, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “South Dakota Tribal  
5       Nursing Facilities Act of 2002”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-  
3 ings:

4 (1) The highest rate of poverty in South Da-  
5 kota occurs on Indian reservations.

6 (2) According to the 2000 United States Cen-  
7 sus, nine counties that encompass Indian reserva-  
8 tions are among the 100 poorest counties in the  
9 United States.

10 (3) There are no nursing facilities on the In-  
11 dian reservations in South Dakota.

12 (4) The lack of nursing facilities on the larger  
13 Indian reservations is a barrier that prevents Indian  
14 elders from accessing long-term health care.

15 (5) The elderly poor constitute a growing por-  
16 tion of the membership of the Indian tribes and trib-  
17 al organizations of South Dakota.

18 (6) The great distances between Indian reserva-  
19 tions and off-reservation nursing facilities—

20 (A) deter the Indian elderly from using  
21 such facilities; and

22 (B) if the Indian elderly do use such facili-  
23 ties, prevent visitation from family and relatives  
24 that is essential to the well-being of the Indian  
25 elderly.

1           (7) There is a critical need for nursing facilities  
2           on the Indian reservations located in South Dakota  
3           to meet the elderly and assisted-living needs of tribal  
4           members.

5           (8) A South Dakota law imposes a moratorium  
6           on the licensing of new nursing facilities in the  
7           State.

8           (9) The medicaid program requires State licen-  
9           sure of nursing facilities to qualify such facility for  
10          reimbursement for care provided to individuals eligi-  
11          ble for medical assistance under such program.

12          (10) The impact of the South Dakota morato-  
13          rium on nursing facility licensure and the require-  
14          ments of the medicaid program prevent Indian tribes  
15          and tribal organizations in South Dakota from de-  
16          veloping and operating these badly needed facilities  
17          on Indian reservations.

18          (11) It is the responsibility and goal of the  
19          United States, in the fulfillment of its responsibility  
20          to provide and facilitate adequate health care for el-  
21          derly and needy members of Indian tribes and tribal  
22          organizations, to protect the right of Indian tribes  
23          and tribal organizations to provide nursing facilities  
24          for those members.

1 (b) PURPOSES.—The purposes of this Act are, not-  
2 withstanding any impediment imposed by State law—

3 (1) to facilitate the development and operation  
4 of nursing facilities that are owned or operated by  
5 an Indian tribe or tribal organization on Indian res-  
6 ervations that are located in the State of South Da-  
7 kota; and

8 (2) to protect the right of members of Indian  
9 tribes and tribal organizations to access health care  
10 provided by nursing facilities in the exercise of those  
11 members' entitlement to medical assistance under  
12 the medicaid program.

13 **SEC. 3. ELIGIBILITY OF CERTAIN NURSING FACILITIES FOR**  
14 **REIMBURSEMENT UNDER THE MEDICAID**  
15 **PROGRAM.**

16 (a) IN GENERAL.—Notwithstanding any provision of  
17 title XIX of the Social Security Act (42 U.S.C. 1396 et  
18 seq.), an applicable nursing facility shall be eligible for re-  
19 imbursement for medical assistance provided under such  
20 title and shall be deemed to be a facility of the Indian  
21 Health Service for purposes of the third sentence of sec-  
22 tion 1905(b) of such Act (42 U.S.C. 1396d(b)) if and for  
23 so long as—

24 (1) the facility meets all of the conditions and  
25 requirements which are applicable generally to such

1 facilities under such title (other than any State re-  
2 quirement relating to the operation of such a facility  
3 under such title); and

4 (2) has in effect a plan approved under sub-  
5 section (b)(2).

6 (b) SUBMISSION AND APPROVAL OF PLANS.—

7 (1) SUBMISSION.—An Indian tribe or tribal or-  
8 ganization that desires an applicable nursing facility  
9 to be reimbursed through the operation of this sec-  
10 tion shall submit a plan to the Secretary at such  
11 time, in such manner, and containing such informa-  
12 tion as the Secretary may specify, including evidence  
13 that—

14 (A) such facility is licensed by the Indian  
15 tribe or tribal organization; and

16 (B) the State, the Indian tribe, or the trib-  
17 al organization has agreed to perform the func-  
18 tions of the State under section 1919 of the So-  
19 cial Security Act (42 U.S.C. 1396r).

20 (2) APPROVAL.—Not later than the date that is  
21 90 days after the date on which a plan is submitted  
22 under paragraph (1), the Secretary shall approve or  
23 disapprove such plan or shall notify the facility of  
24 the additional information needed for approval or  
25 disapproval.

1 (c) DEFINITIONS.—In this section:

2 (1) APPLICABLE NURSING FACILITY.—The term  
3 “applicable nursing facility” means an existing or  
4 planned nursing facility (as defined in section  
5 1919(a) of the Social Security Act (42 U.S.C.  
6 1396r(a))) that—

7 (A) is owned or operated by an Indian  
8 tribe or tribal organization;

9 (B) is located (or will be located) in the  
10 State of South Dakota; and

11 (C) is not able to obtain a State license  
12 only as a result of a State imposed moratorium  
13 on the issuance of such licenses.

14 (2) INDIAN TRIBE AND TRIBAL ORGANIZA-  
15 TION.—The terms “Indian tribe” and “tribal organi-  
16 zation” have the meanings given such terms under  
17 section 4 of the Indian Health Care Improvement  
18 Act.

19 (3) SECRETARY.—The term “Secretary” means  
20 the Secretary of Health and Human Services.

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