Whereas, the Fast Flux Test Facility (FFTF) is the nation's most advanced test reactor; and

Whereas, numerous independent studies have suggested that the facility could one day be used to produce cancer-curing medical isotopes; and

Whereas, the facility has also been considered by the Department of Energy (DOE) for short-term production of tritium for our nation's defense needs; and

Whereas, utilizing the FFTF for this purpose could help postpone construction of more expensive options for tritium production, thus freeing federal dollars for environmental purposes during DOE's ''Ten Year Cleanup Plan''; and

Whereas, this would protect Hanford clean up from budget pressures during this time frame and ensure that the federal government fulfills its responsibilities under the Tri-Party Agreement; and

Whereas, private sector involvement in the FFTF project could further reduce federal expenditures needed for tritium production; and

Whereas, DOE and President William J. Clinton have announced their decision to keep the FFTF on standby for potential use for medical and tritium purposes; and

Whereas, this decision could lead to the development of a major cancer treatment center in Washington State; and

Whereas, sixty-nine nationally recognized cancer researchers have expressed their strong support for preserving the FFTF, and have argued that they would find it ''unconscionable to shut down the FFTF without a full review of its potential for future operation, including isotope production'': Now, therefore,

Your Memorialists respectfully pray that the United States Congress and executive agencies approve and endorser the plan to fully and fairly evaluate the FFTF for use in meeting critical national needs, and urge that the long-term best interests of clean-up activities at Hanford and cancer research be given top priority by DOE in arriving at its decision, be it

Resolved, That copies of this Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States, the Secretary of Energy, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–37. A petition from the citizens of the State of California relative to violence, abuse, and the women's citizenship; to the Committee on Environment and Public Works.

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. BOND (for himself and Mr. ASHCROFT):

S. 368. A bill to prohibit the use of Federal funds for human cloning research; to the Committee on Labor and Human Resources.

By Mr. JEFFORDS (for himself, Mr. KENNEDY, Mr. CHAFEE, Ms. MIKULSKI, Ms. COLLINS, Mrs. MURRAY, Mr. DODD, Mr. HOLLINGS, Mr. GLENN, and Mr. REED):

S. 369. A bill to amend section 1128B of the Social Security Act to repeal the criminal penalty for fraudulent disposition of assets in order to obtain medicaid benefits added by section 217 of the Health Insurance Portability and Accountability Act of 1996; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. CONRAD, and Mr. HOLLINGS):

S. 370. A bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

S. 371. A bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for physician assistants, to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY:

S. 372. A bill to amend title XVIII of the Social Security Act to provide for a 5-year reinstatement of the medicare-dependent, small, rural hospital payment provisions, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY:

S. 373. A bill to amend title XXVII of the Public Health Service Act and part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to establish standards for protection of consumers in managed care plans and other health plans; to the Committee on Labor and Human Resources.

By Mr. ROBB:

S. 374. A bill to amend title 38, United States Code, to extend eligibility for hospital care and medical services under chapter 17 of that title to veterans who have been awarded the Purple Heart, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. MCCAIN (for himself, Mr. DODD, Mr. ROBERTS, Mr. FORD, Mr. WARNER, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. REED, Mr. DEWINE, Mr. WELLSTONE, and Mr. HAGEL):

S. 375. A bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test; to the Committee on Finance.

By Mr. LEAHY (for himself, Mr. BURNS, Mrs. MURRAY, and Mr. WYDEN):

S. 376. A bill to affirm the rights of Americans to use and sell encryption products, to establish privacy standards for voluntary key recovery encryption systems, and for other purposes; to the Committee on the Judiciary.

By Mr. BURNS (for himself, Mr. LEAHY, Mr. LOTT, Mr. NICKLES, Mr. DORGAN, Mrs. HUTCHISON, Mr. CRAIG, Mr. WYDEN, Mr. ASHCROFT, Mr. DOMENICI, Mr. THOMAS, Mr. CAMPBELL, Mrs. BOXER, Mr. BROWNBACK, Mrs. MURRAY, Mr. KEMPTHORNE, Mr. INHOFE, Mr. FAIRCLOTH, Mr. GRAMS, and Mr. ALLARD):

S. 377. A bill to promote electronic commerce by facilitating the use of strong encryption, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. THOMPSON:

S. 378. A bill to provide additional funding for the Committee on Governmental Affairs of the Senate; read the first time.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 379. A bill entitled the ''Native Alaskan Subsistance Whaling Provision''; to the Committee on Finance.

By Mr. DURBIN (for himself, Mr. KENNEDY, and Mr. KOHL):

S. 380. A bill to prohibit foreign nationals admitted to the United States under a nonimmigrant visa from possessing a firearm; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Mr. MACK, Mr. FRIST, Mr. MOYNIHAN, Mr. KENNEDY, Mr. ABRAHAM, Mr. KERREY, Mr. CRAIG, Mr. WELLSTONE, Mr. COCHRAN, Ms. MIKULSKI, Mr. CAMPBELL, Mr. LEAHY, Mr. JEFFORDS, Mrs. HUTCHISON, Mr. HOLLINGS, Mr. FAIRCLOTH, and Mr. BINGAMAN):

S. 381. A bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trail program; to the Committee on Finance.

By Mr. HOLLINGS (for himself, Mr. SPECTER, Mr. DASCHLE, Mr. BRYAN, Mr. BIDEN, Mrs. FEINSTEIN, Mr. REED, Mr. CONRAD, Mr. DORGAN, and Mr. REID):

S.J. Res. 18. A joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections; read twice and placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOND (for himself and Mr. ASHCROFT):

S. 368. A bill to prohibit the use of Federal funds for human cloning research; to the Committee on Labor and Human Resources.

RESEARCH LEGISLATION

Mr. BOND. Mr. President, today I rise to introduce a measure on behalf of myself, Senator ASHCROFT, and Senator BYRD which would prohibit permanently the use of Federal funds for human cloning research. I am sure most Americans by now have heard about the successful cloning of Dolly, the sheep, by Scottish scientists. Many people are now asking can similar techniques be used to clone a human being? Something that was once thought to be only science fiction is now close to being a reality.

With the legislation I introduce today, I intend to make sure that human cloning stays within the realm of science fiction and does not become a reality. The bill that I am introducing with my colleagues today will place a permanent ban on Federal funding for human cloning or human cloning research. We must send a clear signal: Human cloning is something we cannot and should not tolerate. This type of research on humans is morally reprehensible. We should not be creating human beings for spare parts or as replacements. Moreover, a National Institutes of Health human embryo panel noted, ''allowing society to create genetically identical persons would devalue human life by undermining the individuality of human beings.''

In a September 1994 report of the Human Embryo Research Panel, the heading is, ''Research Considered Unacceptable for Federal Funding.'' It said:

Four ethical considerations entered into the deliberations of the panel as it determined what types of research were unacceptable for Federal funding: The potential adverse consequences of the research for children, women and men; the respect due the reimplantation embryo; concern for public sensitivities in highly controversial research proposals, and concern for the meaning of humanness, parenthood, and the successions of generations.

The President has said we should study the issue. President Clinton has asked a Federal bioethicist board to consider the implications of this research and report back to him within 90 days. I do not think we need to study this. I think we can save the board some effort because the President's own administration has concluded that human cloning was ''research considered unacceptable for Federal funding.'' There are some aspects of life which simply ought to be off limits to science.

I think it will be helpful to go through some of the ethical considerations the board looked at. First, they asked: Is it ethical to create genetically identical individuals who can be born at different times? Is it ethical to store a frozen human embryo that is genetically identical to a born child in order to serve as a later source for organ and tissue transplantation; thus treating humans as spare parts? Is it ethical to create a genetically identical child as a replacement in case the first child dies?

Again, these are just a sample of the ethical questions the issue poses.

The board concluded the analysis by stating:

There are broad moral concerns about the deliberate duplication of an individual genome. The notion of cloning an existing human being or of making ''carbon copies'' of an existing embryo appears repugnant to members of the public. Many Members of the panel share this view and see no justification for Federal funding of such research.

I also should point out an important distinction with this bill. It is narrowly drafted so that it only affects human cloning research. It does not address the issue of plant and animal cloning research, and it will also allow—and I personally strongly support—NIH to continue its human genome mapping project.

I have long been a supporter of biotechnology, genome mapping and manipulation, and even plant and animal cloning. But we can draw a clear line here. For plants and animals, it makes sense to clone your specimens to improve human health and human well-being. But when we are talking about creating an entire human being, identical to another, we are talking about playing God, and that is where we must draw the line.

I note, the Vatican and leading ethicists throughout the country have called for a ban on human cloning and human cloning research.

I ask unanimous consent that the names of those ethicists and scientists be printed in the RECORD.

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

Dr. Ted Cicero, Vice Chancellor for Research at Washington University in St. Louis, Missouri.

Dr. Kevin Fitzgerald, a Jesuit priest and a geneticist at Loyola University in Illinois.

Arthur Caplan, head of the Center for Bioethics at the University of Pennsylvania.

Dr. Harmon Smith, Professor of Moral Theology at Duke University.

By Mr. JEFFORDS (for himself, Mr. KENNEDY, Mr. CHAFEE, Ms. MIKULSKI, Ms. COLLINS, Mrs. MURRAY, Mr. DODD, Mr. HOLLINGS, Mr. GLENN and Mr. REED):

S. 369. A bill to amend section 1128B of the Social Security Act to repeal the criminal penalty for fraudulent disposition of assets in order to obtain medicaid benefits added by section 217 of the Health Insurance Portability and Accountability Act of 1996; to the Committee on Finance.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AMENDMENTS

Mr. JEFFORDS. Mr. President, I am on the floor today to introduce legislation that will repeal section 217 of the Health Insurance Portability and Accountability Act [HIPAA]. As enacted last year, this provision for the first time creates Federal criminal penalties for elders who transfer their assets and who subsequently apply for Medicaid but are deemed ineligible for nursing home benefits.

I believe the goal to stop fraud and abuse in the Medicaid Program is laudable and must be pursued. However, there is a growing consensus that section 217 is a vague, unenforceable, criminal sanction misdirected at the elderly. It is unduly threatening to the Nation's senior citizens. We are sending the wrong message by implying there is something wrong or illegal with obtaining sound financial advice and estate planning to legitimately protect the assets that senior citizens have spent a lifetime accruing.

During a recent hearing before the Committee on Labor and Human Resources, on the implementation of HIPAA, several concerns were raised about this issue. Ms. Gail Shearer, the director of health policy analysis of the Consumers Union, testified that section 217 was ''leading to considerable alarm among seniors'' and that she was ''deeply troubled by the prospect of HIPAA leading to the transfer of elderly nursing home residents from their nursing home to prison.''

At that same hearing, Mr. Bruce Vladek, the administrator of the Health Care Financing Administration, pointed out that there is no evidence that large numbers of the elderly are impoverishing themselves to become Medicaid eligible. He expressed his belief that a few people doing something egregious can create the perception of a widespread problem. It is especially unclear how pervasive this practice is, particularly in light of actions already taken by Congress to curb these asset transfers.

Repeal of section 217 would not affect several other restrictions now on the books designed to close loopholes and stop the inappropriate transfer of assets. People found to have transferred nonexempt assets within a look-back period are determined ineligible and denied Medicaid nursing home assistance for the period over which their assets would have paid. The look-back period for asset transfers is 36 months, with a 60-month period for trusts. States are also required to establish estate recovery programs to compensate for nursing home services paid for by the Medicaid Program.

There is no systematic study that has determined or recommended that the addition of criminal sanctions to the penalties which already exist are necessary to address inappropriate asset transfers by the elderly. In the absence of a demonstrated need for criminal penalties, we believe that section 217 holds the potential to do more harm than good.

No one really wants to send Granny to jail. In fact, it has been reported that the intended targets of section 217 are those who have created a cottage industry, and made substantial sums of money, from advising the elderly on how to transfer their assets to become Medicaid eligible. Ironically, section 217 has had the opposite effect. Recent newspaper ads placed by these advisers from Portland, ME, to Phoenix, AZ, now use this very law to drum up business. The bold-print headlines of these ads read:

Sneaky New Law Buried in the Health Insurance Bill Can Put Unsuspecting Seniors and Retirees Behind Bars!, and You Only Have Until December 31st, 1996, To Avoid Making the Mistake That Could Toss You in Jail . . . Congress' Sneaky New Law Is the Most Vicious Attack on Retirees Yet!

Mr. President, fraud and abuse in the Medicaid Program must not be tolerated, and taxpayers should not have to pay nursing home bills for persons who have the wherewithal to pay for their own care. But neither should confusing, unenforceable laws be in place that impose Federal criminal penalties on elderly individuals where there is no clear understanding of what does and what does not constitute a criminal activity.

Organizations urging repeal of the provision include: the American Association of Retired Persons, the Alzheimer's Association, the Leadership Council on Aging—a group of more than 40 national organizations in the field of aging—and the American Bar Association.

I believe that we in the Congress owe it to our senior citizens to stop their needless anxiety over this misdirected, confusing law. We need to repeal section 217. I urge my colleagues to join me in repealing this unnecessary and unworkable law.

Mr. President, 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. 369

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

SECTION 1. REPEAL OF CRIMINAL PENALTY FOR FRAUDULENT DISPOSITION OF ASSETS IN ORDER TO OBTAIN MEDICAID BENEFITS.

(a) REPEAL.—Section 1128B(a) of the Social Security Act (42 U.S.C. 1320a–7b(a)), as amended by section 217 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2008), is amended—

(1) by adding ''or'' at the end of paragraph (4);

(2) by striking ''or'' at the end of paragraph (5) and inserting a comma; and

(3) by striking paragraph (6).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 1936).

Mr. KENNEDY. Mr. President, I commend Senator JEFFORDS for his leadership on this legislation and I am honored to join him on it. Our bill repeals the criminal penalties enacted last year for disposing of assets in order to obtain Medicaid benefits.

We all agree that Medicaid must be free of fraud and abuse. No one should be able to game the system by giving away their assets just to qualify for Medicaid, a program intended to help the truly needy.

The criminal penalties enacted last year was a mistake and should never have been enacted. They are poorly drafted, and will have unintended consequences that penalize senior citizens unfairly. Indeed, this provision could frighten the most needy elderly away from seeking the care they need, while doing little to deter and punish those who defraud the system.

No serious study has defined abusive transfers of assets as a significant problem, or recommended criminalizing an action that is already prohibited and penalized in other ways. If middle and upper income families are transferring assets to qualify for Medicaid, it should be the topic of congressional hearings and investigation, so that we can evaluate the scope of the problem and develop an appropriate response. In the meantime, seniors should not be terrorized with threats of jail merely for seeking nursing home care.

The current debate over this issue reveals a much larger problem—the need for better coverage of long-term care, so that those requiring long nursing home stays don't have to sacrifice their life savings to pay for their care.

There is broad bipartisan support in Congress for repeal of this provision. The White House supports repeal. Advocacy groups for the elderly support repeal. I urge Congress to act quickly on this legislation, and provide peace of mind to senior citizens across the country who feel unfairly threatened by current law.

By Mr. GRASSLEY (for himself, Mr. CONRAD, and Mr. HOLLINGS):

S. 370. A bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

THE PRIMARY CARE HEALTH PRACTITIONER INCENTIVE ACT OF 1997

● Mr. GRASSLEY. Mr. President, today, on behalf of myself, Senator CONRAD, Senator DORGAN, and Senator HOLLINGS, I am introducing two bills. If enacted, these bills would increase access to primary care for Medicare beneficiaries in rural and inner-city communities. The Primary Care Health Practitioner Incentive Act of 1997 would reform Medicare reimbursement to nurse practitioners [NP's] and clinical nurse specialists [CNS's]. The Physician Assistant Incentive Act of 1997 would reform Medicare reimbursement for physician assistants. We introduced these bills in the last three Congresses. We are reintroducing them today to improve access to primary care services for Medicare beneficiaries, particularly in rural and underserved areas. This legislation would reform Medicare policies which, under certain circumstances, restrict reimbursement for services delivered by these providers. Similar measures are included in the President's Medicare proposal and were part of the Balanced Budget Act of 1995.

The Medicare Program currently covers the services of these practitioners. However, payment levels vary depending on treatment settings and geographic area. In most cases, reimbursement may not be made directly to the nonphysician provider. Rather, it must be made to the employer of the provider, often a physician. The legislation authorizing these different reimbursement arrangements was passed in an incremental fashion over the years.

The Medicare law, which authorizes reimbursement of these providers, is also inconsistent with State law in many cases. For instance, in Iowa, State law requires nonphysicians to practice with either a supervising physician or a collaborating physician. However, under Iowa law, the supervising physician need not be physically present in the same facility as the nonphysician practitioner and, in many instances, can be located in a different site from that of the nonphysician practitioner he or she is supervising.

Unfortunately, Medicare policy will not recognize such relationships. Instead, the law requires that the physician be present in the same building as the nonphysician practitioner in order for the services of these nonphysician providers to be reimbursed. This is known as the incident to provision, referring to services that are provided incident to a physician's services.

This has created a problem in Iowa, Mr. President. In many parts of my State, clinics have been established using nonphysician practitioners, particularly physician assistants, to provide primary health care services in communities that are unable to recruit a physician. The presence of these practitioners insures that primary health care services will be available to the community. Iowa's Medicare carrier has strictly interpreted the incident to requirement of Medicare law as requiring the physical presence of a supervising physician in places where physician assistants practice. This has caused many of the clinics using physician assistants to close, and thus has deprived the community of primary health care services.

Mr. President, in 1995 the Iowa Hospital Association suggested a number of ways to improve access and cost effectiveness in the Medicare Program. One of their suggestions was that this incident to restriction be relaxed. They said:

> In rural Iowa, most physicians are organized in solo or small group practices. Physician assistants are used to augment these practices. With emergency room coverage requirements, absences due to vacation, continuing education or illness and office hours in satellite clinics, there are instances on a monthly basis where the physician assistant is providing care to patients without a physician in the clinic. Medicare patients in the physician clinic where the physician assistant is located have to either wait for the physician to return from the emergency room or care is provided without this provision.

If enacted, this legislation would establish a more uniform payment policy for these providers. It would authorize reimbursement of their services as long as they were practicing within State law and their professional scope of practice. It calls for reimbursement of these provider groups at 85 percent of the physician fee schedule for services they provide in all treatment settings and in all geographic areas. Where it is permitted under State law, reimbursement would be authorized even if these nonphysician providers are not under the direct, physical supervision of a physician.

Currently, the services of these nonphysician practitioners are paid at 100 percent of the physician's rate when provided ''incident to'' a physician's services. If enacted, this legislation would discontinue this ''incident to'' policy. Medicare reimbursement would now be provided directly to the nurse practitioners and clinical nurse specialists and it would be provided to the employer of the physician assistant. These bills also call for a 10-percent bonus payment when these practitioners work in health professional shortage areas [HPSA's]. Senator CONRAD and I believe these provisions will encourage nonphysician practitioners to relocate in areas in need of health care services.

Mr. President, legislation closely paralleling these bills we are introducing today is being introduced this week in the House by Representatives NANCY

JOHNSON and ED TOWNS. In addition, these provisions are included in the President's Medicare proposal. Historically, this legislation has received bipartisan support in both Houses. Comparable legislation was included in the Balanced Budget Act of 1995, as well as several other health care measures in previous Congresses. Therefore, I urge my colleagues to support this legislation.●

Mr. HOLLINGS. Mr. President, I join my colleagues Senators CONRAD and GRASSLEY in introducing the Primary Care Health Practitioner Incentive Act of 1997. Today I specifically want to address the provision that would allow for direct Medicare reimbursement for services provided by nurse practitioners and clinical nurse specialists regardless of geographic location. For many years we have been trying to pass legislation that would allow these health care providers in urban settings the same direct Medicare reimbursement as those in a rural setting, and I am hopeful that this is the year it will actually be enacted.

Currently, nurse practitioners and clinical nurse specialists may treat Medicare patients without a physician present if they practice in a rural setting or in a long-term care facility. I believe that it is time for this antiquated restraint to practice to be removed so that health care choices may be improved and increased for all Medicare patients. If we are to have any hope of providing adequate care with huge reductions in both Medicare and Medicaid, it is essential that service be provided by the least costly provider of quality care. We simply cannot afford to ignore the quality care of which nurse practitioners and clinical nurse specialists have proven they are capable.

I would also like to point out that many times there is a discrepancy in the designation of rural and urban areas. In my home State of South Carolina, as in other States, a number of the areas listed as urban are, in reality, rural areas. Medicare patients in these areas are unable to receive home visits or utilize local community satellite offices staffed with nurse practitioners. Rather, they are required to travel miles to see a physician. As a result, many patients forgo preventive health care and wait to seek care until they become so ill that they must be hospitalized or they are forced to seek care in more expensive emergency rooms. Not only is access to physicians more limited, but their fees for services are usually higher as well. Recent figures published by the American Academy of Nurse Practitioners estimate a cost savings of greater than $54 million per year if nurse practitioners were utilized appropriately in the provision of Medicare services in ambulatory care settings.

The primary objective of nurse practitioners and clinical nurse specialists is to provide routine care, manage chronic conditions, promote preventive health care, and make medical care more accessible and less expensive. Nurse practitioners and clinical nurse specialists have proven that they are able to provide high-quality, cost-effective primary care in all settings in which they provide services. It is foolish to restrict their ability to provide primary care services to the elderly based on setting or geographic location, and I urge your consideration and the passage of this bill.

By Mr. GRASSLEY (for himself, Mr. CONRAD, and Mr. HOLLINGS):

S. 371. A bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for physician assistants, to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

THE PHYSICIAN ASSISTANT INCENTIVE ACT OF 1997

● Mr. CONRAD. Mr. President, Senator GRASSLEY and I are again introducing legislation to improve Medicare reimbursement policy for nurse practitioners, clinical nurse specialists, and physician assistants. The Primary Care Health Practitioner Incentive Act and the Physician Assistant Incentive Act of 1997 are very similar to S. 864 and S. 863, which we introduced in the 104th Congress. This legislation passed both Houses as part of reconciliation in 1995. I am very hopeful that this bipartisan legislation will garner widespread support and be signed into law as part of a Medicare reform bill this year.

We believe our legislation will help all Americans by making the best possible use of primary care providers who play a vital role in our health care delivery infrastructure. Throughout the country, nurse practitioners, clinical nurse specialists and physician assistants have the skills to provide needed primary care services. This is particularly important in rural and underserved areas that have shortages of physicians.

In recent years, our Nation's health care system has put a renewed emphasis on the use of primary care and wellness. Nurse practitioners, physician assistants, and clinical nurse specialists are uniquely positioned to provide this care. Nurse practitioners are registered nurses with advanced education and clinical training, often in a specialty area such as geriatrics or women's health. Nearly half of the Nation's 25,000 nurse practitioners have master's degrees. Clinical nurse specialists are required to have master's degrees and usually work in teritary care settings such as cardiac care. Many, however, also work in primary care. Physician assistants receive an average of 2 years of physician-supervised clinical training and classroom instruction and work in all setting providing diagnostic, therapeutic, and preventive care services. Each of these providers work with physicians in varying degrees usually in consultation.

Within their areas of competence, these health care providers deliver care of exceptional quality. These practitioners play a vital role in communities that cannot support a physician but can afford a nurse practitioner or physician assistant; historically, these providers have been willing to move to both rural and inner-city areas that are underserved by health care providers. In fact, there are 50 communities in North Dakota that are taking advantage of the services provided by these care givers. Unfortunately, unless we make changes in our Federal reimbursement scheme, many areas of the country will not be able to benefit from these needed services.

Current Medicare reimbursement rules were developed in an ad hoc fashion; as a result, they are inconsistent, incoherent, and nearly inexplicable. Current law provides reimbursement for advanced practice nurses in rural settings. But if the same patient sees the same nurse practitioner in a satellite clinic in an equally rural community that happens to be within an MSA county, reimbursement becomes subject to the ''incident to'' rule that HCFA has interpreted to require the physical presence of a physician in the building.

In rural North Dakota and in rural communities throughout the country, that scenario is often inconsistent with the realities of health care delivery. Doctors in these areas often rotate between several clinics in a region that is staffed on a full-time basis by a physician assistant, nurse practitioner, or other provider. This allows physicians to cover a wider area and affords more rural residents access to basic primary care services. Current Medicare rules work against this, however. If a Medicare patient requires care when a physician is away at another clinic or out on an emergency call, the physician assistant or other provider will not be reimbursed by Medicare for the same care that would have been paid for if a physician was in the next room.

Moreover, if the nurse practitioner crosses the street from a free-standing clinic to a hospital-affiliated outpatient clinic, the reimbursement rules change once again. Physician assistants are subject to an equally bewildering set of reimbursement rules that serve to prevent their effective use by the Medicare Program.

Other complications also cause problems. State laws are often inconsistent with the Medicare requirements. In North Dakota, care provided by a physician assistant is reimbursed even if a physician is not present. Across the country, there also are a wide variety of payment mechanisms that result in reimbursement variations in different settings and among different providers. The Office of Technology Assessment, the Physician Payment Review Commission, and these providers themselves have all expressed the need for consistency and sensibility in a reimbursement system that acknowledges

the reality of today's medical marketplace. Our colleagues shared those sentiments in 1995 by passing this legislation in both Houses.

The legislation Senator GRASSLEY and I are introducing today will provide each of these groups with reimbursement at 85 percent of the physician fee schedule. They will also provide a bonus payment to those providers who choose to practice in areas designated as Health Professional Shortage Areas [HPSA's]. The health care access problems faced by residents of these communities could be dramatically improved through the use of this special class of primary care providers. Finally, our legislation will ensure that a nurse practitioner who cares for a patient will get paid directly for that service.

This legislation offers an example how Medicare can and should increase access to care by promoting the use of cost-effective providers to a much higher degree without compromising the quality of care that older Americans receive. There was a clear agreement on these issues in the 104th Congress, and we urge our Democratic and Republican colleagues to continue to support this legislation in the 105th Congress.●

By Mr. GRASSLEY:

S. 372. A bill to amend title XVIII of the Social Security Act to provide for a 5-year reinstatement of the Medicare-dependent, small, rural hospital payment provisions, and for other purposes; to the Committee on Finance.

THE MEDICARE DEPENDENT HOSPITALS PROGRAM REINSTATEMENT ACT

● Mr. GRASSLEY. Mr. President, I introduce a bill which would reinstate the Medicare-Dependent Hospital Program.

This program expired in October 1994. As its title implied, the hospitals it helped were those which were very dependent on Medicare reimbursement. These were small—100 beds or less—rural hospitals with not less than 60 percent of total discharges or with 60 percent of total inpatient days attributable to Medicare beneficiaries. The program enabled the hospitals in question to choose the most favorable of three reimbursement methods.

The program was extended, and phased out down to October 1994, in the Omnibus Budget Reconciliation Act of 1993. That act retained the choice of the three original reimbursement methods. But it reduced the reimbursement available from those original computation methods by 50 percent.

My legislation would not extend the program as it was originally enacted by the Omnibus Budget Reconciliation Act of 1989. Rather, it would reinstate for 5 years the provisions contained in the Omnibus Budget Reconciliation Act of 1993. It would not have retroactive effect, however. The program would be revived for fiscal year 1998, and would terminate at the end of fiscal year 2002.

As I noted above, the hospitals which would benefit from this program are small, rural hospitals providing an essential point of access to hospital and hospital-based services in rural areas and small towns. Obviously, if we lose these hospitals, we will also have a hard time keeping physicians in those communities.

Mr. President, 44, or 36 percent, of Iowa's 122 community hospitals qualified to participate in this program in 1994, and 29, or 24 percent, chose to participate. I believe that this was the largest number of such hospitals of any State.

For these hospitals, the percentage of all inpatient days attributable to Medicare patients was 77.4 percent in 1994, and Medicare discharges represented 65.5 percent of total discharges. Across all Iowa hospitals, the Association of Iowa Hospitals and Health Systems indicates that the Medicare share of inpatient days and discharges has increased in recent years, as non-Medicare admissions have dropped. As a result, it is likely that the program will provide a lifeline for even more Iowa hospitals now than in 1994.

The expiration of the program has had a devastating effect on many of these hospitals, including a number with negative operating margins. The bottom line is that many of these hospitals have had, and will have, a very difficult time continuing to exist without the Medicare-Dependent Hospital Program.

Mr. President, I am also going to continue to work for a limited service rural hospital bill. This bill will essentially extend the EACH/RPCH Program—the Essential Access Community Hospital and Rural Primary Care Hospital Program—to all the States.

Taken together, these two pieces of legislation will allow the smaller hospitals in Iowa—and throughout America—to modify their missions in a deliberate and nondisruptive way, and to continue to provide the health care services essential to their communities.●

By Mr. KENNEDY:

S. 373. A bill to amend title XXVII of the Public Health Service Act and part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to establish standards for protection of consumers in managed care plans and other health plans; to the Committee on Labor and Human Resources.

THE HEALTH INSURANCE BILL OF RIGHTS ACT OF 1997

Mr. KENNEDY. Mr. President, 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. 373

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Health Insurance Bill of Rights Act of 1997''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) PATIENT PROTECTION STANDARDS.—Title XXVII of the Public Health Service Act is amended—

(1) by redesignating part C as part D, and

(2) by inserting after part B the following new part:

''PART C—PATIENT PROTECTION STANDARDS

''SEC. 2770. NOTICE; ADDITIONAL DEFINITIONS.

''(a) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 711(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this part as if such section applied to such issuer and such issuer were a group health plan.

''(b) ADDITIONAL DEFINITIONS.—For purposes of this part:

''(1) NONPARTICIPATING PHYSICIAN OR PROVIDER.—The term 'nonparticipating physician or provider' means, with respect to health care items and services furnished to an enrollee under health insurance coverage, a physician or provider that is not a participating physician or provider for such services.

''(2) PARTICIPATING PHYSICIAN OR PROVIDER.—The term 'participating physician or provider' means, with respect to health care items and services furnished to an enrollee under health insurance coverage, a physician or provider that furnishes such items and services under a contract or other arrangement with the health insurance issuer offering such coverage.

''SUBPART 1—ACCESS TO CARE

''SEC. 2771. ACCESS TO EMERGENCY CARE.

''(a) PROHIBITION OF CERTAIN RESTRICTIONS ON COVERAGE OF EMERGENCY SERVICES.

''(1) IN GENERAL.—If health insurance coverage provides any benefits with respect to emergency services (as defined in paragraph (2)(B)), the health insurance issuer offering such coverage shall cover emergency services furnished to an enrollee—

''(A) without the need for any prior authorization determination,

''(B) subject to paragraph (3), whether or not the physician or provider furnishing such services is a participating physician or provider with respect to such services, and

''(C) subject to paragraph (3), without regard to any other term or condition of such coverage (other than an exclusion of benefits, or an affiliation or waiting period, permitted under section 2701).

''(2) EMERGENCY SERVICES; EMERGENCY MEDICAL CONDITION.—For purposes of this section—

''(A) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON.—The term 'emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

''(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

''(ii) serious impairment to bodily functions, or

''(iii) serious dysfunction of any bodily organ or part.

''(B) EMERGENCY SERVICES.—The term 'emergency services' means—

''(i) a medical screening examination (as required under section 1867 of the Social Security Act) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department, to evaluate an emergency medical condition (as defined in subparagraph (A)), and

''(ii) within the capabilities of the staff and facilities available at the hospital, such further medical examination and treatment as are required under section 1867 of the Social Security Act to stabilize the patient.

''(C) TRAUMA AND BURN CENTERS.—The provisions of clause (ii) of subparagraph (B) apply to a trauma or burn center, in a hospital, that—

''(i) is designated by the State, a regional authority of the State, or by the designee of the State, or

''(ii) is in a State that has not made such designations and meets medically recognized national standards.

''(3) APPLICATION OF NETWORK RESTRICTION PERMITTED IN CERTAIN CASES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if a health insurance issuer in relation to health insurance coverage denies, limits, or otherwise differentiates in coverage or payment for benefits other than emergency services on the basis that the physician or provider of such services is a nonparticipating physician or provider, the issuer may deny, limit, or differentiate in coverage or payment for emergency services on such basis.

''(B) NETWORK RESTRICTIONS NOT PERMITTED IN CERTAIN EXCEPTIONAL CASES.—The denial or limitation of, or differentiation in, coverage or payment of benefits for emergency services under subparagraph (A) shall not apply in the following cases:

''(i) CIRCUMSTANCES BEYOND CONTROL OF ENROLLEE.—The enrollee is unable to go to a participating hospital for such services due to circumstances beyond the control of the enrollee (as determined consistent with guidelines and subparagraph (C)).

''(ii) LIKELIHOOD OF AN ADVERSE HEALTH CONSEQUENCE BASED ON LAYPERSON'S JUDGMENT.—A prudent layperson possessing an average knowledge of health and medicine could reasonably believe that, under the circumstances and consistent with guidelines, the time required to go to a participating hospital for such services could result in any of the adverse health consequences described in a clause of subsection (a)(2)(A).

''(iii) PHYSICIAN REFERRAL.—A participating physician or other person authorized by the plan refers the enrollee to an emergency department of a hospital and does not specify an emergency department of a hospital that is a participating hospital with respect to such services.

''(C) APPLICATION OF 'BEYOND CONTROL' STANDARDS.—For purposes of applying subparagraph (B)(i), receipt of emergency services from a nonparticipating hospital shall be treated under the guidelines as being 'due to circumstances beyond the control of the enrollee' if any of the following conditions are met:

''(i) UNCONSCIOUS.—The enrollee was unconscious or in an otherwise altered mental state at the time of initiation of the services.

''(ii) AMBULANCE DELIVERY.—The enrollee was transported by an ambulance or other emergency vehicle directed by a person other than the enrollee to the nonparticipating hospital in which the services were provided.

''(iii) NATURAL DISASTER.—A natural disaster or civil disturbance prevented the enrollee from presenting to a participating hospital for the provision of such services.

''(iv) NO GOOD FAITH EFFORT TO INFORM OF CHANGE IN PARTICIPATION DURING A CONTRACT YEAR.—The status of the hospital changed from a participating hospital to a nonparticipating hospital with respect to emergency services during a contract year and the plan or issuer failed to make a good faith effort to notify the enrollee involved of such change.

''(v) OTHER CONDITIONS.—There were other factors (such as those identified in guidelines) that prevented the enrollee from controlling selection of the hospital in which the services were provided.

''(b) ASSURING COORDINATED COVERAGE OF MAINTENANCE CARE AND POST-STABILIZATION CARE.—

''(1) IN GENERAL.—In the case of an enrollee who is covered under health insurance coverage issued by a health insurance issuer and who has received emergency services pursuant to a screening evaluation conducted (or supervised) by a treating physician at a hospital that is a nonparticipating provider with respect to emergency services, if—

''(A) pursuant to such evaluation, the physician identifies post-stabilization care (as defined in paragraph (3)(B)) that is required by the enrollee,

''(B) the coverage provides benefits with respect to the care so identified and the coverage requires (but for this subsection) an affirmative prior authorization determination as a condition of coverage of such care, and

''(C) the treating physician (or another individual acting on behalf of such physician) initiates, not later than 30 minutes after the time the treating physician determines that the condition of the enrollee is stabilized, a good faith effort to contact a physician or other person authorized by the issuer (by telephone or other means) to obtain an affirmative prior authorization determination with respect to the care,

then, without regard to terms and conditions specified in paragraph (2) the issuer shall cover maintenance care (as defined in paragraph (3)(A)) furnished to the enrollee during the period specified in paragraph (4) and shall cover post-stabilization care furnished to the enrollee during the period beginning under paragraph (5) and ending under paragraph (6).

''(2) TERMS AND CONDITIONS WAIVED.—The terms and conditions (of coverage) described in this paragraph that are waived under paragraph (1) are as follows:

''(A) The need for any prior authorization determination.

''(B) Any limitation on coverage based on whether or not the physician or provider furnishing the care is a participating physician or provider with respect to such care.

''(C) Any other term or condition of the coverage (other than an exclusion of benefits, or an affiliation or waiting period, permitted under section 2701 and other than a requirement relating to medical necessity for coverage of benefits).

''(3) MAINTENANCE CARE AND POST-STABILIZATION CARE DEFINED.—In this subsection:

''(A) MAINTENANCE CARE.—The term 'maintenance care' means, with respect to an individual who is stabilized after provision of emergency services, medically necessary items and services (other than emergency services) that are required by the individual to ensure that the individual remains stabilized during the period described in paragraph (4).

''(B) POST-STABILIZATION CARE.—The term 'post-stabilization care' means, with respect to an individual who is determined to be stable pursuant to a medical screening examination or who is stabilized after provision of emergency services, medically necessary items and services (other than emergency services and other than maintenance care) that are required by the individual.

''(4) PERIOD OF REQUIRED COVERAGE OF MAINTENANCE CARE.—The period of required coverage of maintenance care of an individual under this subsection begins at the time of the request (or the initiation of the good faith effort to make the request) under paragraph (1)(C) and ends when—

''(A) the individual is discharged from the hospital;

''(B) a physician (designated by the issuer involved) and with privileges at the hospital involved arrives at the emergency department of the hospital and assumes responsibility with respect to the treatment of the individual; or

''(C) the treating physician and the issuer agree to another arrangement with respect to the care of the individual.

''(5) WHEN POST-STABILIZATION CARE REQUIRED TO BE COVERED.—

''(A) WHEN TREATING PHYSICIAN UNABLE TO COMMUNICATE REQUEST.—If the treating physician or other individual makes the good faith effort to request authorization under

paragraph (1)(C) but is unable to communicate the request directly with an authorized person referred to in such paragraph within 30 minutes after the time of initiating such effort, then post-stabilization care is required to be covered under this subsection beginning at the end of such 30-minute period.

''(B) WHEN ABLE TO COMMUNICATE REQUEST, AND NO TIMELY RESPONSE.—

''(i) IN GENERAL.—If the treating physician or other individual under paragraph (1)(C) is able to communicate the request within the 30-minute period described in subparagraph (A), the post-stabilization care requested is required to be covered under this subsection beginning 30 minutes after the time when the issuer receives the request unless a person authorized by the plan or issuer involved communicates (or makes a good faith effort to communicate) a denial of the request for the prior authorization determination within 30 minutes of the time when the issuer receives the request and the treating physician does not request under clause (ii) to communicate directly with an authorized physician concerning the denial.

''(ii) REQUEST FOR DIRECT PHYSICIAN-TO-PHYSICIAN COMMUNICATION CONCERNING DENIAL.—If a denial of a request is communicated under clause (i), the treating physician may request to communicate respecting the denial directly with a physician who is authorized by the issuer to deny or affirm such a denial.

''(C) WHEN NO TIMELY RESPONSE TO REQUEST FOR PHYSICIAN-TO-PHYSICIAN COMMUNICATION.—If a request for physician-to-physician communication is made under subparagraph (B)(ii), the post-stabilization care requested is required to be covered under this subsection beginning 30 minutes after the time when the issuer receives the request from a treating physician unless a physician, who is authorized by the issuer to reverse or affirm the initial denial of the care, communicates (or makes a good faith effort to communicate) directly with the treating physician within such 30-minute period.

''(D) DISAGREEMENTS OVER POST-STABILIZATION CARE.—If, after a direct physician-to-physician communication under subparagraph (C), the denial of the request for the post-stabilization care is not reversed and the treating physician communicates to the issuer involved a disagreement with such decision, the post-stabilization care requested is required to be covered under this subsection beginning as follows:

''(i) DELAY TO ALLOW FOR PROMPT ARRIVAL OF PHYSICIAN ASSUMING RESPONSIBILITY.—If the issuer communicates that a physician (designated by the plan or issuer) with privileges at the hospital involved will arrive promptly (as determined under guidelines) at the emergency department of the hospital in order to assume responsibility with respect to the treatment of the enrollee involved, the required coverage of the post-stabilization care begins after the passage of such time period as would allow the prompt arrival of such a physician.

''(ii) OTHER CASES.—If the issuer does not so communicate, the required coverage of the post-stabilization care begins immediately.

''(6) NO REQUIREMENT OF COVERAGE OF POST-STABILIZATION CARE IF ALTERNATE PLAN OF TREATMENT.—

''(A) IN GENERAL.—Coverage of post-stabilization care is not required under this subsection with respect to an individual when—

''(i) subject to subparagraph (B), a physician (designated by the plan or issuer involved) and with privileges at the hospital involved arrives at the emergency department of the hospital and assumes responsibility with respect to the treatment of the individual; or

''(ii) the treating physician and the issuer agree to another arrangement with respect to the post-stabilization care (such as an appropriate transfer of the individual involved to another facility or an appointment for timely followup treatment for the individual).

''(B) SPECIAL RULE WHERE ONCE CARE INITIATED.—Required coverage of requested post-stabilization care shall not end by reason of subparagraph (A)(i) during an episode of care (as determined by guidelines) if the treating physician initiated such care (consistent with a previous paragraph) before the arrival of a physician described in such subparagraph.

''(7) CONSTRUCTION.—Nothing in this subsection shall be construed as—

''(A) preventing an issuer from authorizing coverage of maintenance care or post-stabilization care in advance or at any time; or

''(B) preventing a treating physician or other individual described in paragraph (1)(C) and an issuer from agreeing to modify any of the time periods specified in paragraphs (5) as it relates to cases involving such persons.

''(c) LIMITS ON COST-SHARING FOR SERVICES FURNISHED IN EMERGENCY DEPARTMENTS.—If health insurance coverage provides any benefits with respect to emergency services, the health insurance issuer offering such coverage may impose cost sharing with respect to such services only if the following conditions are met:

''(1) LIMITATIONS ON COST-SHARING DIFFERENTIAL FOR NONPARTICIPATING PROVIDERS.—

''(A) NO DIFFERENTIAL FOR CERTAIN SERVICES.—In the case of services furnished under the circumstances described in clause (i), (ii), or (iii) of subsection (a)(3)(B) (relating to circumstances beyond the control of the enrollee, the likelihood of an adverse health consequence based on layperson's judgment, and physician referral), the cost-sharing for such services provided by a nonparticipating provider or physician does not exceed the cost-sharing for such services provided by a participating provider or physician.

''(B) ONLY REASONABLE DIFFERENTIAL FOR OTHER SERVICES.—In the case of other emergency services, any differential by which the cost-sharing for such services provided by a nonparticipating provider or physician exceeds the cost-sharing for such services provided by a participating provider or physician is reasonable (as determined under guidelines).

''(2) ONLY REASONABLE DIFFERENTIAL BETWEEN EMERGENCY SERVICES AND OTHER SERVICES.—Any differential by which the cost-sharing for services furnished in an emergency department exceeds the cost-sharing for such services furnished in another setting is reasonable (as determined under guidelines).

''(3) CONSTRUCTION.—Nothing in paragraph (1)(B) or (2) shall be construed as authorizing guidelines other than guidelines that establish maximum cost-sharing differentials.

''(d) INFORMATION ON ACCESS TO EMERGENCY SERVICES.—A health insurance issuer, to the extent a health insurance issuer offers health insurance coverage, shall provide education to enrollees on—

''(1) coverage of emergency services (as defined in subsection (a)(2)(B)) by the issuer in accordance with the provisions of this section,

''(2) the appropriate use of emergency services, including use of the 911 telephone system or its local equivalent,

''(3) any cost sharing applicable to emergency services,

''(4) the process and procedures of the plan for obtaining emergency services, and

''(5) the locations of—

''(A) emergency departments, and

''(B) other settings,

in which participating physicians and hospitals provide emergency services and post-stabilization care.

''(e) GENERAL DEFINITIONS.—For purposes of this section:

''(1) COST SHARING.—The term 'cost sharing' means any deductible, coinsurance amount, copayment or other out-of-pocket payment (other than premiums or enrollment fees) that a health insurance issuer offering health insurance issuer imposes on enrollees with respect to the coverage of benefits.

''(2) GOOD FAITH EFFORT.—The term 'good faith effort' has the meaning given such term in guidelines and requires such appropriate documentation as is specified under such guidelines.

''(3) GUIDELINES.—The term 'guidelines' means guidelines established by the Secretary after consultation with an advisory panel that includes individuals representing emergency physicians, health insurance issuers, including at least one health maintenance organization, hospitals, employers, the States, and consumers.

''(4) PRIOR AUTHORIZATION DETERMINATION.—The term 'prior authorization determination' means, with respect to items and services for which coverage may be provided under health insurance coverage, a determination (before the provision of the items and services and as a condition of coverage of the items and services under the coverage) of whether or not such items and services will be covered under the coverage.

''(5) STABILIZE.—The term 'to stabilize' means, with respect to an emergency medical condition, to provide (in complying with section 1867 of the Social Security Act) such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from the facility.

''(6) STABILIZED.—The term 'stabilized' means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur before an individual can be transferred from the facility, in compliance with the requirements of section 1867 of the Social Security Act.

''(7) TREATING PHYSICIAN.—The term 'treating physician' includes a treating health care professional who is licensed under State law to provide emergency services other than under the supervision of a physician.

''SEC. 2772. ACCESS TO SPECIALTY CARE.

''(a) OBSTETRICAL AND GYNECOLOGICAL CARE.—

''(1) IN GENERAL.—If a health insurance issuer, in connection with the provision of health insurance coverage, requires or provides for an enrollee to designate a participating primary care provider—

''(A) the issuer shall permit a female enrollee to designate a physician who specializes in obstetrics and gynecology as the enrollee's primary care provider; and

''(B) if such an enrollee has not designated such a provider as a primary care provider, the issuer—

''(i) may not require prior authorization by the enrollee's primary care provider or otherwise for coverage of routine gynecological care (such as preventive women's health examinations) and pregnancy-related services provided by a participating physician who specializes in obstetrics and gynecology to

the extent such care is otherwise covered, and

''(ii) may treat the ordering of other gynecological care by such a participating physician as the prior authorization of the primary care provider with respect to such care under the coverage.

''(2) CONSTRUCTION.—Nothing in paragraph (1)(B)(ii) shall waive any requirements of coverage relating to medical necessity or appropriateness with respect to coverage of gynecological care so ordered.

''(b) SPECIALTY CARE.—

''(1) REFERRAL TO SPECIALTY CARE FOR ENROLLEES REQUIRING TREATMENT BY SPECIALISTS.—

''(A) IN GENERAL.—In the case of an enrollee who is covered under health insurance coverage offered by a health insurance issuer and who has a condition or disease of sufficient seriousness and complexity to require treatment by a specialist, the issuer shall make or provide for a referral to a specialist who is available and accessible to provide the treatment for such condition or disease.

''(B) SPECIALIST DEFINED.—For purposes of this subsection, the term 'specialist' means, with respect to a condition, a health care practitioner, facility, or center (such as a center of excellence) that has adequate expertise through appropriate training and experience (including, in the case of a child, appropriate pediatric expertise) to provide high quality care in treating the condition.

''(C) CARE UNDER REFERRAL.—Care provided pursuant to such referral under subparagraph (A) shall be—

''(i) pursuant to a treatment plan (if any) developed by the specialist and approved by the issuer, in consultation with the designated primary care provider or specialist and the enrollee (or the enrollee's designee), and

''(ii) in accordance with applicable quality assurance and utilization review standards of the issuer.

Nothing in this subsection shall be construed as preventing such a treatment plan for an enrollee from requiring a specialist to provide the primary care provider with regular updates on the specialty care provided, as well as all necessary medical information.

''(D) REFERRALS TO PARTICIPATING PROVIDERS.—An issuer is not required under subparagraph (A) to provide for a referral to a specialist that is not a participating provider, unless the issuer does not have an appropriate specialist that is available and accessible to treat the enrollee's condition and that is a participating provider with respect to such treatment.

''(E) TREATMENT OF NONPARTICIPATING PROVIDERS.—If an issuer refers an enrollee to a nonparticipating specialist, services provided pursuant to the approved treatment plan shall be provided at no additional cost to the enrollee beyond what the enrollee would otherwise pay for services received by such a specialist that is a participating provider.

''(2) SPECIALISTS AS PRIMARY CARE PROVIDERS.—

''(A) IN GENERAL.—A health insurance issuer, in connection with the provision of health insurance coverage, shall have a procedure by which a new enrollee upon enrollment, or an enrollee upon diagnosis, with an ongoing special condition (as defined in subparagraph (C)) may receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the enrollee's primary and specialty care. If such an enrollee's care would most appropriately be coordinated by such a specialist, the issuer shall refer the enrollee to such specialist.

''(B) TREATMENT AS PRIMARY CARE PROVIDER.—Such specialist shall be permitted to treat the enrollee without a referral from the enrollee's primary care provider and may authorize such referrals, procedures, tests, and other medical services as the enrollee's primary care provider would otherwise be permitted to provide or authorize, subject to the terms of the treatment plan (referred to in paragraph (1)(C)(i)).

''(C) ONGOING SPECIAL CONDITION DEFINED.—In this paragraph, the term 'special condition' means a condition or disease that—

''(i) is life-threatening, degenerative, or disabling, and

''(ii) requires specialized medical care over a prolonged period of time.

''(D) TERMS OF REFERRAL.—The provisions of subparagraphs (C) through (E) of paragraph (1) shall apply with respect to referrals under subparagraph (A) of this paragraph in the same manner as they apply to referrals under paragraph (1)(A).

''(3) STANDING REFERRALS.—

''(A) IN GENERAL.—A health insurance issuer, in connection with the provision of health insurance coverage, shall have a procedure by which an enrollee who has a condition that requires ongoing care from a specialist may receive a standing referral to such specialist for treatment of such condition. If the issuer, or the primary care provider in consultation with the medical director of the issuer and the specialist (if any), determines that such a standing referral is appropriate, the issuer shall make such a referral to such a specialist.

''(C) TERMS OF REFERRAL.—The provisions of subparagraphs (C) through (E) of paragraph (1) shall apply with respect to referrals under subparagraph (A) of this paragraph in the same manner as they apply to referrals under paragraph (1)(A).

''SEC. 2773. CONTINUITY OF CARE.

''(a) IN GENERAL.—If a contract between a health insurance issuer, in connection with the provision of health insurance coverage, and a health care provider is terminated (other than by the issuer for failure to meet applicable quality standards or for fraud) and an enrollee is undergoing a course of treatment from the provider at the time of such termination, the issuer shall—

''(1) notify the enrollee of such termination, and

''(2) subject to subsection (c), permit the enrollee to continue the course of treatment with the provider during a transitional period (provided under subsection (b)).

''(b) TRANSITIONAL PERIOD.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) through (4), the transitional period under this subsection shall extend for at least—

''(A) 60 days from the date of the notice to the enrollee of the provider's termination in the case of a primary care provider, or

''(B) 120 days from such date in the case of another provider.

''(2) INSTITUTIONAL CARE.—The transitional period under this subsection for institutional or inpatient care from a provider shall extend until the discharge or termination of the period of institutionalization and shall include reasonable follow-up care related to the institutionalization and shall also include institutional care scheduled prior to the date of termination of the provider status.

''(3) PREGNANCY.—If—

''(A) an enrollee has entered the second trimester of pregnancy at the time of a provider's termination of participation, and

''(B) the provider was treating the pregnancy before date of the termination,

the transitional period under this subsection with respect to provider's treatment of the pregnancy shall extend through the provision of post-partum care directly related to the delivery.

''(4) TERMINAL ILLNESS.—

''(A) IN GENERAL.—If—

''(i) an enrollee was determined to be terminally ill (as defined in subparagraph (B)) at the time of a provider's termination of participation, and

''(ii) the provider was treating the terminal illness before the date of termination,

the transitional period under this subsection shall extend for the remainder of the enrollee's life for care directly related to the treatment of the terminal illness.

''(B) DEFINITION.—In subparagraph (A), an enrollee is considered to be 'terminally ill' if the enrollee has a medical prognosis that the enrollee's life expectancy is 6 months or less.

''(c) PERMISSIBLE TERMS AND CONDITIONS.—An issuer may condition coverage of continued treatment by a provider under subsection (a)(2) upon the provider agreeing to the following terms and conditions:

''(1) The provider agrees to continue to accept reimbursement from the issuer at the rates applicable prior to the start of the transitional period as payment in full.

''(2) The provider agrees to adhere to the issuer's quality assurance standards and to provide to the issuer necessary medical information related to the care provided.

''(3) The provider agrees otherwise to adhere to the issuer's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan approved by the issuer.

''SEC. 2774. CHOICE OF PROVIDER.

''(a) PRIMARY CARE.—A health insurance issuer that offers health insurance coverage shall permit each enrollee to receive primary care from any participating primary care provider who is available to accept such enrollee.

''(b) SPECIALISTS.—

''(1) IN GENERAL.—Subject to paragraph (2), a health insurance issuer that offers health insurance coverage shall permit each enrollee to receive medically necessary specialty care, pursuant to appropriate referral procedures, from any qualified participating health care provider who is available to accept such enrollee for such care.

''(2) LIMITATION.—Paragraph (1) shall not apply to speciality care if the issuer clearly informs enrollees of the limitations on choice of participating providers with respect to such care.

''(c) LIST OF PARTICIPATING PROVIDERS.—For disclosure of information about participating primary care and specialty care providers, see section 2782(b)(3).

''SEC. 2775. COVERAGE FOR INDIVIDUALS PARTICIPATING IN APPROVED CLINICAL TRIALS.

''(a) IN GENERAL.—If a health insurance issuer offers health insurance coverage to a qualified enrollee (as defined in subsection (b)), the issuer—

''(1) may not deny the enrollee participation in the clinical trial referred to in subsection (b)(2);

''(2) subject to subsection (c), may not deny (or limit or impose additional conditions on) the coverage of routine patient costs for items and services furnished in connection with participation in the trial; and

''(3) may not discriminate against the enrollee on the basis of the enrollee's participation in such trial.

''(b) QUALIFIED ENROLLEE DEFINED.—For purposes of subsection (a), the term 'qualified enrollee' means an enrollee under health insurance coverage who meets the following conditions:

''(1) The enrollee has a life-threatening or serious illness for which no standard treatment is effective.

''(2) The enrollee is eligible to participate in an approved clinical trial with respect to treatment of such illness.

''(3) The enrollee and the referring physician conclude that the enrollee's participation in such trial would be appropriate.

''(4) The enrollee's participation in the trial offers potential for significant clinical benefit for the enrollee.

''(c) PAYMENT.—

''(1) IN GENERAL.—Under this section an issuer shall provide for payment for routine patient costs described in subsection (a)(2) but is not required to pay for costs of items and services that are reasonably expected (as determined by the Secretary) to be paid for by the sponsors of an approved clinical trial.

''(2) PAYMENT RATE.—In the case of covered items and services provided by—

''(A) a participating provider, the payment rate shall be at the agreed upon rate, or

''(B) a nonparticipating provider, the payment rate shall be at the rate the issuer would normally pay for comparable services under subparagraph (A).

''(d) APPROVED CLINICAL TRIAL DEFINED.—In this section, the term 'approved clinical trial' means a clinical research study or clinical investigation approved and funded by one or more of the following:

''(1) The National Institutes of Health.

''(2) A cooperative group or center of the National Institutes of Health.

''(3) The Department of Veterans Affairs.

''(4) The Department of Defense.

''SEC. 2776. ACCESS TO NEEDED PRESCRIPTION DRUGS.

''If a health insurance issuer offers health insurance coverage that provides benefits with respect to prescription drugs but the coverage limits such benefits to drugs included in a formulary, the issuer shall—

''(1) ensure participation of participating physicians in the development of the formulary;

''(2) disclose the nature of the formulary restrictions; and

''(3) provide for exceptions from the formulary limitation when medical necessity, as determined by the enrollee's physician subject to reasonable review by the issuer, dictates that a non-formulary alternative is indicated.

''SUBPART 2—QUALITY ASSURANCE

''SEC. 2777. INTERNAL QUALITY ASSURANCE PROGRAM.

''(a) REQUIREMENT.—A health insurance issuer that offers health insurance coverage shall establish and maintain an ongoing, internal quality assurance and continuous quality improvement program that meets the requirements of subsection (b).

''(b) PROGRAM REQUIREMENTS.—The requirements of this subsection for a quality improvement program of an issuer are as follows:

''(1) ADMINISTRATION.—The issuer has a separate identifiable unit with responsibility for administration of the program.

''(2) WRITTEN PLAN.—The issuer has a written plan for the program that is updated annually and that specifies at least the following:

''(A) The activities to be conducted.

''(B) The organizational structure.

''(C) The duties of the medical director.

''(D) Criteria and procedures for the assessment of quality.

''(E) Systems for ongoing and focussed evaluation activities.

''(3) SYSTEMATIC REVIEW.—The program provides for systematic review of the type of health services provided, consistency of services provided with good medical practice, and patient outcomes.

''(4) QUALITY CRITERIA.—The program—

''(A) uses criteria that are based on performance and clinical outcomes where feasible and appropriate, and

''(B) includes criteria that are directed specifically at meeting the needs of at-risk populations and enrollees with chronic or severe illnesses.

''(5) SYSTEM FOR REPORTING.—The program has procedures for reporting of possible quality concerns by providers and enrollees and for remedial actions to correct quality problems, including written procedures for responding to concerns and taking appropriate corrective action.

''(6) DATA COLLECTION.—The program provides for the collection of systematic, scientifically based data to be used in the measure of quality.

''(c) DEEMING.—For purposes of subsection (a), the requirements of subsection (b) are deemed to be met with respect to a health insurance issuer if the issuer—

''(1) is a qualified health maintenance organization (as defined in section 1310(d)), or

''(2) is accredited by a national accreditation organization that is certified by the Secretary.

''SEC. 2778. COLLECTION OF STANDARDIZED DATA.

''(a) IN GENERAL.—A health insurance issuer that offers health insurance coverage shall collect uniform quality data that include—

''(1) a minimum uniform data set described in subsection (b), and

''(2) additional data that are consistent with the requirements of a nationally recognized body identified by the Secretary.

''(b) MINIMUM UNIFORM DATA SET.—The Secretary shall specify the data required to be included in the minimum uniform data set under subsection (a)(1) and the standard format for such data. Such data shall include at least—

''(1) aggregate utilization data;

''(2) data on the demographic characteristics of enrollees;

''(3) data on disease-specific and age-specific mortality rates of enrollees;

''(4) data on enrollee satisfaction, including data on enrollee disenrollment and grievances; and

''(5) data on quality indicators.

''(c) AVAILABILITY.—A summary of the data collected under subsection (a) shall be disclosed under section 2782(b)(4).

''SEC. 2779. PROCESS FOR SELECTION OF PROVIDERS.

''(a) IN GENERAL.—A health insurance issuer that offers health insurance coverage shall have a written process for the selection of participating health care professionals, including minimum professional requirements.

''(b) VERIFICATION OF BACKGROUND.—Such process shall include verification of a health care provider's license, a history of suspension or revocation, and liability claim history.

''(c) RESTRICTION.—Such process shall not use a high-risk patient base or location of a provider in an area with residents with poorer health status as a basis for excluding providers from participation.

''SEC. 2780. DRUG UTILIZATION PROGRAM.

''A health insurance issuer that provides health insurance coverage that includes benefits for prescription drugs shall establish and maintain a drug utilization program which—

''(1) encourages appropriate use of prescription drugs by enrollees and providers,

''(2) monitors illnesses arising from improper drug use or from adverse drug reactions or interactions, and

''(3) takes appropriate action to reduce the incidence of improper drug use and adverse drug reactions and interactions.

''SEC. 2781. STANDARDS FOR UTILIZATION REVIEW ACTIVITIES.

''(a) COMPLIANCE WITH REQUIREMENTS.—

''(1) IN GENERAL.—A health insurance issuer shall conduct utilization review activities in connection with the provision of health insurance coverage only in accordance with a utilization review program that meets the requirements of this section.

''(2) USE OF OUTSIDE AGENTS.—Nothing in this section shall be construed as preventing a health insurance issuer from arranging through a contract or otherwise for persons or entities to conduct utilization review activities on behalf of the issuer, so long as such activities are conducted in accordance with a utilization review program that meets the requirements of this section.

''(3) UTILIZATION REVIEW DEFINED.—For purposes of this section, the terms 'utilization review' and 'utilization review activities' mean procedures used to monitor or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures or settings, and includes ambulatory review, prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.

''(b) WRITTEN POLICIES AND CRITERIA.—

''(1) WRITTEN POLICIES.—A utilization review program shall be conducted consistent with written policies and procedures that govern all aspects of the program.

''(2) USE OF WRITTEN CRITERIA.—

''(A) IN GENERAL.—Such a program shall utilize written clinical review criteria developed pursuant to the program with the input of appropriate physicians.

''(B) CONTINUING USE OF STANDARDS IN RETROSPECTIVE REVIEW.—If a health care service has been specifically pre-authorized or approved for an enrollee under such a program, the program shall not, pursuant to retrospective review, revise or modify the specific standards, criteria, or procedures used for the utilization review for procedures, treatment, and services delivered to the enrollee during the same course of treatment.

''(C) NO ADVERSE DETERMINATION BASED ON REFUSAL TO OBSERVE SERVICE.—Such a program shall not base an adverse determination on—

''(i) a refusal to consent to observing any health care service, or

''(ii) lack of reasonable access to a health care provider's medical or treatment records, unless the program has provided reasonable notice to the enrollee.

''(c) CONDUCT OF PROGRAM ACTIVITIES.—

''(1) ADMINISTRATION BY HEALTH CARE PROFESSIONALS.—A utilization review program shall be administered by qualified health care professionals who shall oversee review decisions. In this subsection, the term 'health care professional' means a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with State law.

''(2) USE OF QUALIFIED, INDEPENDENT PERSONNEL.—

''(A) IN GENERAL.—A utilization review program shall provide for the conduct of utilization review activities only through personnel who are qualified and, to the extent required, who have received appropriate training in the conduct of such activities under the program.

''(B) PEER REVIEW OF ADVERSE CLINICAL DETERMINATIONS.—Such a program shall provide that clinical peers shall evaluate the clinical appropriateness of adverse clinical determinations. In this subsection, the term 'clinical peer' means, with respect to a review, a physician or other health care professional who holds a non-restricted license in a State and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under review.

''(C) PROHIBITION OF CONTINGENT COMPENSATION ARRANGEMENTS.—Such a program shall not, with respect to utilization review activities, permit or provide compensation or anything of value to its employees, agents, or contractors in a manner that—

''(i) provides incentives, direct or indirect, for such persons to make inappropriate review decisions, or

''(ii) is based, directly or indirectly, on the quantity or type of adverse determinations rendered.

''(D) PROHIBITION OF CONFLICTS.—Such a program shall not permit a health care professional who provides health care services to an enrollee to perform utilization review activities in connection with the health care services being provided to the enrollee.

''(3) TOLL-FREE TELEPHONE NUMBER.—Such a program shall provide that—

''(A) appropriate personnel performing utilization review activities under the program are reasonably accessible by toll-free telephone not less than 40 hours per week during normal business hours to discuss patient care and allow response to telephone requests, and

''(B) the program has a telephone system capable of accepting, recording, or providing instruction to incoming telephone calls during other than normal business hours and to ensure response to accepted or recorded messages not less than one business day after the date on which the call was received.

''(4) LIMITS ON FREQUENCY.—Such a program shall not provide for the performance of utilization review activities with respect to a class of services furnished to an enrollee more frequently than is reasonably required to assess whether the services under review are medically necessary.

''(5) LIMITATION ON INFORMATION REQUESTS.—Under such a program, information shall be required to be provided by health care providers only to the extent it is necessary to perform the utilization review activity involved.

''(d) DEADLINE FOR DETERMINATIONS.—

''(1) PRIOR AUTHORIZATION SERVICES.—Except as provided in paragraph (2), in the case of a utilization review activity involving the prior authorization of health care items and services, the utilization review program shall make a determination concerning such authorization, and provide notice of the determination to the enrollee or the enrollee's designee and the enrollee's health care provider by telephone and in writing, as soon as possible in accordance with the medical exigencies of the cases, and in no event later than 3 business days after the date of receipt of the necessary information respecting such determination.

''(2) CONTINUED CARE.—In the case of a utilization review activity involving authorization for continued or extended health care services, or additional services for an enrollee undergoing a course of continued treatment prescribed by a health care provider, the utilization review program shall make a determination concerning such authorization, and provide notice of the determination to the enrollee or the enrollee's designee and the enrollee's health care provider by telephone and in writing, within 1 business day of the date of receipt of the necessary information respecting such determination. Such notice shall include, with respect to continued or extended health care services, the number of extended services approved, the new total of approved services, the date of onset of services, and the next review date.

''(3) PREVIOUSLY PROVIDED SERVICES.—In the case of a utilization review activity involving retrospective review of health care services previously provided, the utilization review program shall make a the determination concerning such services, and provide notice of the determination to the enrollee or the enrollee's designee and the enrollee's health care provider by telephone and in writing, within 30 days of the date of receipt of the necessary information respecting such determination.

''(4) REFERENCE TO SPECIAL RULES FOR EMERGENCY SERVICES, MAINTENANCE CARE, AND POST-STABILIZATION CARE.—For waiver of prior authorization requirements in certain cases involving emergency services and maintenance care and post-stabilization care, see sections 2771(a)(1)(A) and 2771(a)(2)(A), respectively.

''(e) NOTICE OF ADVERSE DETERMINATIONS.—

''(1) IN GENERAL.—Notice of an adverse determination under a utilization review program (including as a result of a reconsideration under subsection (f)) shall be in writing and shall include—

''(A) the reasons for the determination (including the clinical rationale);

''(B) instructions on how to initiate an appeal under section 2785; and

''(C) notice of the availability, upon request of the enrollee (or the enrollee's designee) of the clinical review criteria relied upon to make such determination.

''(2) SPECIFICATION OF ANY ADDITIONAL INFORMATION.—Such a notice shall also specify what (if any) additional necessary information must be provided to, or obtained by, person making the determination in order to make a decision on such an appeal.

''(f) RECONSIDERATION.—

''(1) AT REQUEST OF PROVIDER.—In the event that a utilization review program provides for an adverse determination without attempting to discuss such matter with the enrollee's health care provider who specifically recommended the health care service, procedure, or treatment under review, such health care provider shall have the opportunity to request a reconsideration of the adverse determination under this subsection.

''(2) TIMING AND CONDUCT.—Except in cases of retrospective reviews, such reconsideration shall occur as soon as possible in accordance with the medical exigencies of the cases, and in no event later than 1 business day after the date of receipt of the request and shall be conducted by the enrollee's health care provider and the health care professional making the initial determination or a designated qualified health care professional if the original professional cannot be available.

''(3) NOTICE.—In the event that the adverse determination is upheld after reconsideration, the utilization review program shall provide notice as required under subsection (e).

''(4) CONSTRUCTION.—Nothing in this subsection shall preclude the enrollee from initiating an appeal from an adverse determination under section 2785.

''SUBPART 3—PATIENT INFORMATION

''SEC. 2782. PATIENT INFORMATION.

''(a) DISCLOSURE REQUIREMENT.—A health insurance issuer in connection with the provision of health insurance coverage shall submit to the applicable State authority, provide to enrollees (and prospective enrollees), and make available to the public, in writing the information described in subsection (b).

''(b) INFORMATION.—The information described in this subsection includes the following:

''(1) DESCRIPTION OF COVERAGE.—A description of coverage provisions, including health care benefits, benefit limits, coverage exclusions, coverage of emergency care, and the definition of medical necessity used in determining whether benefits will be covered.

''(2) ENROLLEE FINANCIAL RESPONSIBILITY.—An explanation of an enrollee's financial responsibility for payment of premiums, coinsurance, copayments, deductibles, and any other charges, including limits on such responsibility and responsibility for health care services that are provided by nonparticipating providers or are furnished without meeting applicable utilization review requirements.

''(3) INFORMATION ON PROVIDERS.—A description—

''(A) of procedures for enrollees to select, access, and change participating primary and specialty providers,

''(B) of the rights and procedures for obtaining referrals (including standing referrals) to participating and nonparticipating providers, and

''(C) in the case of each participating provider, of the name, address, and telephone number of the provider, the credentials of the provider, and the provider's availability to accept new patients.

''(4) UTILIZATION REVIEW ACTIVITIES.—A description of procedures used and requirements (including circumstances, time frames, and rights to reconsideration and appeal) under any utilization review program under section 2781 or any drug utilization program under section 2780, as well as a summary of the minimum uniform data collected under section 2778(a)(1).

''(5) GRIEVANCE PROCEDURES.—Information on the grievance procedures under sections 2784 and 2785, including information describing—

''(A) the grievance procedures used by the issuer to process and resolve disputes between the issuer and an enrollee (including method for filing grievances and the time frames and circumstances for acting on grievances);

''(B) written complaints and appeals, by type of complaint or appeal, received by the issuer relating to its coverage; and

''(C) the disposition of such complaints and appeals.

''(6) PAYMENT METHODOLOGY.—A description of the types of methodologies the issuer uses to reimburse different classes of providers and, as specified by the Secretary, the financial arrangements or contractual provisions with providers.

''(7) INFORMATION ON ISSUER.—Notice of appropriate mailing addresses and telephone numbers to be used by enrollees in seeking information or authorization for treatment.

''(8) ASSURING COMMUNICATIONS WITH ENROLLEES.—A description of how the issuer addresses the needs of non-English-speaking enrollees and others with special communications needs, including the provision of information described in this subsection to such enrollees.

''(c) FORM OF DISCLOSURE.—

''(1) UNIFORMITY.—Information required to be disclosed under this section shall be provided in accordance with uniform, national reporting standards specified by the Secretary, after consultation with applicable State authorities, so that prospective enrollees may compare the attributes of different issuers and coverage offered within an area.

''(2) INFORMATION INTO HANDBOOK.—Nothing in this section shall be construed as preventing an issuer from making the information under subsection (b) available to enrollees through an enrollee handbook or similar publication.

''(3) UPDATING.—The information on participating providers described in subsection (a)(3)(C) shall be updated not less frequently than monthly. Nothing in this section shall prevent an issuer from changing or updating other information made available under this section.

''(4) CONSTRUCTION.—Nothing in subsection (a)(6) shall be construed as requiring disclosure of individual contracts or financial arrangements between an issuer and any provider. Nothing in this subsection shall be construed as preventing the information described in subsection (a)(3)(C) from being provided in a separate document.

''SEC. 2783. PROTECTION OF PATIENT CONFIDENTIALITY.

''A health insurance issuer that offers health insurance coverage shall establish appropriate policies and procedures to ensure that all applicable State and Federal laws to protect the confidentiality of individually identifiable medical information are followed.

''SUBPART 4—GRIEVANCE PROCEDURES

''SEC. 2784. ESTABLISHMENT OF COMPLAINT AND APPEALS PROCESS.

''(a) ESTABLISHMENT OF SYSTEM.—A health insurance issuer in connection with the provision of health insurance coverage shall establish and maintain a system to provide for the presentation and resolution of complaints and appeals brought by enrollees, designees of enrollees, or by health care providers acting on behalf of an enrollee and with the enrollee's consent, regarding any aspect of the issuer's health care services, including complaints regarding quality of care, choice and accessibility of providers, network adequacy, and compliance with the requirements of this part.

''(b) COMPONENTS OF SYSTEM.—Such system shall include the following components (which shall be consistent with applicable requirements of section 2785):

''(1) Written notification to all enrollees and providers of the telephone numbers and business addresses of the issuer employees responsible for resolution of complaints and appeals.

''(2) A system to record and document, over a period of at least 3 years, all complaints and appeals made and their status.

''(3) The availability of an enrollee services representative to assist enrollees, as requested, with complaint and appeal procedures.

''(4) Establishment of a specified deadline (not to exceed 30 days after the date of receipt of a complaint or appeal) for the issuer to respond to complaints or appeals.

''(5) A process describing how complaints and appeals are processed and resolved.

''(6) Procedures for follow-up action, including the methods to inform the complainant or appellant of the resolution of a complaint or appeal.

''(7) Notification to the continuous quality improvement program under section 2777(a) of all complaints and appeals relating to quality of care.

''(c) NO REPRISAL FOR EXERCISE OF RIGHTS.—A health insurance issuer shall not take any action with respect to an enrollee or a health care provider that is intended to penalize the enrollee, a designee of the enrollee, or the health care provider for discussing or exercising any rights provided under this part (including the filing of a complaint or appeal pursuant to this section).

''SEC. 2785. PROVISIONS RELATING TO APPEALS OF UTILIZATION REVIEW DETERMINATIONS AND SIMILAR DETERMINATIONS.

''(a) RIGHT OF APPEAL.—

''(1) IN GENERAL.—An enrollee in health insurance coverage offered by a health insurance issuer, and any provider acting on behalf of the enrollee with the enrollee's consent, may appeal any appealable decision (as defined in paragraph (2)) under the procedures described in this section and (to the extent applicable) section 2784. Such enrollees and providers shall be provided with a written explanation of the appeal process upon the conclusion of each stage in the appeal process and as provided in section 2782(a)(5)

''(2) APPEALABLE DECISION DEFINED.—In this section, the term 'appealable decision' means any of the following:

''(A) An adverse determination under a utilization review program under section 2781.

''(B) Denial of access to specialty and other care under section 2772.

''(C) Denial of continuation of care under section 2773.

''(D) Denial of a choice of provider under section 2774.

''(E) Denial of coverage of routine patient costs in connection with an approval clinical trial under section 2775.

''(F) Denial of access to needed drugs under section 2776(3).

''(G) The imposition of a limitation that is prohibited under section 2789.

''(H) Denial of payment for a benefit,

''(b) INFORMAL INTERNAL APPEAL PROCESS (STAGE 1).—

''(1) IN GENERAL.—Each issuer shall establish and maintain an informal internal appeal process (an appeal under such process in this section referred to as a 'stage 1 appeal') under which any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with any appealable decision has the opportunity to discuss and appeal that decision with the medical director of the issuer or the health care professional who made the decision.

''(2) TIMING.—All appeals under this paragraph shall be concluded as soon as possible in accordance with the medical exigencies of the cases, and in no event later than 72 hours in the case of appeals from decisions regarding urgent care and 5 days in the case of all other appeals.

''(3) FURTHER REVIEW.—If the appeal is not resolved to the satisfaction of the enrollee at this level by the deadline under paragraph (2), the issuer shall provide the enrollee and provider (if any) with a written explanation of the decision and the right to proceed to a stage 2 appeal under subsection (c).

''(c) FORMAL INTERNAL APPEAL PROCESS (STAGE 2).—

''(1) IN GENERAL.—Each issuer shall establish and maintain a formal internal appeal process (an appeal under such process in this section referred to as a 'stage 2 appeal') under which any enrollee or provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with the results of a stage 1 appeal has the opportunity to appeal the results before a panel that includes a physician or other health care professional (or professionals) selected by the issuer who have not been involved in the appealable decision at issue in the appeal.

''(2) AVAILABILITY OF CLINICAL PEERS.—The panel under subparagraph (A) shall have available either clinical peers (as defined in section 2781(c)(2)(B)) who have not been involved in the appealable decision at issue in the appeal or others who are mutually agreed upon by the parties. If requested by the enrollee or enrollee's provider with the enrollee's consent, such a peer shall participate in the panel's review of the case.

''(3) TIMELY ACKNOWLEDGMENT.—The issuer shall acknowledge the enrollee or provider involved of the receipt of a stage 2 appeals upon receipt of the appeal.

''(4) DEADLINE.—

''(A) IN GENERAL.—The issuer shall conclude each stage 2 appeal as soon as possible after the date of the receipt of the appeal in accordance with medical exigencies of the case involved, but in no event later than 72 hours in the case of appeals from decisions regarding urgent care and (except as provided in subparagraph (B)) 20 business days in the case of all other appeals.

''(B) EXTENSION.—An issuer may extend the deadline for an appeal that does not relate to a decision regarding urgent or emergency care up to an additional 20 business days where it can demonstrate to the applicable State authority reasonable cause for the delay beyond its control and where it provides, within the original deadline under subparagraph (A), a written progress report and explanation for the delay to such authority and to the enrollee and provider involved.

''(5) NOTICE.—If an issuer denies a stage 2 appeal, the issuer shall provide the enrollee and provider involved with written notification of the denial and the reasons therefore, together with a written notification of rights to any further appeal

''(d) DIRECT USE OF FURTHER APPEALS.—In the event that the issuer fails to comply with any of the deadlines for completion of appeals under this section or in the event that the issuer for any reason expressly waives its rights to an internal review of an appeal under subsection (b) or (c), the enrollee and provider involved shall be relieved of any obligation to complete the appeal stage involved and may, at the enrollee's or provider's option, proceed directly to seek further appeal through any applicable external appeals process.

''(e) EXTERNAL APPEAL PROCESS IN CASE OF USE OF EXPERIMENTAL TREATMENT TO SAVE LIFE OF PATIENT.—

''(1) IN GENERAL.—In the case of an enrollee described in paragraph (2), the health insurance issuer shall provide for an external independent review process respecting the issuer's decision not to cover the experimental therapy (described in paragraph (2)(B)(ii)).

''(2) ENROLLEE DESCRIBED.—An enrollee described in this paragraph is an enrollee who meets the following requirements:

''(A) The enrollee has a terminal condition that is highly likely to cause death within 2 years.

''(B) The enrollee's physician certifies that—

''(i) there is no standard, medically appropriate therapy for successfully treating such terminal condition, but

''(ii) based on medical and scientific evidence, there is a drug, device, procedure, or therapy (in this section referred to as the 'experimental therapy') that is more beneficial than any available standard therapy.

''(C) The issuer has denied coverage of the experimental therapy on the basis that it is experimental or investigational.

''(3) DESCRIPTION OF PROCESS AND DECISION.—The process under this subsection shall provide for a determination on a timely basis, by a panel of independent, impartial physicians appointed by a State authority or by an independent review organization certified by the State, of the medical appropriateness of the experimental therapy. The decision of the panel shall be in writing and shall be accompanied by an explanation of the basis for the decision. A decision of the panel that is favorable to the enrollee may not be appealed by the issuer except in the case of misrepresentation of a material fact by the enrollee or a provider. A decision of the panel that is not favorable to the enrollee may be appealed by the enrollee.

''(4) ISSUER COVERING PROCESS COSTS.—Direct costs of the process under this subsection shall be borne by the issuer, and not by the enrollee.

''(f) OTHER INDEPENDENT OR EXTERNAL REVIEW.—

''(1) IN GENERAL.—In the case of appealable decision described in paragraph (2), the health insurance issuer shall provide for—

''(A) an external review process for such decisions consistent with the requirements of paragraph (3), or

''(B) an internal independent review process for such decisions consistent with the requirements of paragraph (4).

''(2) APPEALABLE DECISION DESCRIBED.—An appealable decision described in this paragraph is decision that does not involve a decision described in subsection (e)(1) but involves—

''(A) a claim for benefits involving costs over a significant threshold, or

''(B) assuring access to care for a serious condition.

''(3) EXTERNAL REVIEW PROCESS.—The requirements of this subsection for an external review process are as follows:

''(A) The process is established under State law and provides for review of decisions on stage 2 appeals by an independent review organization certified by the State.

''(B) If the process provides that decisions in such process are not binding on issuers, the process must provide for public methods of disclosing frequency of noncompliance with such decisions and for sanctioning issuers that consistently refuse to take appropriate actions in response to such decisions.

''(C) Results of all such reviews under the process are disclosed to the public, along with at least annual disclosure of information on issuer compliance.

''(D) All decisions under the process shall be in writing and shall be accompanied by an explanation of the basis for the decision.

''(E) Direct costs of the process shall be borne by the issuer, and not by the enrollee.

''(F) The issuer shall provide for publication at least annually of information on the numbers of appeals and decisions considered under the process.

''(4) INTERNAL, INDEPENDENT REVIEW PROCESS.—The requirements of this subsection for an internal, independent review process are as follows:

''(A)(i) The process must provide for the participation of persons who are independent of the issuer in conducting reviews and (ii) the Secretary must have found (through reviews conducted no less often than biannually) the process to be fair and impartial.

''(B) If the process provides that decisions in such process are not binding on issuers, the process must provide for public methods of disclosing frequency of noncompliance with such decisions and for sanctioning issuers that consistently refuse to take appropriate actions in response to such decisions.

''(C) Results of all such reviews under the process are disclosed to the public, along with at least annual disclosure of information on issuer compliance.

''(D) All decisions under the process shall be in writing and shall be accompanied by an explanation of the basis for the decision.

''(E) Direct costs of the process shall be borne by the issuer, and not by the enrollee.

''(F) The issuer shall provide for publication at least annually of information on the numbers of appeals and decisions considered under the process.

The Secretary may delegate the authority under subparagraph (A)(ii) to applicable State authorities.

''(5) OVERSIGHT.—The Secretary (and applicable State authorities in the case of delegation of Secretarial authority under paragraph (4)) shall conduct reviews not less often than biannually of the fairness and impartiality issuers who desired to use an internal, independent review process described in paragraph (4) to satisfy the requirement of paragraph (1).

''(6) REPORT.—The Secretary shall provide for periodic reports on the effectiveness of this subsection in assuring fair and impartial reviews of stage 2 appeals. Such reports shall include information on the number of stage 2 appeals (and decisions), for each of the types of review processes described in paragraph (2), by health insurance coverage.

''(g) CONSTRUCTION.—Nothing in this part shall be construed as removing any legal rights of enrollees under State or Federal law, including the right to file judicial actions to enforce rights.

''SEC. 2786. STATE HEALTH INSURANCE OMBUDSMEN.

''(a) IN GENERAL.—Each State that obtains a grant under subsection (c) shall establish and maintain a Health Insurance Ombudsman. Such Ombudsman may be part of a independent, nonprofit entity, and shall be responsible for at least the following:

''(1) To assist consumers in the State in choosing among health insurance coverage.

''(2) To provide counseling and assistance to enrollees dissatisfied with their treatment by health insurance issuers in regard to such coverage and in the filing of complaints and appeals regarding determinations under such coverage.

''(3) To investigate instances of poor quality or improper treatment of enrollees by health insurance issuers in regard to such coverage and to bring such instances to the attention of the applicable State authority.

''(b) FEDERAL ROLE.—In the case of any State that does not establish and maintain such an Ombudsman under subsection (a), the Secretary shall provide for the establishment and maintenance of such an official as will carry out with respect to that State the functions otherwise provided under subsection (a) by a Health Insurance Ombudsman.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such amounts as may be necessary to provide for grants to States to establish and operate Health Insurance Ombudsmen under subsection (a) or for the operation of Ombudsmen under subsection (b).

''SUBPART 5—PROTECTION OF PROVIDERS AGAINST INTERFERENCE WITH MEDICAL COMMUNICATIONS AND IMPROPER INCENTIVE ARRANGEMENTS

''SEC. 2787. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

''(a) PROHIBITION.—

''(1) GENERAL RULE.—The provisions of any contract or agreement, or the operation of any contract or agreement, between a health insurance issuer in relation to health insurance coverage (including any partnership, association, or other organization that enters into or administers such a contract or agreement) and a health care provider (or group of health care providers) shall not prohibit or restrict the provider from engaging in medical communications with the provider's patient.

''(2) NULLIFICATION.—Any contract provision or agreement described in paragraph (1) shall be null and void.

''(3) PROHIBITION ON PROVISIONS.—A contract or agreement described in paragraph (1) shall not include a provision that violates paragraph (1).

''(b) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to prohibit the enforcement, as part of a contract or agreement to which a health care provider is a party, of any mutually agreed upon terms and conditions, including terms and conditions requiring a health care provider to participate in, and cooperate with, all programs, policies, and procedures developed or operated by a health insurance issuer to assure, review, or improve the quality and effective utilization of health care services (if such utilization is according to guidelines or protocols that are based on clinical or scientific evidence and the professional judgment of the provider) but only if the guidelines or protocols under such utilization do not prohibit or restrict medical communications between providers and their patients; or

''(2) to permit a health care provider to misrepresent the scope of benefits covered under health insurance coverage or to otherwise require a health insurance issuer to reimburse providers for benefits not covered under the coverage.

''(c) MEDICAL COMMUNICATION DEFINED.—

''(1) IN GENERAL.—In this section, the term 'medical communication' means any communication made by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) with respect to—

''(A) the patient's health status, medical care, or treatment options;

''(B) any utilization review requirements that may affect treatment options for the patient; or

''(C) any financial incentives that may affect the treatment of the patient.

''(2) MISREPRESENTATION.—The term 'medical communication' does not include a communication by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) if the communication involves a knowing or willful misrepresentation by such provider.

''SEC. 2788. PROHIBITION AGAINST TRANSFER OF INDEMNIFICATION OR IMPROPER INCENTIVE ARRANGEMENTS.

''(a) PROHIBITION OF TRANSFER OF INDEMNIFICATION.—No contract or agreement between a health insurance issuer (or any agent acting on behalf of such an issuer) and a health care provider shall contain any clause purporting to transfer to the health care provider by indemnification or otherwise any liability relating to activities, actions, or omissions of the issuer or agent (as opposed to the provider).

''(b) PROHIBITION OF IMPROPER PHYSICIAN INCENTIVE PLANS.—

''(1) IN GENERAL.—A health insurance issuer offering health insurance coverage may not operate any physician incentive plan unless the following requirements are met:

''(A) No specific payment is made directly or indirectly by the issuer to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the issuer.

''(B) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the issuer—

''(i) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the issuer who receive services from the physician or the physician group, and

''(ii) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the issuer to determine the degree of access of such individuals to services provided by the issuer and satisfaction with the quality of such services.

''(C) The issuer provides the applicable State authority (or the Secretary if such authority is implementing this section) with descriptive information regarding the plan, sufficient to permit the authority (or the Secretary in such case) to determine whether the plan is in compliance with the requirements of this paragraph.

''(2) PHYSICIAN INCENTIVE PLAN DEFINED.—In this section, the term 'physician incentive plan' means any compensation arrangement between a health insurance issuer and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the issuer.

''(3) APPLICATION OF MEDICARE RULES.—The Secretary shall provide for the application of rules under this subsection that are substantially the same as the rules established to carry out section 1876(i)(8) of the Social Security Act.

''SUBPART 6—PROMOTING GOOD MEDICAL PRACTICE AND PROTECTING THE DOCTOR-PATIENT RELATIONSHIP

''SEC. 2789. PROMOTING GOOD MEDICAL PRACTICE.

''(a) PROHIBITING ARBITRARY LIMITATIONS OR CONDITIONS FOR THE PROVISION OF SERVICES.—A health insurance issuer, in connection with the provision of health insurance coverage, may not impose limits on the manner in which particular services are delivered if the services are medically necessary and appropriate for the treatment or diagnosis of an illness or injury to the extent that such treatment or diagnosis is otherwise a covered benefit.

''(b) MEDICAL NECESSITY AND APPROPRIATENESS DEFINED.—In subsection (a), the term 'medically necessary and appropriate' means, with respect to a service or benefit, a service or benefit determined by the treating physician participating in the health insurance coverage after consultation with the enrollee, to be required, accordingly to generally accepted principles of good medical practice, for the diagnosis or direct care and treatment of an illness or injury of the enrollee.

''(c) CONSTRUCTION.—Subsection (a) shall not be construed as requiring coverage of particular services the coverage of which is otherwise not covered under the terms of the coverage.''.

(b) APPLICATION TO GROUP HEALTH INSURANCE COVERAGE.—

(1) Subpart 2 of part A of title XXVII of the Public Health Service Act is amended by adding at the end the following new section:

''SEC. 2706. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Each health insurance issuer shall comply with patient protection requirements under part C with respect to group health insurance coverage it offers.

''(b) ASSURING COORDINATION.—The Secretary of Health and Human Services and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding between such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under part C (and this section) and section 713 of the Employee Retirement Income Security Act of 1974 are administered so as to have the same effect at all times; and

''(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.''.''.

(2) Section 2792 of such Act (42 U.S.C. 300gg–92) is amended by inserting ''and section 2706(b)'' after ''of 1996''.

(c) APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.—Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2751 the following new section:

''SEC. 2752. PATIENT PROTECTION STANDARDS.

''Each health insurance issuer shall comply with patient protection requirements under part C with respect to individual health insurance coverage it offers.''.

(d) MODIFICATION OF PREEMPTION STANDARDS.—

(1) GROUP HEALTH INSURANCE COVERAGE.—Section 2723 of such Act (42 U.S.C. 300gg–23) is amended—

(A) in subsection (a)(1), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)'';

(B) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(C) by inserting after subsection (b) the following new subsection:

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (a)(2), the provisions of section 2706 and part C (other than section 2771), and part D insofar as it applies to section 2706 or part C, shall not prevent a State from establishing requirements relating to the subject matter of such provisions (other than section 2771) so long as such requirements are at least as stringent on health insurance issuers as the requirements imposed under such provisions. Subsection (a) shall apply to the provisions of section 2771 (and section 2706 insofar as it relates to such section).''.

(2) INDIVIDUAL HEALTH INSURANCE COVERAGE.—Section 2762 of such Act (42 U.S.C. 300gg–62), as added by section 605(b)(3)(B) of Public Law 104–204, is amended—

(A) in subsection (a), by striking ''subsection (b), nothing in this part'' and inserting ''subsections (b) and (c)'', and

(B) by adding at the end the following new subsection:

''(c) SPECIAL RULES IN CASE OF MANAGED CARE REQUIREMENTS.—Subject to subsection (b), the provisions of section 2752 and part C (other than section 2771), and part D insofar as it applies to section 2752 or part C, shall not prevent a State from establishing requirements relating to the subject matter of such provisions so long as such requirements are at least as stringent on health insurance issuers as the requirements imposed under such section. Subsection (a) shall apply to the provisions of section 2771 (and section 2752 insofar as it relates to such section).''.

(e) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 2723(a)(1) of such Act (42 U.S.C. 300gg–23(a)(1)) is amended by striking ''part C'' and inserting ''parts C and D''.

(2) Section 2762(b)(1) of such Act (42 U.S.C. 300gg–62(b)(1)) is amended by striking ''part C'' and inserting ''part D''.

(f) EFFECTIVE DATES.—(1)(A) Subject to subparagraph (B), the amendments made by subsections (a), (b), (d)(1), and (e) shall apply with respect to group health insurance coverage for group health plan years beginning on or after July 1, 1998 (in this subsection referred to as the ''general effective date'') and also shall apply to portions of plan years occurring on and after January 1, 1999.

(B) In the case of group health insurance coverage provided pursuant to a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by subsections (a), (b), (d)(1), and (e) shall not apply to plan years beginning before the later of—

(i) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(ii) the general effective date.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) or (b) shall not be treated as a termination of such collective bargaining agreement.

(2) The amendments made by subsections (a), (c), (d)(2), and (e) shall apply with respect to individual health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the general effective date.

SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

''SEC. 713. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Subject to subsection (b), a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan) shall comply with the requirements of part C (other than section 2786) of title XXVII of the Public Health Service Act.

''(b) APPLICATION.—In applying subsection (a) under this part, any reference in such subpart C—

''(1) to a health insurance issuer and health insurance coverage offered by such an issuer is deemed to include a reference to a group health plan and coverage under such plan, respectively;

''(2) to the Secretary is deemed a reference to the Secretary of Labor;

''(3) to an applicable State authority is deemed a reference to the Secretary of Labor; and

''(4) to an enrollee with respect to health insurance coverage is deemed to include a reference to a participant or beneficiary with respect to a group health plan.

''(c) GROUP HEALTH PLAN OMBUDSMAN.—With respect to group health plans that provide benefits other than through health insurance coverage, the Secretary shall provide for the establishment and maintenance of such a Federal Group Health Plan Ombudsman that will carry out with respect to such plans the functions described in section 2786(a) of the Public Health Service Act with respect to health insurance issuers that offer group health insurance coverage.

''(d) ASSURING COORDINATION.—The Secretary of Health and Human Services and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding between such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under such part C (and section 2706 of the Public Health Service Act) and this section are administered so as to have the same effect at all times; and

''(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.''.

(b) MODIFICATION OF PREEMPTION STANDARDS.—Section 731 of such Act (42 U.S.C. 1191) is amended—

(1) in subsection (a)(1), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection:

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (a)(2), the provisions of section 713 and part C of title XXVII of the Public Health Service Act (other than section 2771

of such Act), and subpart C insofar as it applies to section 713 or such part, shall not prevent a State from establishing requirements relating to the subject matter of such provisions (other than section 2771 of such Act) so long as such requirements are at least as stringent on health insurance issuers as the requirements imposed under such provisions. Subsection (a) shall apply to the provisions of section 2771 of such Act (and section 713 of this Act insofar as it relates to such section).''.

(c) CONFORMING AMENDMENTS.— (1) Section 732(a) of such Act (29 U.S.C. 1185(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(2) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Patient protection standards.''.

(3) Section 734 of such Act (29 U.S.C. 1187) is amended by inserting ''and section 713(d)'' after ''of 1996''.

(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), the amendments made by this section shall apply with respect to group health plans for plan years beginning on or after July 1, 1998 (in this subsection referred to as the ''general effective date'') and also shall apply to portions of plan years occurring on and after January 1, 1999.

(2) In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) the general effective date.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

By Mr. ROBB:

S. 374. A bill to amend title 38, United States Code, to extend eligibility for hospital care and medical services under chapter 17 of that title to veterans who have been awarded the Purple Heart, and for other purposes; to the Committe on Veterans' Affairs.

THE COMBAT VETERANS MEDICAL EQUITY ACT OF 1997

• Mr. ROBB. Mr. President, I introduce the Combat Veterans Medical Equity Act of 1997, legislation which will serve to codify America's obligation to provide for the medical needs of our combat-wounded veterans.

Although we have long recognized the combat-wounded vet to be among our most deserving veterans, and although we have long distinguished the sacrifices of these veterans by awarding the Purple Heart Medal, remarkably, there is nothing in current law that stipulates an entitlement to health care based upon this physical sacrifice. In fact, I believe most Americans would be surprised to learn that a combat-wounded Purple Heart recipient could be denied services for which a noncombat veteran, with a non-service-connected disability, would be eligible. This legislation would seek to remedy that situation.

Specifically, this bill establishes eligibility for VA hospital care and medical services based upon the award of the Purple Heart Medal. It also gives Purple Heart recipients an enrollment priority on par with former prisoners of war and veterans with service-connected disabilities rated between 10 and 20 percent.

Mr. President, as a Vietnam veteran who has been privileged to lead marines in combat, and as a member of the Senate Armed Services Committee, I have a keen appreciation for the sacrifices made by all of our men and women in uniform. At the same time, in the face of tighter budgets and greater competition for services, I believe strongly that Congress should ensure equity in the disbursing of medical services for our most deserving of veterans—the combat wounded. These veterans, who have shed their blood to keep our country safe and free, deserve no less.

Mr. President, 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. 374

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

SECTION 1. ELIGIBILITY FOR HOSPITAL CARE AND MEDICAL SERVICES BASED ON AWARD OF PURPLE HEART.

(a) ELIGIBILITY.—Section 1710(a)(2) of title 38, United States Code, is amended—

(1) by striking out ''or'' at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph (G):

''(G) who has been awarded the Purple Heart; or''.

(b) ENROLLMENT PRIORITY.—Section 1705(a)(3) of such title is amended—

(1) by striking out ''and veterans'' and inserting in lieu thereof ''veterans''; and

(2) by inserting '', and veterans whose eligibility for care and services under this chapter is based solely on the award of the Purple Heart'' before the period at the end.

(c) CONFORMING AMENDMENTS.—(1) Section 1722(a) of such title is amended by striking out ''section 1710(a)(2)(G)'' and inserting in lieu thereof ''section 1710(a)(2)(H)''.

(2) Section 5317(c)(3) of such title is amended by striking out ''subsection (a)(2)(G),'' and inserting in lieu thereof ''subsection (a)(2)(H),''

By Mr. MCCAIN (for himself, Mr. DODD, Mr. ROBERTS, Mr. FORD, Mr. WARNER, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. REED, Mr. DEWINE, Mr. WELLSTONE and Mr. HAGEL):

S. 375. A bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test; to the Committee on Finance.

THE BLIND PERSONS EARNINGS EQUITY ACT

Mr. MCCAIN. Mr. President, I rise today with my good friend, Senator DODD, to introduce an important piece of legislation which would have a tremendous impact on the lives of many blind people. Our bill restores the 20-year link between blind people and senior citizens in regard to the Social Security earnings limit which has helped many blind people become self-sufficient and productive.

Unfortunately, by passing the Senior Citizens Freedom to Work Act last year, Congress broke the longstanding linkage in the treatment of blind people and seniors under Social Security, which resulted in allowing the earnings limit to be raised for seniors only and did not give blind people the same opportunity to increase their earnings without penalizing their Social Security benefits.

My intent when I sponsored the Senior Citizens Freedom to Work Act was not to permanently break the link between blind people and the senior population. Last year, time constraints and fiscal considerations forced me to focus solely on raising the unfair and burdensome earnings limit for seniors. I am happy to say that the Senior Citizens Freedom to Work Act became law last year, and the earnings exemption for seniors is being raised in annual increments until it reaches $30,000 in the year 2002. This law is allowing millions of seniors to make their lives better and continue contributing to society as productive workers.

We now should work in the spirit of fairness to ensure that this same opportunity is given to the blind population. We should provide blind people the opportunity to be productive and make it on their own. We should not continue policies which discourage these individuals from working and contributing to society.

The bill I am introducing today, along with Senator DODD, will restore the traditional linkage between seniors and blind people and allow them the same consideration as seniors in regard to the Social Security earnings test. This bill would reunite the earnings exemption amount for blind people with the exemption amount for senior citizens. If we do not reinstate this link, blind people will be restricted to earning $14,400 in the year 2002 in order to protect their Social Security benefits, compared to the $30,000 which seniors will be permitted to earn.

There are very strong and convincing arguments in favor of reestablishing the link between these two groups and increasing the earnings limit for blind people.

First, the earnings test treatment of our blind and senior populations has historically been identical. Since 1977, blind people and senior citizens have

shared the identical earnings exemption threshold under title II of the Social Security Act. Now, senior citizens will be given greater opportunity to increase their earnings without having their Social Security benefits being penalized; the blind, however, will not have the same opportunity.

The Social Security earnings test imposes as great a work disincentive for blind people as it does for senior citizens. In fact, the earnings test probably provides a greater aggregate disincentive for blind individuals since many blind beneficiaries are of working age—18–65—and are capable of productive work.

Blindness is often associated with adverse social and economic consequences. It is often tremendously difficult for blind individuals to find sustained employment or any employment at all, but they do want to work. They take great pride in being able to work and becoming productive members of society. By linking the blind with seniors in 1977, Congress provided a great deal of hope and incentive for blind people in this country to enter the work force. Now, we are taking that hope away from them by not allowing them the same opportunity to increase their earnings as senior citizens.

Blind people are likely to respond favorably to an increase in the earnings test by working more, which will increase their tax payments and their purchasing power and allow the blind to make a greater contribution to the general economy. In addition, encouraging the blind to work and allowing them to work more without being penalized would bring additional revenue into the Social Security trust funds. In short, restoring the link between blind people and senior citizens for treatment of Social Security benefits would help many blind people become self sufficient, productive members of society.

I want to stress that it was always my intent that the link between blind and senior populations would only be temporarily broken. I urge my colleagues to join me in sponsoring this important measure to restore fair and equitable treatment for our blind citizens and to give the blind community increased financial independence. Our Nation would be better served if we restore the work incentive equality provision for the blind and provide them with the same freedom, opportunities and fairness as our Nation's seniors.

I ask unanimous consent that numerous letters of support from various community groups and state organizations be included as a part of the RECORD. In addition, I would like to thank the many chapters of the National Federation of the Blind from throughout the country who have sent letters of support for this important piece of legislation including the Arizona Chapter, Idaho Western Chapter, Minnesota, Alabama, South Carolina, Shoreline Chapter of Connecticut, Iowa, Idaho, Minnesota's Metro Chapter, Virginia, Maryland, Connecticut, New York, Utah, Pennsylvania, California, Mississippi, Wisconsin, Idaho s Elmore County, and the Pend Oreille Chapter of Idaho.

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

NATIONAL INDUSTRIES FOR THE BLIND,
Alexandria, VA, February 21, 1997.

Hon. JOHN MCCAIN,
241 Russell Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: On behalf of National Industries for the Blind and our 119 associated industries in 38 states, that employ over 5,300 people who are blind, I vigorously endorse your proposed legislation to amend title II of the Social Security Act.

This legislation to re-institute the linkage, between people who are blind and senior citizens, if passed, will allow people who are blind to strive for full employment.

Please let us know how NIB can be of further assistance to you as you seek support of this important legislation.

Sincerely,

JUDITH D. MOORE.

REHABILITATION ADVISORY COUNCIL FOR THE BLIND,
St. Paul, MN, February 20, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the Rehabilitation Advisory Council for the Blind in Minnesota, I wish to express our strong support for the restoration of the earnings limits linkage under the Social Security Act between the blind and age 65 retirees. It is my understanding that you will be introducing a bill to achieve this restoration. We commend you for your willingness to exercise leadership on behalf of blind people who want to work and participate actively and productively in society. We support your bill.

The Social Security earnings limit for the blind is presently set at $12,000 per year. As I am sure you are aware, this is a powerful disincentive for blind people to leave the Social Security rolls and become self-supporting citizens. This barrier to self-support will become even more insurmountable as the gap between the blind and senior citizens widens. It is vital, therefore, that the blind achieve parity with age 65 retirees insofar as earnings limits under the Social Security Act are concerned. Using the figures that apply to senior citizens, this means raising the earnings limit for the blind to $30,000 per year by the year 2002.

Thank you for recognizing the problem and taking forthright action to deal with it.

Yours sincerely,

CURTIS CHONG,
Chairperson, Rehabilitation Advisory Council for the Blind.

LOUISIANA CENTER FOR THE BLIND,
Ruston, LA, February 21, 1997.

DEAR SENATOR MCCAIN: Since 1985, the Louisiana Center for the Blind has provided training and job placement services for hundreds of blind adults throughout the country. One of our primary goals is to help blind persons become employed so that they can become productive, tax-paying citizens. Over the past twelve years, we have observed that one of the main disincentives for employment is the earnings limit under Social Security Disability Insurance.

As the director of the Louisiana Center for the Blind, I want to express my strong support for your bill which would restore the linkage between the blind and retirees for the earnings limit under the Social Security Act. Since the unemployment rate among the blind is a staggering 70%, I firmly believe that your bill will decrease this statistic by helping blind Americans enter the workforce.

Thank you for your efforts on behalf of the nation's blind.

Sincerely,

JOANNE WILSON,
Director.

NATIONAL COUNCIL OF STATE AGENCIES FOR THE BLIND, INC.,
Boston, MA, February 25, 1997.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Office Building, Washington, DC.

DEAR SENATOR MCCAIN: Please accept this letter of support and applause from the National Council of State Agencies for the Blind as a testimony to the reality that your effort to reestablish the link for Blind SSDI recipients to the earnings limits of persons who are elderly is both timely and well grounded as a benefit to the national economy.

There is no question in the view of this organization which has a primary role of assisting blind persons to return to work, that reestablishment of the linkage would positively impact the decision of many persons to do so. Removing the disincentive of lower earnings before a total cut-off of benefits and reestablishing the linkage of a higher earnings limit would afford those persons capable of rejoining the national work force with the powerful personal reason to do so through sustained economic security.

Please be assured of the support and any assistance you may require of this organization as you take on this progressive and needed challenge to restore the earnings linkage. I may be reached at the above address or by phoning (617)–727–5550 extension 4503 in the event you wish to communicate further.

Sincerely,

CHARLES H. CRAWFORD,
President.

AMERICAN COUNCIL OF THE BLIND,
Washington, DC, February 25, 1997.

Hon. JOHN MCCAIN,
U.S. Senate, 241 Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the national membership of the American Council of the Blind, I write to applaud your efforts to restore the statutory linkage between the earnings limit for seniors and blind SSDI beneficiaries. This bill will go a long way to improving employment opportunities for blind people, who struggle to enter and remain in the work force. In the words of Jim Olsen, a member of the American Council of the Blind of Minnesota, ''restoring the linkage will enable blind people to continue to work, pay taxes, and believe in the American spirit of the work ethic.''

Our members are urging their Senators to support your bill to restore linkage, and we are keeping them informed of your efforts on their behalf. Please let me know how I can be of assistance in this matter.

Thank you.

Very truly yours,

JULIE H. CARROLL,
Director of Governmental Affairs.

METAIRIE, LA,
February 22, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I am writing to express our strong support for your bill to restore the linkage of earnings limits under the Social Security Act which apply to age 65 retirees and blind people of any age. The

position of the National Federation of the Blind on this matter is best expressed in a resolution (copy attached) which was unanimously adopted at our 1996 National Convention.

Your leadership on behalf of beneficiaries who want to contribute to society by working has earned our utmost respect. The Social Security earnings limit, presently at $12,000 annually, is the greatest barrier to self-support for blind people. In fact, I would say that the single factor of the earnings limit is more destructive to the self-support efforts of blind people than any other social condition.

By raising the earnings exemption threshold for blind people to $30,000 beginning in 2002, your bill would substantially remove any disincentive to work for blind people. For that reason, we applaud your efforts and pledge our full support.

Although I think that restoring the linkage is all right for the present, I believe that congress should totally eliminate the earnings limit and place us in the same classification as those 70 and over, this would not only provide a significant work incentive, but would also eliminate the cumbersome process of reporting both our earnings and impairment related work related expenses now required under the law. This has caused problems because of the confusion among Social Security Administration employees some of whom are unaware of the special provisions for blind persons.

I personally have had my earnings continuously started and stopped since 1991 not because of anything I have done that disqualifies me from receiving them, but due to the confusion of S.S.A. personnel. I feel that classifying blind persons the same as those 70 and over would ultimately provide an even better work incentive than the restoration of the linkage.

Thank you for responding to the need.

Very truly yours,

HARVEY HEAGY.

CONNECTICUT COMMUNITY ADVOCATES, SPECIALIZED EDUCATIONAL SERVICES,
Westbrook, CT, February 21, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.
Attention: Sonya Sotak

DEAR SENATOR MCCAIN: As a member of the CT. C.A.S.E.S., I have counseled many blind individuals who want to work. I have compared their potential entry level salary to their Social Security benefits. Too often, these work-bound blind citizens realize that after taxes and work expenses, their new job will not replace or equal their lost disability benefits. Few blind people can afford to sacrifice income, and they must remain idle in order to receive a guaranteed monthly check. The chance to work, earn, pay taxes, and become a contributing member of our society is a valid goal for all Americans; but with the existing law under title II of the Social Security Act, it is an unobtainable goal for blind people.

However, Senator McCain, your leadership and foresight in introducing a bill to restore the linkage of earnings limits under the Social Security Act for seniors and the blind will enable both groups to work. In addition, they will be able to join the work-force without fear. Your bill will restore fairness, equity, and hope for the working age blind person. The blind want to work and with your bill they will work. The staff of CT. C.A.S.E.S. and clients would like to convey our strong support and appreciation for your bill to restore the linkage of earnings limit under the Social Security Act which applies to retirees and blind people of any age.

I know from personal experience, just how strict the earnings limit is for blind people who attempt to work. My earnings exceeded the exempt amount and the entire sum paid to the primary beneficiary, myself, and my dependents was abruptly withdrawn. After subtracting the travel expenses etcetera, from the salary I obtained from being employed, it was quite evident that my real earnings were much less than my monthly disability benefits. At present many blind people will lose financially by going to work but with the enactment of your bill, restoring the linkage, they will not lose. These blind people will become part of the working force. They will pay taxes. They will become fully integrated and truly achieve first class status as working Americans.

PAULA A. KRAUSS,
Director CT. C.A.S.E.S.

NATIONAL FEDERATION OF THE BLIND,
Baltimore, MD, February 12, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I am writing to express our strong support for your bill to restore the linkage of earnings limits under the Social Security Act which apply to age 65 retirees and blind people of any age. The position of the National Federation of the Blind on this matter is best expressed in a resolution (copy attached) which was unanimously adopted at our 1996 National Convention.

Your leadership on behalf of beneficiaries who want to contribute to society by working has earned our utmost respect. The Social Security earnings limit, presently at $12,000 annually, is the greatest barrier to self-support for blind people. In fact, I would say that the single factor of the earnings limit is more destructive to the self-support efforts of blind people than any other social condition.

By raising the earnings exemption threshold for blind people to $30,000 beginning in 2002, your bill would substantially remove any disincentive to work for blind people. For that reason, we applaud your efforts and pledge our full support.

Thank you for responding to the need.

Very truly yours,

JAMES GASHEL,
Director of Governmental Affairs,
National Federation of the Blind.

Mr. DODD. Mr. President, I rise with my dear friend and colleague, Senator MCCAIN, to introduce legislation of vital importance to Americans who happen to be blind. Its purpose is simply to restore the Social Security earnings limitation for the blind to the same level as that for America's senior citizens.

Mr. President, the English poet John Milton once said that ''To be blind is not miserable; not to be able to bear blindness, that is miserable.''

Over the past 20 years, blind Americans have made amazing progress in shouldering those difficult burdens. Today, millions of blind Americans have achieved more independent and rewarding lives for themselves.

The legislation that we introduce today will ensure that this progress continues by restoring an important work incentive for close to 150,000 blind Americans. This bill would reestablish the identical earnings exemption threshold for blind and senior citizen beneficiaries under the Social Security Act, which had been the law from 1977 until just last year.

Prior to 1977, blind people were overwhelmingly dependent on disability benefits. What's worse, many of them could not afford to work without risking the loss of the basic security that these benefits provided.

However, in that year, we raised the earnings exemption for the blind to the same level as retirees—from $500 to $940 a month. That modest step encouraged millions of blind Americans to work by allowing them to keep more of what they earned.

Unfortunately, last year, when the Congress raised the earnings limit for seniors, it failed to extend the same benefits to the blind.

The impact of this unfortunate step has been significant. As the law now stands, a senior citizen may earn $13,500 in 1997 and $30,000 by the year 2002 without any reduction of benefits. A blind person, on the other hand, may only earn $12,000 today, and only $14,400 in 2002. While this provides terrific encouragement for seniors to work, it reenshrines into law the disincentive for blind people that existed before 1977.

There are approximately 1.1 million people in the United States who are blind under the Social Security definition. Of those, 713,000 of the 1.1 million are 65 or older, and they are considered retirees, not blind people.

But there are roughly 387,000 people who are blind, and under retirement age, who have been adversely affected by the severed link between retirees and the blind. Of the 332,000 blind people who are 20 or older, more than 70 percent are unemployed. We must not make their efforts to find meaningful and rewarding work more difficult. Rather, we should encourage blind Americans in their noble endeavors. Our legislation would do just that by raising the earnings limit and linking it once again to the senior citizens exempt account.

In closing, Mr. President, allow me to commend Senator MCCAIN for his leadership here. He has once again demonstrated his commitment to ensuring that all Americans have a fair and equal opportunity to enjoy the fruits of their labors and the blessings of our great Nation. I urge our colleagues to join us in supporting this legislation.

By Mr. LEAHY (for himself, Mr. BURNS, Mrs. MURRAY, and Mr. WYDEN):

S. 376. A bill to affirm the rights of Americans to use and sell encryption products, to establish privacy standards for voluntary key recovery encryption systems, and for other purposes; to the Committee on the Judiciary.

THE ENCRYPTED COMMUNICATION PRIVACY ACT OF 1997

Mr. LEAHY. Mr. President, in the 104th Congress, a bipartisan group of Senators came together to overhaul our country's outdated export rules and bring some sense to our country's encryption policy. We are back at it again in this Congress. I am pleased to

introduce with Senator BURNS, and others, two encryption bills, the Encrypted Communications Privacy Act [ECPA] and Promotion of Commerce On-Line in the Digital Era [PRO-CODE] Act.

This legislation bars government-mandated key recovery, or key escrow encryption, and ensures that all computer users are free to choose any encryption method to protect the privacy of their online communications and computer files. These bills also roll back current restrictions on the export of strong cryptography so that high-tech U.S. firms are free to compete in the global marketplace and meet the demands of customers—both foreign and domestic—for strong encryption.

As an avid Internet user myself, I care deeply about protecting individual privacy and encouraging the development of the Internet as a secure and trusted communications medium. As more Americans every year use the Internet and other computer networks to obtain critical medical services, to conduct business, to be entertained and communicate with their friends, maintaining the privacy and confidentiality of our computer communications both here and abroad has only grown in importance.

Strong encryption also has an important use as a crime prevention shield, to stop hackers, industrial spies and thieves from snooping into private computer files and stealing valuable proprietary information. We should be encouraging the use of strong encryption to prevent certain types of computer and online crime.

We made progress in the last Congress on encryption. The attention we gave to this issue in classified briefings and public hearings helped the administration recognize the need for reform. In fact, in the waning days of the last Congress, the administration took steps to adopt one element proposed in these bills by transferring export control authority for certain encryption products from the State Department to the Commerce Department. The administration also loosened export controls on 56-bit key length encryption—at least for 2 years. Although the administration is moving in the right direction by loosening some export controls, its unilateral regulatory reforms are not enough.

Even under the current regime, popular browser software, such as Microsoft's Internet Explorer and Netscape Navigator, may not be exported in the form generally available here, since both software packages use 128-bit encryption. Lotus Notes shareware, which uses 64-bit encryption, cannot be exported in the same version sold domestically.

We need to loosen export restrictions on encryption products so that American companies are able to export any generally available or mass market encryption products without obtaining Government approval. ECPA would allow our companies to do that.

We are mindful of the national security and law enforcement concerns that have dictated the administration's policy choices on encryption. Both bills contain important exceptions to restrict encryption exports for military end-uses, or to terrorist designated or embargoed countries, such as Cuba or North Korea. This is not enough to satisfy our national security and law enforcement agencies, who fear that the widespread use of strong encryption will undercut their ability to eavesdrop on terrorists or other criminals, or decipher computer files containing material evidence of a crime.

Administration officials have made clear that they seek nothing less than a world-wide key recovery encryption scheme in which the U.S. Government is able to obtain decryption assistance to decipher encrypted communications and stored electronic files. I have significant concerns about the administration conditioning the export of 56-bit key encryption on companies moving forward with key recovery encryption systems. In aggressively promoting a global key recovery scheme the administration is ignoring the conclusion of the National Research Council in its thorough CRISIS report issued last year. Specifically, the report warned that ''Aggressive government promotion of escrowed encryption is not appropriate at this time.''

The administration is putting the proverbial cart-before-the-horse by promoting key recovery without having in place privacy safeguards defining how and under what circumstances law enforcement and others may get access to decryption keys. Many users have legitimate concerns about investing in and using key recovery products without clear answers on how the law enforcement here, let alone other countries, including those with bad human rights records or a history of economic espionage, will get access to their keys.

ECPA provides those answers with clear guidelines on how and when law enforcement and foreign countries may obtain decryption assistance from key holders, who are voluntarily entrusted with decryption keys or have the capability to provide decryption assistance.

It is time for Congress to take steps to put our national encryption policy on the right course. Both the PRO-CODE bill and the Encrypted Communications Privacy Act reflect a bipartisan effort to reform our nation's cryptography policy in a constructive and positive manner.

I ask unanimous consent that the Encrypted Communications Privacy Act and a section-by-section summary be printed in the RECORD.

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

S. 376

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 ''Encrypted Communications Privacy Act of 1997''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to ensure that Americans have the maximum possible choice in encryption methods to protect the security, confidentiality, and privacy of their lawful wire and electronic communications and stored electronic information; and

(2) to establish privacy standards for key holders who are voluntarily entrusted with the means to decrypt such communications and information, and procedures by which investigative or law enforcement officers may obtain assistance in decrypting such communications and information.

SEC. 3. FINDINGS.

Congress finds that—

(1) the digitization of information and the explosion in the growth of computing and electronic networking offers tremendous potential benefits to the way Americans live, work, and are entertained, but also raises new threats to the privacy of American citizens and the competitiveness of American businesses;

(2) a secure, private, and trusted national and global information infrastructure is essential to promote economic growth, protect privacy, and meet the needs of American citizens and businesses;

(3) the rights of Americans to the privacy and security of their communications and in the conducting of personal and business affairs should be preserved and protected;

(4) the authority and ability of investigative and law enforcement officers to access and decipher, in a timely manner and as provided by law, wire and electronic communications and stored electronic information necessary to provide for public safety and national security should also be preserved;

(5) individuals will not entrust their sensitive personal, medical, financial, and other information to computers and computer networks unless the security and privacy of that information is assured;

(6) business will not entrust their proprietary and sensitive corporate information, including information about products, processes, customers, finances, and employees, to computers and computer networks unless the security and privacy of that information is assured;

(7) encryption technology can enhance the privacy, security, confidentiality, integrity, and authenticity of wire and electronic communications and stored electronic information;

(8) encryption techniques, technology, programs, and products are widely available worldwide;

(9) Americans should be free to use lawfully whatever particular encryption techniques, technologies, programs, or products developed in the marketplace they desire to use in order to interact electronically worldwide in a secure, private, and confidential manner;

(10) American companies should be free—

(A) to compete and to sell encryption technology, programs, and products; and

(B) to exchange encryption technology, programs, and products through the use of the Internet, as the Internet is rapidly emerging as the preferred method of distribution of computer software and related information;

(11) there is a need to develop a national encryption policy that advances the development of the national and global information infrastructure, and preserves the right to privacy of Americans and the public safety and national security of the United States;

(12) there is a need to clarify the legal rights and responsibilities of key holders who are voluntarily entrusted with the

means to decrypt wire and electronic communications and stored electronic information;

(13) Congress and the American people have recognized the need to balance the right to privacy and the protection of the public safety with national security;

(14) the Constitution permits lawful electronic surveillance by investigative or law enforcement officers and the seizure of stored electronic information only upon compliance with stringent standards and procedures; and

(15) there is a need to clarify the standards and procedures by which investigative or law enforcement officers obtain assistance from key holders who—

(A) are voluntarily entrusted with the means to decrypt wire and electronic communications and stored electronic information; or

(B) have information that enables the decryption of such communications and information.

SEC. 4. DEFINITIONS.

As used in this Act, the terms ''decryption key'', ''encryption'', ''key holder'', and ''State'' have the same meanings as in section 2801 of title 18, United States Code, as added by section 6 of this Act.

SEC. 5. FREEDOM TO USE ENCRYPTION.

(a) LAWFUL USE OF ENCRYPTION.—Except as provided in this Act and the amendments made by this Act, it shall be lawful for any person within any State, and by any United States person in a foreign country, to use any encryption, regardless of encryption algorithm selected, encryption key length chosen, or implementation technique or medium used.

(b) PROHIBITION ON MANDATORY KEY RECOVERY OR KEY ESCROW ENCRYPTION.—Neither the Federal Government nor a State may require, as a condition of a sale in interstate commerce, that a decryption key be given to another person.

(c) GENERAL CONSTRUCTION.—Nothing in this Act or the amendments made by this Act shall be construed to—

(1) require the use by any person of any form of encryption;

(2) limit or affect the ability of any person to use encryption without a key recovery function; or

(3) limit or affect the ability of any person who chooses to use encryption with a key recovery function to select the key holder, if any, of the person's choice.

SEC. 6. ENCRYPTED WIRE OR ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC COMMUNICATIONS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 123 the following new chapter:

''CHAPTER 125—ENCRYPTED WIRE OR ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC INFORMATION

''§ 2801. Definitions

''In this chapter—

''(1) the term 'decryption key' means the variable information used in or produced by a mathematical formula, code, or algorithm, or any component thereof, used to decrypt a wire communication or electronic communication or stored electronic information that has been encrypted;

''(2) the term 'decryption assistance' means assistance which provides or facilitates access to the plain text of an encrypted wire communication or electronic communication or stored electronic information;

''(3) the term 'encryption' means the scrambling of wire communications or electronic communications or stored electronic information using mathematical formulas or algorithms in order to preserve the confidentiality, integrity, or authenticity of such communications or information and prevent unauthorized recipients from accessing or altering such communications or information;

''(4) the term 'key holder' means a person (including a Federal agency) located within the United States who—

''(A) is voluntarily entrusted by another independent person with the means to decrypt that person's wire communications or electronic communications or stored electronic information for the purpose of subsequent decryption of such communications or information; or

''(B) has information that enables the decryption of such communications or information for such purpose; and

''(5) the terms 'person', 'State', 'wire communication', 'electronic communication', 'investigative or law enforcement officer', 'judge of competent jurisdiction', and 'electronic storage' have the same meanings given such terms in section 2510 of this title.

''§ 2802. Prohibited acts by key holders

''(a) UNAUTHORIZED RELEASE OF KEY.—Except as provided in subsection (b), any key holder who releases a decryption key or provides decryption assistance shall be subject to the criminal penalties provided in subsection (e) and to civil liability as provided in subsection (f).

''(b) AUTHORIZED RELEASE OF KEY.—A key holder shall only release a decryption key in the possession or control of the key holder or provide decryption assistance with respect to the key—

''(1) with the lawful consent of the person whose key is possessed or controlled by the key holder;

''(2) as may be necessarily incident to the provision of service relating to the possession or control of the key by the key holder; or

''(3) upon compliance with subsection (c)—

''(A) to investigative or law enforcement officers authorized to intercept wire communications or electronic communications under chapter 119 of this title;

''(B) to a governmental entity authorized to require access to stored wire and electronic communications and transactional records under chapter 121 of this title; or

''(C) to a governmental entity authorized to seize or compel the production of stored electronic information.

''(c) REQUIREMENTS FOR RELEASE OF DECRYPTION KEY OR PROVISION OF DECRYPTION ASSISTANCE.—

''(1) WIRE AND ELECTRONIC COMMUNICATIONS.—(A) A key holder may release a decryption key or provide decryption assistance to an investigative or law enforcement officer if—

''(i) the key holder is given—

''(I) a court order—

''(aa) signed by a judge of competent jurisdiction directing such release or assistance; and

''(bb) issued upon a finding that the decryption key or decryption assistance sought is necessary for the decryption of a communication that the investigative or law enforcement officer is authorized to intercept pursuant to chapter 119 of this title; or

''(II) a certification in writing by a person specified in section 2518(7) of this title, or the Attorney General, stating that—

''(aa) no court order is required by law;

''(bb) the conditions set forth in section 2518(7) of this title have been met; and

''(cc) the release or assistance is required;

''(ii) the order or certification under clause (i)—

''(I) specifies the decryption key or decryption assistance being sought; and

''(II) identifies the termination date of the period for which the release or assistance is authorized; and

''(iii) in compliance with the order or certification, the key holder provides only the release or decryption assistance necessary for the access specified in the order or certification.

''(B) If an investigative or law enforcement officer receives a decryption key or decryption assistance under this paragraph for purposes of decrypting wire communications or electronic communications, the judge issuing the order authorizing the interception of such communications shall, as part of the inventory required to be served pursuant to subsection (7)(b) or (8)(d) of section 2518 of this title, cause to be served on the persons named in the order, or the application for the order, and on such other parties as the judge may determine in the interests of justice, notice of the receipt of the key or decryption assistance, as the case may be, by the officer.

''(2) STORED WIRE AND ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC INFORMATION.—(A) A key holder may release a decryption key or provide decryption assistance to a governmental entity requiring disclosure of stored wire and electronic communications and transactional records under chapter 121 of this title only if the key holder is directed to release the key or give such assistance pursuant to a court order issued upon a finding that the decryption key or decryption assistance sought is necessary for the decryption of communications or records the disclosure of which the governmental entity is authorized to require under section 2703 of this title.

''(B) A key holder may release a decryption key or provide decryption assistance under this subsection to a governmental entity seizing or compelling production of stored electronic information only if the key holder is directed to release the key or give such assistance pursuant to a court order issued upon a finding that the decryption key or decryption assistance sought is necessary for the decryption of stored electronic information—

''(i) that the governmental entity is authorized to seize; or

''(ii) the production of which the governmental entity is authorized to compel.

''(C) A court order directing the release of a decryption key or the provision of decryption assistance under subparagraph (A) or (B) shall specify the decryption key or decryption assistance being sought. A key holder may provide only such release or decryption assistance as is necessary for access to the communications, records, or information covered by the court order.

''(D) If a governmental entity receives a decryption key or decryption assistance under this paragraph for purposes of obtaining access to stored wire and electronic communications or transactional records under section 2703 of this title, the notice required with respect to such access under subsection (b) of such section shall include notice of the receipt of the key or assistance, as the case may be, by the entity.

''(3) USE OF KEY.—(A) An investigative or law enforcement officer or governmental entity to which a decryption key is released under this subsection may use the key only in the manner and for the purpose and period expressly provided for in the certification or

court order authorizing such release and use. Such period may not exceed the duration of the interception for which the key was released or such other period as the court, if any, may allow.

''(B) Not later than the end of the period authorized for the release of a decryption key, the investigative or law enforcement officer or governmental entity to which the key is released shall destroy and not retain the key and provide a certification that the key has been destroyed to the issuing court, if any.

''(4) NONDISCLOSURE OF RELEASE.—No key holder, officer, employee, or agent thereof may disclose the release of an encryption key or the provision of decryption assistance under subsection (b)(3), except as otherwise required by law or legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or of a political subdivision of a State, as appropriate.

''(d) RECORDS OR OTHER INFORMATION HELD BY KEY HOLDERS.—

''(1) IN GENERAL.—A key holder may not disclose a record or other information (not including the key or the contents of communications) pertaining to any person, which record or information is held by the key holder in connection with its control or possession of a decryption key, except—

''(A) with the lawful consent of the person whose key is possessed or controlled by the key holder; or

''(B) to an investigative or law enforcement officer pursuant to a warrant, subpoena, court order, or other lawful process authorized by Federal or State law.

''(2) CERTAIN NOTICE NOT REQUIRED.—An investigative or law enforcement officer receiving a record or information under paragraph (1)(B) is not required to provide notice of such receipt to the person to whom the record or information pertains.

''(3) LIABILITY FOR CIVIL DAMAGES.—Any disclosure in violation of this subsection shall render the person committing the violation liable for the civil damages provided for in subsection (f).

''(e) CRIMINAL PENALTIES.—The punishment for an offense under subsection (a) is—

''(1) if the offense is committed for a tortious, malicious, or illegal purpose, or for purposes of direct or indirect commercial advantage or private commercial gain—

''(A) a fine under this title or imprisonment for not more than 1 year, or both, in the case of a first offense; or

''(B) a fine under this title or imprisonment for not more than 2 years, or both, in the case of a second or subsequent offense; and

''(2) in any other case where the offense is committed recklessly or intentionally, a fine of not more than $5,000 or imprisonment for not more than 6 months, or both.

''(f) CIVIL DAMAGES.—

''(1) IN GENERAL.—Any person aggrieved by any act of a person in violation of subsection (a) or (d) may in a civil action recover from such person appropriate relief.

''(2) RELIEF.—In an action under this subsection, appropriate relief includes—

''(A) such preliminary and other equitable or declaratory relief as may be appropriate;

''(B) damages under paragraph (3) and punitive damages in appropriate cases; and

''(C) a reasonable attorney's fee and other litigation costs reasonably incurred.

''(3) COMPUTATION OF DAMAGES.—The court may assess as damages the greater of—

''(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

''(B) statutory damages in the amount of $5,000.

''(4) LIMITATION.—A civil action under this subsection shall be commenced not later than 2 years after the date on which the plaintiff first knew or should have known of the violation.

''(g) DEFENSE.—It shall be a complete defense against any civil or criminal action brought under this chapter that the defendant acted in good faith reliance upon a warrant, subpoena, or court order or other statutory authorization.

''§ 2803. Reporting requirements

''(a) IN GENERAL.—In reporting to the Administrative Office of the United States Courts as required under section 2519(2) of this title, the Attorney General, an Assistant Attorney General specially designated by the Attorney General, the principal prosecuting attorney of a State, or the principal prosecuting attorney of any political subdivision of a State shall report on the number of orders and extensions served on key holders under this chapter to obtain access to decryption keys or decryption assistance and the offenses for which the orders and extensions were obtained.

''(b) REQUIREMENTS.—The Director of the Administrative Office of the United States Courts shall include in the report transmitted to Congress under section 2519(3) of this title the number of orders and extensions served on key holders to obtain access to decryption keys or decryption assistance and the offenses for which the orders and extensions were obtained.

''§ 2804. Unlawful use of encryption to obstruct justice

''Whoever willfully endeavors by means of encryption to obstruct, impede, or prevent the communication to an investigative or law enforcement officer of information in furtherance of a felony that may be prosecuted in a court of the United States shall—

''(1) in the case of a first conviction, be sentenced to imprisonment for not more than 5 years, fined under this title, or both; or

''(2) in the case of a second or subsequent conviction, be sentenced to imprisonment for not more than 10 years, fined under this title, or both.

''§ 2805. Freedom to sell encryption products

''(a) IN GENERAL.—It shall be lawful for any person within any State to sell in interstate commerce any encryption, regardless of encryption algorithm selected, encryption key length chosen, or implementation technique or medium used.

''(b) CONTROL OF EXPORTS BY SECRETARY OF COMMERCE.—

''(1) GENERAL RULE.—Notwithstanding any other law and subject to paragraphs (2), (3), and (4), the Secretary of Commerce shall have exclusive authority to control exports of all computer hardware, computer software, and technology for information security (including encryption), except computer hardware, software, and technology that is specifically designed or modified for military use, including command, control, and intelligence applications.

''(2) ITEMS SUBJECT TO LICENSE EXCEPTION.—Except as otherwise provided under the Trading With The Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (but only to the extent that the authority of the International Emergency Economic Powers Act is not exercised to extend controls imposed under the Export Administration Act of 1979), a license exception shall be made available for the export or reexport of—

''(A) any computer software, including computer software with encryption capabilities, that is—

''(i) generally available, as is, and designed for installation by the user or purchaser; or

''(ii) in the public domain (including computer software available through the Internet or another interactive computer service) or publicly available because the computer software is generally accessible to the interested public in any form;

''(B) any computing device or computer hardware that otherwise would be restricted solely on the basis that it incorporates or employs in any form computer software (including computer software with encryption capabilities) that is described in subparagraph (A);

''(C) any computer software or computer hardware that is otherwise restricted solely on the basis that it incorporates or employs in any form interface mechanisms for interaction with other hardware and software, including encryption hardware and software; or

''(D) any encryption technology related or ancillary to a device, software, or hardware described in subparagraph (A), (B), or (C).

''(3) COMPUTER SOFTWARE, COMPUTER HARDWARE, AND TECHNOLOGY WITH ENCRYPTION CAPABILITIES.—(A) Except as provided in subparagraph (B), the Secretary of Commerce shall authorize the export or reexport of computer software, computer hardware, and technology with encryption capabilities under a license exception if—

''(i) a product offering comparable security is commercially available from a foreign supplier without effective restrictions;

''(ii) a product offering comparable security is generally available in a foreign country; or

''(iii) the sole basis for otherwise withholding the license exception is the employment in the software, hardware, or technology of encryption from a foreign source.

''(B) The Secretary of Commerce shall prohibit the export or reexport of computer software, computer hardware, and technology described in subparagraph (A) to a foreign country if the Secretary determines that there is substantial evidence that such software, hardware, or technology will be—

''(i) diverted to a military end-use or an end-use supporting international terrorism;

''(ii) modified for military or terrorist end-use; or

''(iii) reexported without requisite United States authorization.

''(4) DEFINITIONS.—As used in this subsection—

''(A) the term 'as is' means, in the case of computer software (including computer software with encryption capabilities), a computer software program that is not designed, developed, or tailored by the computer software company for specific purchasers, except that such purchasers may supply certain installation parameters needed by the computer software program to function properly with the purchaser's system and may customize the computer software program by choosing among options contained in the computer software program;

''(B) the term 'computing device' means a device which incorporates one or more microprocessor-based central processing units that can accept, store, process, or provide output of data;

''(C) the term 'computer hardware', when used in conjunction with information security, includes computer systems, equipment, application-specific assemblies, modules, and integrated circuits;

''(D) the term 'generally available' means, in the case of computer software (including computer software with encryption capabilities), computer software that is widely offered for sale, license, or transfer including over-the-counter retail sales, mail order

transactions, telephone order transactions, electronic distribution, and sale on approval;

''(E) the term 'interactive computer service' has the meaning provided that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(e)(2));

''(F) the term 'Internet' has the meaning provided that term in section 230(e)(1) of the Communications Act of 1934 (47 U.S.C. 230(e)(1));

''(G) the term 'is designed for installation by the purchaser' means, in the case of computer software (including computer software with encryption capabilities)—

''(i) that the computer software company intends for the purchaser (including any licensee or transferee), who may not be the actual program user, to install the computer software program on a computing device and has supplied the necessary instructions to do so, except that the company may also provide telephone help-line services for software installation, electronic transmission, or basic operations; and

''(ii) that the computer software program is designed for installation by the purchaser without further substantial support by the supplier;

''(H) the term 'license exception' means a general authorization applicable to a type of export that does not require an exporter to, as a condition of exporting—

''(i) submit a written application to the Secretary of Commerce; or

''(ii) receive prior written authorization by the Secretary of Commerce; and

''(I) the term 'technology' means specific information necessary for the development, production, or use of a product.

''§ 2806. Requirements for release of decryption key or provision of decryption assistance to a foreign country

''(a) IN GENERAL.—Except as provided in subsection (b), no investigative or law enforcement officer or key holder may release a decryption key or provide decryption assistance to a foreign country.

''(b) CONDITIONS FOR COOPERATION WITH FOREIGN COUNTRY.—

''(1) IN GENERAL.—In any case in which the United States has entered into a treaty or convention with a foreign country to provide mutual assistance with respect to decryption, the Attorney General (or the designee of the Attorney General) may, upon an official request to the United States from the foreign country, apply for an order described in paragraph (2) from the district court in which a key holder resides for—

''(A) assistance in obtaining the release of a decryption key from the key holder; or

''(B) obtaining decryption assistance from the key holder.

''(2) CONTENTS OF ORDER.—An order described in this paragraph is an order that directs the key holder involved to—

''(A) release a decryption key to the Attorney General (or the designee of the Attorney General) for furnishing to the foreign country; or

''(B) provide decryption assistance to the Attorney General (or the designee of the Attorney General) for furnishing to the foreign country.

''(3) REQUIREMENTS FOR ORDER.—A judge of a court described in paragraph (1) may issue an order described in paragraph (2) if the judge finds, on the basis on an application made by the Attorney General under this subsection, that—

''(A) the decryption key or decryption assistance sought is necessary for the decryption of a communication or information that the foreign country is authorized to intercept or seize pursuant to the law of the foreign country;

''(B) the law of the foreign county provides for adequate protection against arbitrary interference with respect to privacy rights; and

''(C) the decryption key or decryption assistance is being sought in connection with a criminal investigation for conduct that would constitute a violation of a criminal law of the United States if committed within the jurisdiction of the United States.

''(c) DEFINITION.—As used in this section, the term 'official request' has the meaning given that term in section 3506(c) of this title.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 123 the following new item:

''125. Encrypted wire or electronic communications and stored electronic information ..... 2801''.

SEC. 7. INTELLIGENCE ACTIVITIES.

(a) CONSTRUCTION.—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN CONDUCT.—Nothing in this Act or the amendments made by this Act shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General, of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as so defined.

ENCRYPTED COMMUNICATIONS PRIVACY ACT OF 1997—SUMMARY

Sec. 1. Short Title. The Act may be cited as the ''Encrypted Communications Privacy Act of 1997.''

Sec. 2. Purpose. The Act would ensure that Americans have the maximum possible choice in encryption methods to protect the security, confidentiality and privacy of their lawful wire and electronic communications and stored electronic information. Americans are free to choose an encryption method with a key recovery feature, in which another person, called a ''key holder,'' is voluntarily entrusted with a decryption key or with the means to decrypt, or has information that would enable the decryption of, encrypted communications or information. The Act would establish privacy standards for the key holder, and procedures for law enforcement officers and foreign countries to follow to obtain assistance from the key holder in decrypting encrypted communications and information.

Sec. 3. Findings. The Act enumerates fifteen congressional findings, including that a secure, private and trusted national and global information infrastructure is essential to promote citizens' privacy and meet the needs of both American citizens and businesses, that encryption technology widely available worldwide can help meet those needs, that Americans should be free to use, and American businesses free to compete and sell, encryption technology, programs and products, and that there is a need to develop a national encryption policy to advance the global information infrastructure and preserve Americans' right to privacy and the Nation's public safety and national security.

Sec. 4. Definitions. The terms ''decryption key'', ''encryption'', ''key holder'', and ''State'' as used in the Act are defined in section 6 of the Act.

Sec. 5. Freedom to Use Encryption.

(a) Lawful Use of Encryption. The Act legislatively confirms current practice in the United States that any person in this country may lawfully use any encryption method, regardless of encryption algorithm, key length or implementation selected.

The Act further makes clear that it is lawful under U.S. law for by any United States persons in a foreign country to use any encryption method. This provision is consistent with, though broader than, the Commerce Department's license exceptions published in the Federal Register on December 30, 1996, for temporary encryption exports that effectively replace the Department of State's personal use exemption. This personal use exemption that permits the export of cryptographic products by U.S. citizens and permanent residents who have the need to temporarily export the cryptographic products when leaving the U.S. for brief periods of time. For example, under this exemption, U.S. citizens traveling abroad are able to take their laptop computers containing copies of Lotus Notes software, many versions of which contain an encryption program otherwise not exportable.

(b) Prohibition on Mandatory Key Recovery or Key Escrow Encryption. The Act expressly bars the government from mandating that encryption technology or products be sold in interstate commerce with a key recovery feature.

(c) General Construction. Nothing in the Act is to be construed to require the use of encryption, the use of encryption with or without a key recovery feature, or the use of a key holder if a person chooses to use encryption with a key recovery feature.

Sec. 6. Encrypted Wire or Electronic Communications and Stored Electronic Information. This section of the act adds a new chapter 125, entitled ''Encrypted Wire or Electronic Communications and Stored Electronic Information,'' to title 18 of the United States Code to establish privacy standards for key holders and to set forth procedures that law enforcement officers, governmental entities and foreign countries must follow to obtain release of decryption keys or decryption assistance from key holders.

(a) In General. New chapter 125 has six sections.

§ 2801. Definitions. Generally, the terms used in the new chapter have the same meanings as in the federal wiretap statute, 18 U.S.C. 2510. Definitions are provided for ''decryption key'', ''decryption assistance'', ''encryption'' and ''key holder''. A ''key holder'' is a person located within the United States who is voluntarily entrusted by another independent person with the means to decrypt, or who has information that would enable the decryption of, that person's encrypted wire or electronic communications or stored electronic information. A key holder may, but is not required to be, a Federal agency.

This chapter applies to wire or electronic communications and communications in electronic storage, as defined in 18 U.S.C. 2510, and to stored electronic data. Thus, this chapter describes procedures for law enforcement to obtain assistance in decrypting encrypted electronic mail messages, encrypted telephone conversations, encrypted facsimile transmissions, encrypted computer transmissions and encrypted file transfers over the Internet that are lawfully intercepted pursuant to a wiretap order, under 18 U.S.C. 2518, or obtained pursuant to lawful process, under 18 U.S.C. 2703, and encrypted information stored on computers that is seized pursuant to a search warrant or other lawful process.

§2802. Prohibited acts by key holders

(a) UNAUTHORIZED RELEASE OF KEY.—Key holders will be subject to both criminal and civil liability for the unauthorized release of decryption keys or providing unauthorized decryption assistance.

(b) AUTHORIZED RELEASE OF KEY.—Key holders are authorized to release decryption keys or provide decryption assistance (1) with the consent of the key owner, (2) as may be necessarily incident to the provision of the key holder's service in possessing or controlling the key, or (3) to investigative or law enforcement officers authorized to conduct wiretaps and intercept wire or electronic communications, governmental entities authorized to access stored wire or electronic communications and transactional records, and governmental entities authorized to seize or compel production of stored electronic records, and upon compliance with the procedures set forth in subsection (c).

(c) REQUIREMENTS FOR RELEASE OF DECRYPTION KEY OR PROVISION OF DECRYPTION ASSISTANCE.—Generally decryption keys may be released and decryption assistance provided only pursuant to a court order issued upon a finding that the key or assistance is necessary to decrypt communications or stored data lawfully intercepted or seized. The standard for release of the key or provision of decryption assistance is tied directly to the problem at hand: the need to decrypt a message or information that the government is otherwise authorized to intercept or obtain. This will ensure that key holders need respond to only one type of compulsory process—a court order. Moreover, this Act will set a single standard for law enforcement, removing any extra burden on law enforcement to demonstrate, for example, probable cause for two separate orders (i.e., for the encrypted communications or information and for decryption assistance) and possibly before two different judges (i.e., the judge issuing the order for the encrypted communications or information and the judge issuing the order to the key holder).

(1) WIRE AND ELECTRONIC COMMUNICATIONS.—To obtain access to a decryption key or decryption assistance from a key holder, an investigative or law enforcement officer must present to the key holder a court order (or a certification issued under the emergency situation procedures in 18 U.S.C. 2518(7)) issued upon a finding that the decryption key or decryption assistance is necessary for the decryption of a communication that the officer is authorized to intercept. The order or certification shall specify the key or assistance being sought and identify the termination date of the period for which the release or assistance is authorized. Released keys or other decryption assistance may only be used in the manner and for the purpose and duration expressly provided by the court order.

The Act reinforces the principle of minimization. A key holder may only provide the minimal key release or decryption assistance needed to access the particular communications or information specified by court order. Under some key recovery schemes, release of a key holder's private key—rather than an individual session key—might provide the ability to decrypt every communication or stored file ever encrypted by a particular key owner, or by every user in an entire corporation, or by every user who was ever a customer of the key holder. The Act protects against such over broad releases of keys by requiring the court issuing the order to find the keys or decryption assistance being sought are necessary.

A key holder who fails to comply with the court order to provide a decryption key or decryption assistance may be penalized under current contempt or obstruction laws.

(2) STORED WIRE AND ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC INFORMATION.—

(A) A key holder is authorized to release a decryption key or provide decryption assistance to a governmental entity when directed to do so by a court order issued upon a finding that the key or assistance sought is necessary for the decryption of stored wire and electronic communications and transactional records, which a governmental entity is authorized to obtain under 18 U.S.C. §2703. The notice required to be given to subscribers or customers, under 18 U.S.C. §2703(b), shall include notice of the receipt of the key or assistance, as the case may be, by the governmental entity.

(B) A key holder is authorized to release a decryption key or provide decryption assistance to a governmental entity when directed to do so by a court order issued upon a finding that the key or assistance sought is necessary for the decryption of stored electronic information, which a governmental entity is authorized to seize or for which the governmental entity is authorized to compel production.

(C) A court order issued under either (A) or (B) must specify the decryption key or decryption assistance being sought, and the key holder may provide only such release or assistance as is necessary for access to the communications, records or information covered by the court order.

(3) USE OF KEY.—An investigative or law enforcement officer or governmental entity to which a decryption key has been released may use the key only in the manner, for the purpose and for the period expressly provided for in the court order or certification authorizing the release and use. At the end of the period for authorized release of the decryption key, the investigative or law enforcement officer or governmental entity must destroy and not retain the key and certify this has been done to the issuing court, if any.

(4) NONDISCLOSURE OF RELEASE.—A key holder may not disclose the release of a decryption key or provision of decryption assistance unless otherwise ordered to do so by law or legal process and then only after prior notification to the Attorney General or principal prosecuting attorney of a State or of a political subdivision of a State, as appropriate.

(d) RECORDS OR OTHER INFORMATION HELD BY KEY HOLDERS.—Key holders are prohibited from disclosing records or other information (not including decryption keys or the contents of communications) pertaining to key owners, except with the owner's consent or to an investigative or law enforcement officer, pursuant to a subpoena, court order or other lawful process. Investigative or law enforcement officers receiving such information are not required to notify the person to whom such information pertains. Key holders who violate this section are liable for civil damages as provided in subsection (f).

(e) CRIMINAL PENALTIES.—Key holders who violate this section for a tortuous, malicious or an illegal purpose, or for direct or indirect commercial advantage or private commercial gain, will be subject to a fine and up to 1 year imprisonment for a first offense, and fine and up to 2 years' imprisonment for a second offense. Other reckless and intentional violations would subject the key holder to a fine of not more than $5,000 and not more than 6 months' imprisonment.

(f) CIVIL DAMAGES.—Persons aggrieved by key holder violations may sue for injunctive relief, and actual damages or statutory damages of $5,000, whichever is greater. A civil action must be commenced not later than 2 years after the date on which the plaintiff first knew or should have known of the offense.

(g) DEFENSE.—A complete defense against any civil or criminal action is provided if the defendant acted in good faith reliance upon a court order, warrant, grand jury or trial subpoena or other statutory authorization.

§2803. Reporting requirements. The Attorney General is required to include in his or her report to the Administrative Office of the U.S. Courts, under 18 U.S.C. §2519(2), the number of orders and extensions served on key holders to obtain access to decryption keys or decryption assistance. The Director of the Administrative Office of the U.S. Courts is required to include this information, and the offenses for which the orders were obtained, in the report to Congress under 18 U.S.C. §2519(3).

§2804. Unlawful use of encryption to obstruct justice

Persons who willfully use encryption in an effort and for the purpose of obstructing, impeding, or prevent the communication of information in furtherance of a federal felony crime to a law enforcement officer, would be subject to a fine and up to 5 years' imprisonment for a first offense, and up to 10 years' imprisonment for a second or subsequent offense.

§2805. Freedom to sell encryption products

(a) IN GENERAL.—The Act legislatively confirms that it is lawful to sell any encryption, regardless of encryption algorithm, key length or implementation used, domestically in the United States or its territories.

(b) CONTROL OF EXPORTS BY SECRETARY OF COMMERCE.—Notwithstanding any other law, the Act vests the Secretary of Commerce with control of exports of hardware, software and technology for information security, including encryption for both communications and other stored data, except when the hardware, software or technology is specifically designed or modified for military use. Under the Act, the Secretary must grant export license exceptions to computer software, computer hardware and technology with encryption capabilities if the Secretary determines that a product with comparable security is commercially available from a foreign supplier without effective restrictions, is generally available in a foreign country, or if the product employs encryption from a foreign source that otherwise would be the sole basis for restriction.

The Secretary of Commerce would be required to grant a license exception for the export of computer software with encryption capabilities that is generally available, including mass market products (i.e., those generally available, sold ''as is'', and designed for installation by the purchaser) or in the public domain and generally accessible. For example, no license would be required for encryption products commercially available without restriction and sold ''as is'', such as Netscape's commercially available World Wide Web Browser with strong encryption, which can not be exported. Similarly, a license exception would be granted to export encryption software placed in the public domain and generally accessible, such as Phil Zimmermann's Pretty Good Privacy program, which has been distributed to the public free of charge via the Internet.

The Secretary of Commerce would also be required to grant a license exception for the export of computer hardware that would otherwise be restricted solely on the basis that it incorporates computer software with encryption capabilities described above, or so-called ''crypto-ready'' computer software or hardware incorporating an interface mechanism for interaction with encryption hardware or software. Finally, the Secretary

of Commerce would be required to grant a license exception for the export of encryption technology related or ancillary to the items described above, to enable American companies to license their technology for production, use and sale abroad.

Significantly, the government is authorized to continue export controls on countries that pose terrorism concerns, such as Libya, Syria and Iran, or other embargoed countries, such as Cuba and North Korea, pursuant to the Trading With the Enemy Act or the International Emergency Economic Powers Act.

§ 2806. Requirements for release of decryption key or provision of decryption assistance to a foreign country

The Act bars investigative or law enforcement officers and key holders from releasing a decryption key or providing decryption assistance to a foreign country except when certain conditions are satisfied. First, the foreign country must have entered into a treaty or convention to provide mutual assistance with respect to decryption. Second, the foreign country must make a formal request to the United States for such assistance. Third, the Attorney General or the Attorney General's designee must obtain an order from the district court in which the key holder resides directing the key holder to release the decryption key or provide decryption assistance. Finally, the order may only be issued if the judge finds that (1) the decryption key or decryption assistance being sought is necessary for the decryption of a communication or information that the foreign country is authorized to intercept or seize pursuant to its own domestic law; (2) the law of the foreign country provides adequate protection against the arbitrary interference of privacy rights; and (3) the decryption key or decryption assistance being sought is in connection with a criminal investigation for conduct that would constitute a violation of a criminal law of the United States if committed within the jurisdiction of the United States.

The grounds for issuance of the court order ensure that a U.S. court will examine the quality of legal protections in place in the foreign country on whose behalf of request for decryption assistance is made and that the United States does not facilitate the provision of decryption assistance to legal system that do not meet minimum international human rights standards or in cases that would violate American constitutional standards.

(b) TECHNICAL AMENDMENT.—The Act adds new chapter 125 and the new title in the table of chapters in title 18 of the United States Code.

Sec. 6. Intelligence Activities.—The Act does not authorize the conduct of intelligence activities, nor affect the conduct by Federal government officers or employees in intercepting (1) encrypted or other official communications of Federal executive branch or Federal contractors for communications security purposes; (2) radio communications between or among foreign powers or agents, as defined by the Foreign Intelligence Surveillance Act (FISA); or (3) electronic communication systems used exclusively by foreign powers or agents, as defined by FISA.

By Mr. BURNS (for himself, Mr. LEAHY, Mr. LOTT, Mr. NICKLES, Mr. DORGAN, Mrs. HUTCHISON, Mr. CRAIG, Mr. WYDEN, Mr. ASHCROFT, Mr. DOMENICI, Mr. THOMAS, Mr. CAMPBELL, Mrs. BOXER, Mr. BROWNBACK, Mrs. MURRAY, Mr. KEMPTHORNE, Mr. INHOFE, Mr. FAIRCLOTH, Mr. GRAMS, and Mr. ALLARD):

S. 377. A bill to promote electronic commerce by facilitating the use of strong encryption, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PROMOTION OF COMMERCE ON-LINE IN THE DIGITAL ERA [PRO-CODE] ACT OF 1997

Mr. BURNS. Mr. President, when I want to communicate, sometimes I send a postcard. In that case, I know not to say anything that I don't want printed on the front page of the newspaper. Somebody, anybody, can read it. When I buy an envelope and put a stamp on it, I am taking a step toward securing that information. I have a reasonable expectation that people will not open my mail.

When I talk on the telephone—at least on a landline telephone—I have a reasonable expectation that nobody is listening in. Today, we are in a world that is characterized by the fact that nearly everyone has a computer and that those computers are, for the most part, connected to one another. In light of that fact, it is becoming more and more important to ensure that our communications over these computer networks are conducted in a secure way. It is no longer possible to say that when we move into the information age, we'll secure these networks, because we are already there. We use computers in our homes and businesses in a way that couldn't have been imagined 10 years ago, and these computers are connected through networks, making it easier to communicate than ever before. This phenomenon holds the promise of transforming life in States like Montana, where health care and state-of-the-art education can be delivered over networks to people located away from population centers. These new technologies can improve the lives of real people, but only if the security of information that moves over these networks is safe and reliable.

The problem today is that our computer networks are not as secure as they could be; it is fairly easy for amateur hackers to break into our networks. They can intercept information; they can steal trade secrets and intellectual property; they can alter medical records; the list is endless. Last Congress, FBI Director Freeh stated his profound concerns about the threat of economic espionage on a global basis. One solution to this, of course, is to let individuals and businesses alike to take steps to secure that information. Encryption is one technology that accomplishes that. Domestically, Americans are free to use strong encryption to secure their information—we are determined to make sure that that guarantee prevails.

I rise today to introduce a bill, similar to one I introduced during the 104th Congress, which designed to promote electronic commerce, both domestically and globally, by facilitating the use of strong encryption. Last Congress, my bill was criticized for not acknowledging the legitimate law enforcement and national security interests raised by the widespread use of strong, or unbreakable encryption. In response to those criticisms, this Congress, working with Senator LEAHY, Senator DORGAN, and Senator LOTT, has modified this bill to address those concerns. Our approach, though, encourages Government officials to abandon the head-in-the-sand approach that they've taken for the past 7 years, hoping that strong encryption would not become available globally, and take a proactive approach to addressing this technology. Because everyone agrees that this technology will eventually be widely available globally—many of us believe that the technology is already widely available globally—now is the time to get industry working with Government officials to teach them how to execute their duties in a global communications network where strong encryption is ubiquitous.

We believe that this bill lays the most responsible course for addressing this technology, and I am pleased to announce that the following Senators have signed onto this bill as original cosponsors: Majority Leader LOTT, Assistant Majority Leader NICKLES, Senator DORGAN, Senator WYDEN, Senator KAY BAILEY HUTCHISON, Senator CRAIG, Senator ASHCROFT, Senator DOMENICI, Senator MURRAY, Senator BROWNBACK, Senator KEMPTHORNE, Senator INHOFE, Senator BOXER, Senator FAIRCLOTH, Senator THOMAS, Senator GRAMS, and Senator ALLARD. With such impressive bipartisan support, I am extremely optimistic that the bill will be reported out of the Commerce Committee quickly and will pass the Senate during this Congress.

As I mentioned earlier, this legislation was drafted to not only address the concerns raised by industry but also to encourage law enforcement and national security officials to prepare themselves to do their job in an environment where strong, unbreakable encryption is everywhere. To date, the FBI/NSA/CIA have devoted their efforts in this area to maintaining the status quo and hoping that strong encryption does not become common worldwide. The evidence from a Commerce Department study conducted over a year ago, indicates that this has already taken place—the study identified 497 foreign-made products that were capable of offering encryption at a level in excess of that which domestic companies could export under the present export restrictions in 28 foreign countries. Therefore, this legislation encourages these officials to address this technology proactively. Essentially the bill was designed to accomplish the following:

Ending the imposition of U.S. Government-designed encryption standards. This is accomplished by restricting the Department of Commerce [NIST] from imposing Government encryption standards intended for use by the private sector, and by prohibiting the Department of Commerce from setting de facto encryption standards through use of export controls.

Promoting the use of commercial encryption. This is accomplished by prohibiting the restrictions on the sale of commercial encryption programs and products in interstate commerce; by prohibiting governmental imposition, expressly or in practice, of mandatory key escrow; and by permitting the export of, first, generally available software with encryption capabilities, and second, other software and hardware with encryption capabilities if exports of products with similar security have been exported for use by foreign financial institutions.

Protecting the national security and public safety. This is accomplished by, first, imposing industry reporting requirements upon companies wishing to export products with strong encryption; second, creating an Information Security Board whose purpose is to get industry experts and law enforcement/national security officers to work together—both publicly and privately—to address the execution of law enforcement/national security functions in an environment where strong encryption has widely proliferated; and third, by prohibiting exports of particular encryption software and hardware to identified individuals or organizations in specific foreign countries if there is substantial evidence that it will be diverted to, or modified for, military or terrorist end-use.

We believe that getting law enforcement and national security officials to address this technology proactively is a more responsible and defensible position than mandating a key escrow or other key recovery system upon industry.

This legislation is vitally important to a wide range of domestic industries. The export restriction poses serious commercial threats to three distinct classes of industry: first, the industry that manufacturers and sells encryption software and hardware; second, industries that purchase encryption hardware and software and incorporate that technology into their products; and third, all industries that communicate with subsidiaries or customers over the global communications network.

THE ENCRYPTION MANUFACTURING INDUSTRY

While domestic companies presently hold a position of global leadership in the manufacture of products that provide strong encryption, this leadership is threatened by the provisions restricting the export of this technology. Because there are no import restrictions on the sale of this technology and because there are no domestic restrictions on the sale of this technology, foreign manufacturers of encryption technology have seized the opportunity provided by the continued application of these export restrictions to steal market share from domestic companies. Because we are already seeing hundreds of different foreign-made products offering strong encryption in the global marketplace, the foreign companies who manufacture these products are not only cornering the foreign market for this technology, they are beginning to compete for the U.S. market—as the global export of their product increases, their per-unit cost decreases; thus, domestic companies may soon find themselves competing for the U.S. market against a foreign product which offers comparable security but at a lower cost. In effect, these export restrictions are effectively exporting the entire encryption manufacturing industry.

INDUSTRIES THAT INCORPORATE ENCRYPTION TECHNOLOGY INTO THEIR PRODUCTS

The export restrictions apply not only to companies who are in the business of the manufacture and sale of encryption technology, but also to entire industries that purchase this technology and incorporate it into their products. The restrictions even apply to domestic industries who import encryption technology and incorporate it into their products. Furthermore, the restrictions prohibit export of products that are encryption-ready, that is, are designed to have the encryption package installed elsewhere. These industries suffer the same competition disadvantage in the global marketplace that our domestic encryption manufacturing companies face. Likewise, it will not be long before these industries find themselves (having already conceded all foreign markets to foreign competitors) competing for the U.S. market with foreign competitors offering similar products but at a lower price. Thus, continued application of the export restrictions on encryption technology could result in the export of a wide range of industries.

As information security becomes an increasingly important consideration, we are seeing a broad range of products that are incorporating encryption technology. For example, the entire telecommunications manufacturing industry—from cellular telephones to switches—has a direct stake in this debate. Likewise, virtually all manufacturing concerns are impacted. I am in the process of collecting statements from 23 separate industries who see the speedy resolution of this problem as critical to their survival in the global marketplace.

NIGHTMARE SCENARIO

During the first hearing on Pro-Code last Congress, one of the witnesses, Jim Bidzos, the founder and owner of RSA Data Security, a prominent domestic encryption manufacturing company, pointed out that the United States is presently on the verge of exporting, industry by industry, the lion's share of our country's industry base. At that hearing, he pointed out that Nippon Telephone & Telegraph [NTT], the largest company on the planet with $600 billion in annual revenues and $300 million in annual subsidies from the Japanese Government has just announced the production—and intention to export globally—of a computer chip that provided unbreakable encryption, with a key of 1,024 bit length. Thus, NTT is now in the position of cornering—quite easily, I might add—the global market on this technology and will soon be competing directly with RSA for the U.S. market with similar chips which, due to economies of scale, cost less to consumers. Once NTT has run all of its U.S. competitors out of business, it will be uniquely poised to take over every industry that incorporates the NTT chip into a product, in the exact same way as they took over the chips manufacturing industry.

COMPANIES WHO TRANSMIT PROPRIETARY INFORMATION OVER THE GLOBAL COMMUNICATIONS NETWORK

Not only do the export restrictions pose commercial problems for industries that manufacture or incorporate encryption technology into their products, they also raise serious economic threats to any industry that transmits proprietary information over the global communications network. Because the public communications network is global, the export restrictions effectively prohibit companies who wish to communicate with subsidiaries, partners, or customers outside the United States in a secure way; transmitting the hardware or software to international associates to provide communications security in excess of that allowable under the export restrictions violate those restrictions. The economic implications arising from this application of the export restrictions is staggering: petroleum companies can't send exploration data to overseas subsidiaries; automotive companies can't send design information to factories abroad; Walt Disney can't send the digital package of the movie the Lion King to its distributor in England; the list is endless. Thus, all intellectual property or other proprietary information that travels over the public network is put at risk of economic espionage as a result of this application of these export restrictions.

Finally, the controversy over this technology raises serious fourth amendment constitutional issues. In a new era where one's personal and economic information is increasingly rendered in digital form, the ability of the Government to peer into such data at will raises serious fourth amendment concerns.

Further, it raises first amendment constitutional issues as well. Last month, a California Appellate Court affirmed a favorable ruling in the first amendment challenge to the Arms Export Control Act [AECA] and the International Traffic in Arms Regulations [ITAR] in Bernstein versus U.S. Department of State. Bernstein involved a graduate student, Daniel J. Bernstein, who developed an encryption algorithm called Snuffle. He had articulated his mathematical ideas in two ways: in an academic paper and in a source code. The State Department denied Bernstein's request to export his cryptographic product for the purposes

of teaching the Snuffle algorithm, to disclose it at academic conferences, or to publish it in journals or online discussion groups. Bernstein alleged that the restrictions were: an unconstitutional prior restraint on speech; an infringement on his free speech; and infringed the rights of association and equal protection. The State Department moved to dismiss the case of the grounds that these issues were nonjusticible, and the Court denied the motion finding that source code was considered to be speech for the purposes of the first amendment analysis.

In light of the pressing commercial and constitutional impact of restricting the sale of this technology, both domestically and abroad, I believe that we must act now, before we effectively export entire industries. I encourage my colleagues to join me in supporting Pro-Code.

Mr. President, 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. 377

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 ''Promotion of Commerce On-Line in the Digital Era (Pro-CODE) Act of 1997''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The ability to digitize information makes carrying out tremendous amounts of commerce and personal communication electronically possible.

(2) Miniaturization, distributed computing, and reduced transmission costs make communication via electronic networks a reality.

(3) The explosive growth in the internet and other computer networks reflects the potential growth of electronic commerce and personal communication.

(4) The internet and the global information infrastructure have the potential to revolutionize the way individuals and businesses conduct business.

(5) The full potential of the internet for the conduct of business cannot be realized as long as it is an insecure medium in which confidential business information and sensitive personal information remain at risk of unauthorized viewing, alteration, and use.

(6) Encryption of information enables businesses and individuals to protect themselves against the unauthorized viewing, alteration, and use of information by employing widely understood and readily available science and technology to ensure the confidentiality, authenticity, and integrity of information.

(7) In order to promote economic growth and meet the needs of businesses and individuals in the United States, a variety of encryption products and programs should be available to promote strong, flexible, and commercially acceptable encryption capabilities.

(8) United States computer, computer software and hardware, communications, and electronics businesses are leading the world technology revolution, as those businesses have developed and are prepared to offer immediately to computer users worldwide a variety of communications and computer hardware and computer software that provide strong, robust, and easy-to-use encryption.

(9) United States businesses seek to market the products described in paragraph (8) in competition with scores of foreign businesses in many countries that offer similar, and frequently stronger, encryption products and programs.

(10) The regulatory efforts by the Secretary of Commerce, acting through the National Institute of Standards and Technology, and other entities to promulgate standards and guidelines in support of government-designed solutions to encryption problems that—

(A) were not developed in the private sector; and

(B) have not received widespread commercial support,

have had a negative impact on the development and marketing of products with encryption capabilities by United States businesses.

(11) Because of outdated Federal controls, United States businesses have been prohibited from exporting strong encryption products and programs.

(12) In response to the desire of United States businesses to sell commercial products to the United States Government and to sell a single product worldwide, the Secretary of Commerce, acting through the National Institute of Standards and Technology, has sought to require them to include features in products sold both in the United States and foreign countries that will allow the Federal Government easy access to the plain text of all electronic information and communications.

(13) The Secretary of Commerce, acting through the National Institute of Standards and Technology, has proposed that United States businesses be allowed to sell products and programs offering strong encryption to the United States Government and in foreign countries only if the products and programs include a feature guaranteeing the Federal Government access to a key that decrypts information (hereafter in this section referred to as ''key escrow encryption'').

(14) The key escrow encryption approach to regulating encryption is reflected in the approval in 1994 by the National Institute of Standards and Technology of a Federal information processing standard for a standard of escrowed encryption, known as the ''clipper chip'', that was flawed and controversial.

(15) The current policy of the Federal Government to require that keys to decrypt information be made available to the Federal Government as a condition of exporting strong encryption technology has had the effect of prohibiting the exportation of strong encryption technology.

(16) The Federal Government has legitimate law enforcement and national security objectives which necessitate the disclosure to the Federal Government of general information that is neither proprietary nor confidential by experts in information security industries, including cryptographers, engineers, and others designated in the design and development of information security products. By relaxing export controls on encryption products and programs, this Act creates an obligation on the part of representatives of companies involved in the export of information security products to share information about those products to designated representatives of the Federal Government.

(17) In order to promote electronic commerce in the twenty-first century and to realize the full potential of the internet and other computer networks—

(A) United States businesses should be encouraged to develop and market products and programs offering encryption capabilities; and

(B) the Federal Government should be prohibited from promulgating regulations and adopting policies that discourage the use and sale of encryption.

(b) PURPOSE.—The purpose of this Act is to promote electronic commerce through the use of strong encryption by—

(1) recognizing that businesses in the United States that offer computer hardware and computer software made in the United States that incorporate encryption technology are ready and immediately able, with respect to electronic information that will be essential to conducting business in the twenty-first century to provide products that are designed to—

(A) protect the confidentiality of that information; and

(B) ensure the authenticity and integrity of that information;

(2) restricting the Department of Commerce with respect to the promulgation or enforcement of regulations, or the application of policies, that impose government-designed encryption standards; and

(3) promoting the ability of United States businesses to sell to computer users worldwide computer software and computer hardware that provide the strong encryption demanded by such users by—

(A) restricting Federal or State regulation of the sale of such products and programs in interstate commerce;

(B) prohibiting mandatory key escrow encryption systems; and

(C) establishing conditions for the sale of encryption products and programs in foreign commerce.

SEC. 3. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) AS IS.—The term ''as is'' means, in the case of computer software (including computer software with encryption capabilities), a computer software program that is not designed, developed, or tailored by a producer of computer software for specific users or purchasers, except that such term may include computer software that—

(A) is produced for users or purchasers that supply certain installation parameters needed by the computer software program to function properly with the computer system of the user or purchaser; or

(B) is customized by the user or purchaser by selecting from among options contained in the computer software program.

(2) COMPUTING DEVICE.—The term ''computing device'' means a device that incorporates one or more microprocessor-based central processing units that are capable of accepting, storing, processing, or providing output of data.

(3) COMPUTER HARDWARE.—The term ''computer hardware'' includes computer systems, equipment, application-specific assemblies, modules, and integrated circuits.

(4) DECRYPTION.—The term ''decryption'' means the unscrambling of wire or electronic communications or information using mathematical formulas, codes, or algorithms.

(5) DECRYPTION KEY.—The term ''decryption key'' means the variable information used in a mathematical formula, code, or algorithm, or any component thereof, used to decrypt wire or electronic communications or information that has been encrypted.

(6) DESIGNED FOR INSTALLATION BY THE USER OR PURCHASER.—The term ''designed for installation by the user or purchaser'' means, in the case of computer software (including computer software with encryption capabilities) computer software—

(A) with respect to which the producer of that computer software—

(i) intends for the user or purchaser (including any licensee or transferee), to install the computer software program on a computing device; and

(ii) has supplied the necessary instructions to do so, except that the producer or distributor of the computer software program (or any agent of such producer or distributor) may also provide telephone helpline or onsite services for computer software installation, electronic transmission, or basic operations; and

(B) that is designed for installation by the user or purchaser without further substantial support by the supplier.

(7) ENCRYPTION.—The term ''encryption'' means the scrambling of wire or electronic communications or information using mathematical formulas, codes, or algorithms in order to preserve the confidentiality, integrity, or authenticity of such communications or information and prevent unauthorized recipients from accessing or altering such communications or information.

(8) GENERAL LICENSE.—The term ''general license'' means a general authorization that is applicable to a type of export that does not require an exporter of that type of export to, as a condition to exporting—

(A) submit a written application to the Secretary; or

(B) receive prior written authorization by the Secretary.

(9) GENERALLY AVAILABLE.—The term ''generally available'' means, in the case of computer software (including software with encryption capabilities), computer software that—

(A) is distributed via the internet or that is widely offered for sale, license, or transfer (without regard to whether it is offered for consideration), including over-the-counter retail sales, mail order transactions, telephone order transactions, electronic distribution, or sale on approval; or

(B) preloaded on computer hardware that is widely available.

(10) INTERNET.—The term ''internet'' means the international computer network of both Federal and non-Federal interconnected packet-switched data networks.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(12) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any Territory or Possession of the United States.

SEC. 4. RESTRICTION OF DEPARTMENT OF COMMERCE ENCRYPTION ACTIVITIES IMPOSING GOVERNMENT ENCRYPTION SYSTEMS.

(a) LIMITATION ON REGULATORY AUTHORITY CONCERNING ENCRYPTION STANDARDS.—The Secretary may not (acting through the National Institute of Standards and Technology or otherwise) promulgate, or enforce regulations, or otherwise adopt standards or carry out policies that result in encryption standards intended for use by businesses or entities other than Federal computer systems.

(b) LIMITATION ON AUTHORITY CONCERNING EXPORTS OF COMPUTER HARDWARE AND COMPUTER SOFTWARE WITH ENCRYPTION CAPABILITIES.—Except as provided in section 5(c)(3)(B), the Secretary may not promulgate or enforce regulations, or adopt or carry out policies in a manner inconsistent with this act, or that have the effect of imposing government-designed encryption standards on the private sector by restricting the export of computer hardware and computer software with encryption capabilities.

SEC. 5. PROMOTION OF COMMERCIAL ENCRYPTION PRODUCTS.

(a) PROHIBITION ON RESTRICTIONS ON SALE OR DISTRIBUTION IN INTERSTATE COMMERCE.—

(1) IN GENERAL.—Except as provided in this Act, neither the Federal government nor any State may restrict or regulate the sale in interstate commerce by any person of any product or program designed to provide encryption capabilities solely because such product or program has encryption capabilities. Nothing in this paragraph may be construed to preempt any provision of Federal or State law applicable to contraband or regulated substances.

(2) APPLICABILITY.—Paragraph (1) shall apply without regard to the encryption algorithm selected, encryption key length chosen, or implementation technique or medium used for a product or program with encryption capabilities.

(b) PROHIBITION ON MANDATORY KEY ESCROW.—Neither the Federal government nor any State may require, as a condition of sale in interstate commerce, that a decryption key, or access to a decryption key, be given to any other person (including a Federal agency or an entity in the private sector that may be certified or approved by the Federal government or a State).

(c) CONTROL OF EXPORTS BY SECRETARY.—

(1) GENERAL RULE.—Notwithstanding any other provision of law and subject to paragraphs (2), (3), and (4), the Secretary shall have exclusive authority to control exports of all computer hardware, computer software, and technology with encryption capabilities, except computer hardware, computer software, and technology that is specifically designed or modified for military use, including command, control, and intelligence applications.

(2) ITEMS THAT DO NOT REQUIRE INDIVIDUAL LICENSES.—Except as provided in paragraph (3)(b) of this subsection, only a general license may be required, except as otherwise provided under the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (but only to the extent that the authority of the International Emergency Economic Powers Act is not exercised to extend controls imposed under the Export Administration Act of 1979), for the export or reexport of—

(A) any computer software, including software with encryption capabilities, that—

(i) is generally available, as is, and designed for installation by the user or purchaser; or

(ii) is available on the date of enactment of this Act, or becomes legally available thereafter, in the public domain (including on the internet) or publicly available because it is generally accessible to the interested public in any form; or

(B) any computing device or computer hardware solely because it incorporates or employs in any form computer software (including computer software with encryption capabilities) that is described in subparagraph (A).

(3) COMPUTER SOFTWARE AND COMPUTER HARDWARE WITH ENCRYPTION CAPABILITIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall authorize the export or reexport of computer software and computer hardware with encryption capabilities under a general license for nonmilitary end-uses in any foreign country to which those exports of computer software and computer hardware of similar capability are permitted for use by financial institutions that the Secretary determines not to be controlled in fact by United States persons.

(B) EXCEPTION.—The Secretary shall prohibit the export or reexport of particular computer software and computer hardware described in this subsection to an identified individual or organization in a specific foreign country if the Secretary determines that there is substantial evidence that such software and computer hardware will be—

(i) diverted to a military end-use or an end-use supporting international or domestic terrorism;

(ii) modified for military or terrorist end-use, including acts against the national security, public safety, or the integrity of the transportation, communications, or other essential systems of interstate commerce in the United States;

(iii) reexported without the authorization required under Federal law; or

(iv) intentionally used to evade enforcement of United States law or taxation by the United States or by any State or local government.

(4) REPORTING.—

(A) EXPORTS.—The publisher or manufacturer of computer software or hardware with encryption capabilities shall disclose (for reporting purposes only) within 30 days after export to the Secretary such information regarding a program's or product's encryption capabilities as would be required for an individual license to export that program or product.

(B) REPORT NOT AN EXPORT PRECONDITION.—Nothing in this paragraph shall be construed to require, or to permit the Secretary to impose any conditions or reporting requirements, including reporting under subparagraph (A), as a precondition to the exportation of any such product or program.

SEC. 6. INFORMATION SECURITY BOARD.

(a) INFORMATION SECURITY BOARD TO BE ESTABLISHED.—The Secretary shall establish an Information Security Board comprised of representatives of agencies within the Federal Government responsible for or involved in the formulation of information security policy, including export controls on products with information security features (including encryption). The Board shall meet at such times and in such places as the Secretary may prescribe, but not less frequently than quarterly. The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Board or to meetings held by the Board under subsection (d).

(b) PURPOSES.—The purposes of the Board are—

(1) to provide a forum to foster communication and coordination between industry and the Federal government; and

(2) to foster the aggregation and dissemination of general, nonproprietary, and nonconfidential developments in important information security technologies, including encryption.

(c) REQUIREMENTS.—

(1) REPORTS TO AGENCIES.—The Board shall regularly report general, nonproprietary, and nonconfidential information to appropriate Federal agencies to keep law enforcement and national security agencies abreast of emerging technologies so they are able effectively to execute their responsibilities.

(2) PUBLICATIONS.—The Board shall cause such information (other than classified, proprietary, or confidential information) as it deems appropriate, consistent with its purposes, to be published from time to time through any appropriate medium and to be made available to the public.

(d) MEETINGS.—The Secretary shall establish a process for quarterly meetings between the Board and representatives from the private sector with interest or expertise in information security, including cryptographers, engineers, and product managers. The Board may meet at anytime with one or more representatives of any person involved in the development, production, or distribution of encryption technology or of computing devices that contain encryption technology.

SEC. 7. STATUTORY CONSTRUCTION.

Nothing in this Act may be construed to affect any law intended to prevent the—

(1) distribution of descramblers or any other equipment for illegal interceptions of cable and satellite television signals;

(2) illegal or unauthorized distribution or release of classified, confidential, or proprietary information; or

(3) enforcement of Federal or State criminal law.

Mr. GRAMS. Mr. President, I rise in support of Senator BURNS' legislation, the Promotion of Commerce On-Line in the Digital Era (Pro-CODE) Act of 1997 and am pleased to be an original cosponsor of the bill.

This is important legislation which will create the proper balance between encryption technology export interests as well as national security interests. The administration's encryption policy was disappointing to me, since it tipped the balance too far in the direction of security and law enforcement concerns, risking important privacy rights of producers and users of cncryption technology.

Again our Government has found itself in the position of creating unilateral export controls that will do only one thing—essentially terminate export opportunities for U.S. companies. To limit U.S. companies from exporting encyrption technology at 56 bits without a costly key recovery system will simply price us out of the market. Many of our allies are ready to sell far more sophisticated technology without a key recovery system. It's not hard to see who will pick up most of a growing encryption technology global market.

Also, key recovery is not needed for encryption technology sold domestically or imported. If U.S. companies are forced to sell only the technology including the key recovery for cost savings reasons, it's also not hard to see how quickly the domestic market will dry up in favor of imports. The solution is not import controls. The Burns bill is the solution that 18 Senators of both parties have supported today.

Senator BURNS' bill protects national security interests. It would not allow exports over what is available from our allies. It also allows Commerce to prohibit specific exports where there is substantial evidence the technology will be diverted or used by terrorists, drug dealers and other criminals. Further, it creates an Information Security Board designed to get industry and law enforcement interests together to address this important issue.

I am sensitive to law enforcement and national security concerns, but the holes in the administration's policy are enormous and smack of politics more than sound policy. Criminals and terrorists will simply not use U.S. technology, or they will find a way to circumvent the key recovery system. Also, they can use encryption technology within the U.S. without the same scrutiny.

Senator BURNS has described the many problems and questions raised by a key recovery system held by a third party, so I won't belabor them. But the privacy concerns are real. I can't imagine why users would want to buy a product that simply puts at risk unwarranted release of the encrypted material. No matter how many protections can be built into the key escrow system, there is no way to avoid some misuse or abuse of the system.

Senator BURNS should be congratulated for his effort to correct this policy. I applaud his efforts and strongly support them as chairman of the International Finance Subcommittee of the Banking Committee which has jurisdiction over many export control issues.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 379. A bill entitled the ''Native Alaskan Subsistance Whaling Provision''; to the Committee on Finance.

ALASKA SUBSISTENCE WHALING LEGISLATION

Mr. MURKOWSKI. Mr. President, I rise on behalf of myself and Senator STEVENS to introduce legislation that would resolve a dispute that has existed for several years between the IRS and native whaling captains in my State. Our legislation would amend the Internal Revenue Code to ensure that a charitable donation tax deduction would be allowed for native whaling captains who organize and support subsistence whaling activities in their communities.

Subsistence whaling is a necessity to the Alaska Native community. In many of our remote village communities, the whale hunt is a tradition that has been carried on for generations over many millennia. It is the custom that the captain of the hunt make all provisions for the meals, wages, and equipment costs associated with this important activity.

In most instances, the captain is repaid in whale meat and muktuck, which is blubber and skin. However, as part of the tradition, the captain is required to donate a substantial portion of the whale to his village in order to help the community survive.

The proposed deduction would allow the captain to deduct up to $7,500 to help defray the costs associated with providing this community service.

Mr. President, I want to point out that if the captain incurred all of these expenses and then donated the whale meat to a local charitable organization, the captain would almost certainly be able to deduct the costs he incurred in outfitting the boat for the charitable purpose. However, the cultural significance of the captain's sharing the whale with the community would be lost.

This is a very modest effort to allow the Congress to recognize the importance of this part of our Native Alaskan tradition. Last year, the Joint Committee on Taxation estimated that this provision would cost a mere $3 million over a 10-year period. I think that is a very small price for preserving this vital link with our natives' heritage.

I ask unanimous consent that the text of the legislation be included in the RECORD.

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

S. 379

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

SECTION 1. CHARITABLE CONTRIBUTION DEDUCTION FOR CERTAIN EXPENSES INCURRED IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHALING.

(a) IN GENERAL.—Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) of the following new subsection:

''(m) EXPENSES PAID BY CERTAIN WHALING CAPTAINS IN SUPPORT OF NATIVE ALASKA SUBSISTENCE WHALING.—

''(1) IN GENERAL.—In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed $7,500 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

''(2) AMOUNT DESCRIBED.—The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities. For purposes of the preceding sentence, the term 'whaling expenses' includes expenses for—

''(A) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

''(B) the supplying of food for the crew and other provisions for carrying out such activities, and

''(C) storage and distribution of the catch from such activities.

''(3) SANCTIONED WHALING ACTIVITIES.—For purposes of this subsection, the term 'sanctioned whaling activities' means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to all taxable years beginning before, on, or after the date of the enactment of this Act.

By Mr. DURBIN (for himself, Mr. KENNEDY, and Mr. KOHL):

S. 380. A bill to prohibit foreign nationals admitted to the United States under a nonimmigrant visa from possessing a firearm; to the Committee on the Judiciary.

EMPIRE STATE BUILDING COUNTERTERRORISM ACT

Mr. DURBIN. Mr. President, I rise today to introduce with Senators KENNEDY and KOHL the ''Durbin-Kennedy Empire State Building Counter-Terrorism Act of 1997.''

This legislation is spurred by the recent tragedy at the Empire State Building where a man in this country on a tourist visa shot and killed Chris Burmeister, a young Danish tourist, wounded six and then turned the gun on himself.

But this bill is about much more than that one tragedy. It is an effort to address a real problem and to pass a sensible measure to deal with it. The shooting at the Empire State Building has sadly served to reveal a glaring gap in our laws—a gap that any would-be terrorist could walk through.

The fact is that any foreign national who is coming into the United States on a tourist visa will probably pass through several airport security checks to determine whether or not he is carrying a firearm. But as we have learned in the tragedy at the Empire State Building, that foreign tourist can slip through our Nation's laws and can probably buy a gun once here in the United States more easily than you or I could.

The motivation for the killing in New York is not clearly terrorist in nature. But I do not want to wait until a terrorist exploits these loopholes in order to act. Let us close the gap now.

Let me briefly explain the problem. Currently, more than 20 million people a year come into the United States on nonimmigrant visas. Nearly 1 million of them came in via Chicago last year. And by the way, that number does not include people from Mexico and Canada. There are more than 50 types of nonimmigrant visas, including tourist visas, work visas, student visas, and diplomatic visas. These visas are issued to people who do not intend to reside permanently in the United States and they are issued without any kind of criminal background check of the applicant.

Under the Brady law, anyone who wants to buy a gun in this country has to undergo a criminal background check. In the last 28 months, this requirement has stopped more than 186,000 illegal gun purchases. Seventy percent of those denied were felons.

But what the Empire State Building shooting reveals is a gap in this law. Someone who just came to the United States on a tourist visa clearly does not have a criminal record in this country. Yet he or she may have such a record in their country of origin. The Brady bill cannot catch them since we do not search criminal records in foreign countries. So the tourist with a criminal record can easily get a gun.

It is frightening to anticipate the damage that a foreign terrorist could wreak by exploiting this gap. But closing this loophole is easy. And we should do it now. Not later.

The measure I propose is straightforward. It bars people who have come to this country on nonimmigrant visas from being able to purchase or possess a gun.

Let me emphasize that the vast majority of the people who come to this country on nonimmigrant visas do not have any kind of criminal background and do not intend to buy guns or harm anyone. And that is why the legislation has two important and sensible exceptions.

First, foreign nationals who enter this country on nonimmigrant visas and who are here for legitimate sporting purposes, law enforcement purposes or diplomatic purposes will be exempt. It only makes sense that someone who is here to take part in a shooting competition should be able to bring in their gun.

The second exception allows people here on nonimmigrant visas to buy a firearm if they have been in this country for 6 months and if they can prove that they do not have a criminal record in their country of origin.

Mr. President, this is a rational piece of legislation. We are all concerned with the growing terrorist threat in our country. No one who has followed the news in the last decade can be unaware of the fact that our Nation is a terrorist target. Well, we should not be putting guns in the hands of terrorists. This bill will stop that from happening.

I hope all of us can work quickly to pass this measure.

Mr. KENNEDY. Mr. President, the killings at the Empire State Building last Sunday were the shots heard 'round the country. The entire Nation was horrified to learn of the senseless assault on seven tourists, and hopefully we will be shocked into action to close the flagrant loophole in the gun laws that allowed the attack to happen. It's preposterous that a deranged alien could arrive in this country, set up temporary residence in a motel, buy a semiautomatic handgun, and start blasting away in a crowded tourist site. The gunman at the Empire State Building killed himself. One other person died, six were injured, and countless others on the observation deck at the time bear the psychological scars from this senseless atrocity. Most of the victims were visitors from other countries—France, Switzerland, and Argentina—and were there seeing one of the most famous symbols of America.

Imagine the nightmare for a 16-year-old French tourist who saw both her parents shot, or the 10-year-old girl from the Bronx whose father was wounded. The thoughts and prayers of all Americans are with the victims and their families.

The shock and disbelief turned to anger as we learned more about the circumstances of the shooting. The gunman, Abu Kamal, was in the United States on a tourist visa, and was easily able to purchase a Berreta semiautomatic handgun in Florida, even though there is a 90-day residency requirement under Federal law before aliens can purchase a handgun.

The current gaps in Federal law are appalling. A foreign national can come to the United States on a tourist visa, or a work visa, and then obtain a handgun legally with ease. There is virtually nothing to stop a terrorist from entering the United States on a tourist visa, and then purchasing a supply of weapons legally in the United States for use in a terrorist activity. There is no legitimate reason why someone who is in the United States temporarily should be able to purchase or carry a firearm here.

Senator DURBIN and I are introducing a bill today to close this gaping loophole. Our bill will prohibit foreign nationals who are in the United States on a nonimmigrant visa from possessing a firearm. Foreign nationals here on a tourist visa, or a temporary work visa, would be prohibited from carrying a firearm, and dealers would be prohibited from knowingly selling them a firearm. The INS already provides immigration information to law enforcement authorities conducting background checks on gun purchasers, so they are well-positioned to provide this additional information to firearms dealers.

The bill does not apply to permanent residents. In addition, a series of sensible exceptions will permit certain foreign nationals who are in the United States temporarily to carry a firearm. For example, foreign nationals performing official State functions, such as bodyguards and other Embassy personnel, would be exempted. Foreign nationals who are coming to the United States to go hunting would also be exempted. The Justice Department would have the discretion to grant additional exemptions to qualified applicants.

We intend to address in future legislation another major aspect of the gun violence problem in America—which is the widespread disparity between gun control laws in various States. It will be impossible to stop guns from coming into New York or Massachusetts, or elsewhere, if we don't solve this problem. Fifteen percent of the gun crimes committed in New York City in 1995 involved guns traced to Florida. Gunrunning will always be a profitable business, as long as some States make it as easy to buy guns as to buy groceries. We must address this larger problem, or we will continue to suffer these senseless acts of violence.

This bill cannot undo the tragedy last Sunday at the Empire State Building. But we can prevent future similar tragedies by closing the loopholes that exist in current Federal law that enable foreign nationals to obtain firearms too easily. I urge my colleagues to support this sensible and needed proposal.

Mr. President, I commend the Senator from Illinois for his forceful statement in support of this legislation which will address a gaping loophole that exists in the gun laws and which he has ably explained on the floor of the Senate this afternoon where individuals would be able to come into the United States on a temporary visa and be able to purchase not just perhaps one weapon but a whole series of weapons and be able to use them for whatever purposes they might want here in the United States or perhaps take them outside of the United States. This is a gaping loophole. With the information that is being acquired by the INS, there is no reason it cannot be made available to gun dealers around the

country with a minimum amount of interference in their ability to sell guns in conformance with other provisions of the law.

I think this is a really important piece of legislation, and I welcome the opportunity to work with the Senator. Hopefully, we will have it acted on as well as the other provisions that are before the Senate dealing with the massive movement of weapons from State to State. In my own State of Massachusetts, about 80 percent of the weapons that are used in crimes of violence are imported. As good as we have, in terms of the local and State control, we are not able to control it and deal with the issues of providing security to our people in our State.

But I thank the Senator and welcome the chance to join with him and look forward to working with him on the legislation.

By Mr. ROCKEFELLER (for himself, Mr. MACK, Mr. FRIST, Mr. MOYNIHAN, Mr. KENNEDY, Mr. ABRAHAM, Mr. KERREY, Mr. CRAIG, Mr. WELLSTONE, Mr. COCHRAN, Ms. MIKULSKI, Mr. CAMPBELL, Mr. LEAHY, Mr. JEFFORDS, Mrs. HUTCHISON, Mr. HOLLINGS, Mr. FAIRCLOTH, and Mr. BINGAMAN.

S. 381. A bill to establish a demonstration project to study and provide coverage of routine patient care costs for Medicare beneficiaries with cancer who are enrolled in an approved clinical trail program; to the Committee on Finance.

THE MEDICARE CANCER CLINICAL TRIAL COVERAGE ACT OF 1997

Mr. ROCKEFELLER. Mr. President, I am very pleased to be reintroducing a modest but important bill that would establish a demonstration project to assure Medicare beneficiaries with cancer that Medicare will cover their routine patient costs when part of a clinical research trial. I am especially proud to have Senator MACK joining me again as my key cosponsor. It is a privilege to work with Senator MACK, who knows the anguish of fighting cancer only too well. And, we are especially glad to be joined by so many of our colleagues, including Senators FRIST, MOYNIHAN, KENNEDY, ABRAHAM, KERREY, CRAIG, WELLSTONE, COCHRAN, MIKULSKI, CAMPBELL, LEAHY, JEFFORDS, HUTCHISON, HOLLINGS, and FAIRCLOTH.

Mr. President, cancer is the second leading cause of death in the United States. Medicare beneficiaries account for more than half of all cancer diagnoses, and 60 percent of all cancer deaths. Over 12,000 new cases of cancer will be diagnosed this year in my own State of West Virginia.

Access to clinical trials is especially important in the field of cancer. With today's rapid discoveries of new cancer therapies and the lack of effective treatments for some cancers, peer-reviewed clinical trials often provide cancer patients the best available care. Given differences in biological responses according to age, research is needed on the particular effects of cancer and cancer treatments on those age 65 and older. Our legislation will promote that vital research. At the same time, it will provide the Health Care Financing Administration with the information it needs on whether coverage for experimental therapies and treatments should be eventually extended to the entire Medicare population. In the long run, the coverage of patient care costs in clinical trials will save the health care delivery system millions of dollars by telling us at the earliest possible time which medical interventions work and which do not.

Our legislation is an effort to give Medicare beneficiaries the security and decency of knowing that if they are diagnosed with cancer, their treatment options will be determined by whatever therapy they and their doctor decide will give them the best shot of beating the disease. These life and death decisions should not be guided by what may or may not be paid for by the Medicare Program.

Currently, Medicare's payment policies are unclear and, as a result, unpredictable. There is anecdotal evidence that Medicare, in fact, usually pays for the routine patient care costs associated with clinical research trials. But when denials do happen, they tend to be arbitrary and random. This unpredictability discourages Medicare patients from enrolling in a clinical trial, even when it may medically be their best treatment option.

Three winners of the Nobel Prize in Medicine and Physiology have written me and Senator MACK in support of our legislation. They wrote, ''clinical trials represent the standard of care and are often the best hope for a successful treatment outcome. Only by supporting clinical research will we be able to advance the state of medical knowledge and learn more quickly which medical interventions are effective and which are not.''

Mr. President, our legislation is very targeted to give older Americans their best shot at fighting cancer. This bill does not create a new benefit. It merely ensures that patients enrolled in clinical studies receive Medicare coverage for the same type of routine patient care costs, such as hospital and physician fees, that would be covered outside of a trial setting. We are not asking Medicare to pay for the cost of research. These expenses will still be covered by trial sponsors, including pharmaceutical companies.

In establishing a demonstration project, this bill will also provide valuable information about the costs and benefits of providing coverage for clinical trials for other life threatening diseases. We started with cancer first because cancer is a major affliction of Medicare beneficiaries. In addition, there is a well-established national cancer clinical trial system to deliver this patient care.

Mr. President, this is the year to enact this bill into law. This proposal is a key Medicare reform to include in the action expected in the upcoming budget process that will deal with Medicare spending and policy.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 381

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 ''Medicare Cancer Clinical Trial Coverage Act of 1997''.

SEC. 2. MEDICARE CANCER PATIENT DEMONSTRATION PROJECT.

(A) ESTABLISHMENT.—Not later than January 1, 1998, the Secretary of Health and Human Services (in this Act referred to as the ''Secretary'') shall establish a demonstration project which provides for payment under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) which are provided to an individual diagnosed with cancer and enrolled in the medicare program under such title as part of the individual's participation in an approved clinical trial program; and

(2) which are not otherwise eligible for payment under such title for individuals who are entitled to benefits under such title.

(b) APPLICATION.—The beneficiary cost sharing provisions under the medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual participating in a demonstration project conducted under this Act.

(c) APPROVED CLINICAL TRIAL PROGRAM.—For purposes of this Act, the term ''approved clinical trial program'' means a clinical trial program which is approved by—

(1) the National Institutes of Health;

(2) a National Institutes of Health cooperative group or a National Institutes of Health center;

(3) the Food and Drug Administration (in the form of an investigational new drug or device exemption);

(4) the Department of Veterans Affairs;

(5) the Department of Defense; or

(6) a qualified nongovernmental research entity identified in the guidelines issued by the National Institutes of Health for center support grants.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—for purposes of this Act, ''routine patient care costs'' shall include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the medicare program if such items and services were not provided in connection with an approved clinical trial program; and

(B) are furnished according to the design of an approved clinical trial program.

(2) EXCLUSION.—For purposes of this Act, ''routine patient care costs'' shall not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

(B) any item or service supplied without charge by the sponsor of the approved clinical trial program.

SEC. 3. STUDY, REPORT, AND TERMINATION.

(a) STUDY.—The Secretary shall study the impact on the medicare program under title

XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

(b) REPORT TO CONGRESS.—Not later than January 1, 2002, the Secretary shall submit a report to Congress that contains a statement regarding—

(1) any incremental cost to the medicare program under title XVIII of the Social Security Act resulting from the provisions of this Act; and

(2) a projection of expenditures under the medicare program if coverage of routine patient care costs in an approved clinical trial program were extended to individuals entitled to benefits under the medicare program who have a diagnosis other than cancer.

(c) TERMINATION.—The provisions of this Act shall not apply after December 31, 2002.

MEDICARE CANCER CLINICAL TRIAL COVERAGE ACT OF 1997

CURRENT LAW

Medicare's policy regarding coverage of clinical trials is unclear. Medicare carriers occasionally deny coverage of physician services or hospital charges on the grounds that they have been provided in the context of a clinical trial. Patients or physicians may be at risk for the cost of items or services that are normally covered by Medicare if they choose to enroll in a clinical trial, even though such trials are regarded as the standard of care for treatment of cancer.

PROPOSED CHANGE

The Secretary of HHS would be required to conduct a demonstration project, beginning no later than January 1, 1998, which would study the feasibility of covering patient costs for beneficiaries diagnosed with cancer and enrolled in certain approved clinical trials. Eligibility for coverage would be dependent on approval of the trial design by one of several high quality peer-review organizations, including the National Institutes of Health, the Food and Drug Administration, the Department of Defense, and the Department of Veterans Affairs. No later than January 1, 2002, the Secretary would be required to report to Congress concerning any incremental costs of such coverage and the advisability of covering other diagnoses under the same circumstances. The demonstration project would sunset on December 31, 2002.

Supported by: National Coalition for Cancer Survivorship; Candlelighters Childhood Cancer Foundation; Cancer Care, Inc.; National Alliance of Breast Cancer Organizations (NABCO); US TOO International; Y-ME National Breast Cancer Organization; American Cancer Society; American Society of Clinical Oncology; American Society of Pediatric Hematology/Oncology; Association of American Cancer Institutes; Association of Community Cancer Centers; Cancer Research Foundation of America; North American Brain Tumor Coalition; Leukemia Society of America; National Breast Cancer Coalition; National Childhood Cancer Foundation; National Coalition for Cancer Research; Oncology Nursing Society; Prostate Cancer Support-group Network; and Society of Surgical Oncology.

Mr. MACK. Mr. President, I am pleased to join Senator ROCKEFELLER today as we introduce legislation to provide Medicare patients fighting cancer with coverage of benefits when they participate in approved clinical trials.

Under current law, Medicare will not generally pay for the costs of patient care if they are participating in clinical trials. Beneficiaries are denied access to clinical trials of promising new therapies because Medicare deems these therapies experimental, and therefore not qualified for coverage. This means cancer patients who are Medicare beneficiaries essentially have two choices when they have exhausted all traditional cancer therapies—either pay the costs of participating in a clinical trial themselves, or go without additional treatment. For all but the most wealthy beneficiaries, it is too cost-prohibitive to take part in a clinical trial.

Clinical trials are one of the most effective ways the Federal Government has of determining which treatments are most effective. Yet, researchers have told me they have difficulty accruing the required number of patients to participate in the trials they are conducting. Researchers have identified noncoverage by Medicare and private insurers as one of the primary reasons why patients do not participate in clinical trials. At a time when American researchers are making such tremendous progress in cancer genetics and cancer biology, it is essential that this knowledge be translated into new therapies through well-designed clinical trials. This legislation will help enhance our research efforts by facilitating broad patient participation in important cancer clinical trials.

Our legislation is limited to only the highest-quality clinical trials. Only those trials which have undergone the rigors of peer-review will be considered. These include trials approved by the National Institutes of Health [NIH], the Food and Drug Administration, the Department of Veterans Affairs, the Department of Defense, or organizations which are approved by the NIH, such as the American Cancer Society.

Like most of my colleagues, I am very reluctant to introduce legislation to expand Medicare at a time when the report of the Board of Trustees of Social Security and Medicare clearly shows that Medicare is going broke. My support of such legislation is conditional upon the added benefit providing a clear and needed service at no significant cost to taxpayers.

The legislation we introduce today does not add to Medicare's basic benefit package, but merely provides coverage for routine patient costs which Medicare is already obligated to reimburse when provided outside a clinical trial. Medicare will not be responsible for paying for research or new pharmaceutical products. In addition, Medicare beneficiaries will still be responsible for meeting deductibles and copayment requirements traditionally required by Medicare. Because these beneficiaries are cancer patients, they are already receiving, or will receive in the future, many of the medical services covered by this legislation.

Finally, this is a true demonstration program. In 2002, the Secretary of Health and Human Services must submit a report to Congress detailing any cost increases to the Medicare program and provide projects for future expenditures, if the program continues. Congress can then decide, based upon these data and any hearings which may take place, whether to enact legislation to make coverage of cancer clinical trials permanent.

Therefore, I am convinced this legislation meets my two criteria for expanding Medicare. First, there is an indisputable urgent need for this benefit and, second, I believe it will not add significantly to the costs of the Medicare system. In fact, the information we learn from these clinical trials may provide us with more cost-effective means of treating cancer patients.

As I have mentioned to my colleagues before, many members of my family have battled cancer. As a family, we have worked extensively with numerous cancer organizations. As a Senator, I have met with thousands of cancer patients throughout Florida and the rest of the United States. They have told me how important it is that patients themselves, not the Government, be responsible for making treatment decisions with their physicians. Patients desperately want to participate in clinical trials when traditional therapies are no longer beneficial. The legislation which Senator ROCKEFELLER and I introduce today, which has the enthusiastic support of cancer patient, physician, nurse, and research organizations, will empower cancer patients with more treatment choices in a cost-effective manner.

I want to commend Senator JOHN ROCKEFELLER for his leadership in bringing this issue to the forefront. Senator ROCKEFELLER has always been there for cancer patients, as evidenced by his landmark 1993 legislation which provided Medicare coverage of anticancer drugs. We've worked together on cancer issues on several occasions over the years, and it's always a pleasure to work with him.

Mr. President, our legislation would provide cancer patients who are Medicare participants with an additional choice at a time when a clinical trial may be their best, or only, hope for survival. I therefore urge my colleagues to cosponsor the Medicare Cancer Clinical Trial Program Coverage Act of 1997.

ADDITIONAL COSPONSORS

S. 61

At the request of Mr. LOTT, the names of the Senator from Utah [Mr. HATCH], the Senator from Kentucky [Mr. FORD], the Senator from Illinois [Ms. MOSELEY-BRAUN], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the U.S. merchant marine during World War II.