

transportation agencies to improve security, and for other purposes; considered and passed.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT:

S. Res. 445. A resolution to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; to the Committee on Rules and Administration.

#### ADDITIONAL COSPONSORS

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1630

At the request of Mrs. DOLE, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1630, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral services, and for other purposes.

S. 2338

At the request of Mr. BOND, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2338, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 2395

At the request of Mr. CONRAD, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2395, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centenary of the bestowal of the Nobel Peace Prize on President Theodore Roosevelt, and for other purposes.

S. 2426

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 2426, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 2553

At the request of Mr. DODD, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 2553, a bill to amend title XVIII of the Social Security Act to provide for coverage of screening ultrasound for abdominal aortic aneurysms under part B of the medicare program.

S. 2568

At the request of Mr. BIDEN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2568, a bill to require the Sec-

retary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

S. 2602

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Michigan (Mr. LEVIN), the Senator from Montana (Mr. BAUCUS), the Senator from Hawaii (Mr. AKAKA), the Senator from Arkansas (Mr. PRYOR), the Senator from Iowa (Mr. HARKIN), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 2602, a bill to provide for a circulating quarter dollar coin program to honor the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and for other purposes.

S. 2759

At the request of Mr. ROCKEFELLER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2759, a bill to amend title XXI of the Social Security Act to modify the rules relating to the availability and method of redistribution of unexpended SCHIP allotments, and for other purposes.

S. 2864

At the request of Mr. GRASSLEY, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2864, a bill to extend for eighteen months the period for which chapter 12 of title 11, United States Code, is reenacted.

S. 2866

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 2866, a bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the authority of the Secretary of Agriculture and the Commodity Credit Corporation to enter into memorandums of understanding with a State regarding the collection of approved State commodity assessments on behalf of the State from the proceeds of marketing assistance loans.

S. RES. 408

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. Res. 408, a resolution supporting the construction by Israel of a security fence to prevent Palestinian terrorist attacks, condemning the decision of the International Court of Justice on the legality of the security fence, and urging no further action by the United Nations to delay or prevent the construction of the security fence.

AMENDMENT NO. 3734

At the request of Mr. SPECTER, the names of the Senator from Maine (Ms. SNOWE) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of amendment No. 3734 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-

related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3801

At the request of Mr. KYL, the names of the Senator from Montana (Mr. BURNS) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of amendment No. 3801 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3803

At the request of Mr. CORNYN, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of amendment No. 3803 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3808

At the request of Mr. LEVIN, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of amendment No. 3808 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3839

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3839 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3840

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3840 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3845

At the request of Mr. BYRD, the names of the Senator from Alaska (Mr. STEVENS), the Senator from Hawaii (Mr. INOUE), the Senator from Virginia (Mr. WARNER), the Senator from Iowa (Mr. HARKIN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of amendment No. 3845 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3845 proposed to S. 2845, supra.

AMENDMENT NO. 3875

At the request of Mr. STEVENS, his name and the name of the Senator

from Montana (Mr. BURNS) were added as cosponsors of amendment No. 3875 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

#### AMENDMENT NO. 3877

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3877 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

#### AMENDMENT NO. 3879

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3879 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

#### AMENDMENT NO. 3880

At the request of Mr. STEVENS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of amendment No. 3880 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

#### AMENDMENT NO. 3903

At the request of Mr. STEVENS, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of amendment No. 3903 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KOHL (for himself and Mr. DEWINE):

S. 2880. A bill to amend title XI of the Social Security Act to ensure full and free competition in the medical device and hospital supply industries; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today with Senator DEWINE to introduce the Medical Device Competition Act of 2004. The legislation that we are introducing today is the product of perhaps the most important work of our Subcommittee in the last few years—ensuring that physicians, patients, and health care workers have access to the best and safest medical devices, devices that can literally make the difference between life and death.

For nearly three years, the Antitrust Subcommittee has undertaken a thorough investigation of the hospital purchasing industry. This industry accounting for more than an estimated \$50 billion in commerce is responsible

for purchasing nearly everything that a hospital buys to treat sick or injured patients, everything from simple band-aids to high tech x-ray machines, from pacemakers to surgical devices. Much of this purchasing is done under contracts negotiated by what are known as “group purchasing organizations”, “GPOs”, large organizations that aggregate the buying power of hundreds, and sometimes thousands, of hospitals in order to gain bargaining power and volume discounts from hospital suppliers.

Without question, the goal of gaining volume discounts through aggregating buying power that led to the creation of GPOs is laudable. Unfortunately, our inquiry revealed that a system created to aggregate demand and hold down cost had sometimes mutated into a tool for entrenching market power of dominant suppliers, locking out competitors, and suppressing innovation. All too often conflicts of interest and questionable GPO business practices denied physicians and their patients choice of needed medical devices and robbed hospitals of the benefit of competition.

Moreover, the power and importance of GPOs to our health care system increased as the GPO industry has undergone enormous consolidation in the last decade. As originally envisioned, GPOs were generally local or regional buying cooperatives each of whom accounting for a very small proportion of the market. Today, this situation is transformed. The two largest GPOs negotiate purchasing contracts for more than an estimated 60 percent of the Nation's not for profit hospital beds. The size and national scope of these large GPOs have turned them into the gatekeepers who can decide which medical devices doctors will use and which medical device companies will be able to sell their lifesaving goods..

Our investigation uncovered abuses and questionable practices that interfered with the GPOs' mission of buying the best products at the best prices. At the time our investigation began in 2001, it was all too common a practice for GPOs to contract with only one supplier of a medical device for lengthy terms. Industry observers also raised concerns over contracts which bundled commodities like hospital gowns with medical devices like pacemakers and surgical equipment, creating nearly insurmountable barriers for smaller manufacturers with specialized product lines to compete, regardless of the quality or effectiveness of their product. Some GPOs accepted high payments—so-called “administrative fees”—well in excess of 3 percent from manufacturers. Worst of all, supposedly neutral contracting decisions were at times infected by equity interests held by GPOs or their executives in medical device companies.

We can be proud of the work of our subcommittee—and, indeed, many in the GPO industry—in responding to this situation. At our behest, six of the

largest hospital buying groups agreed to fundamental reform by adopting codes of conduct governing their business activities and ethical responsibilities. These codes forbid anti-competitive business practices, and ban conflicts of interest that interfere with the GPOs' mission of buying the best products at the lowest prices. The GPOs that agreed to these new codes should be commended for their willingness to engage in real reform. Thanks to these GPOs' good work and willingness to engage in reform, many of the most egregious practices began to disappear from the marketplace and barriers to patients getting access to the best medical devices more have begun to come down.

Yet these reforms—as real and important as they are—have inherent limitations. They are completely voluntary and can be modified or even withdrawn by the GPOs at will. They have no enforcement mechanism nor any manner to objectively verify that they are being adhered to. We have no assurance that the reforms will not be abridged or abrogated should our subcommittee's oversight come to an end. We must now, therefore, find a way to ensure that these gains cannot be reversed.

Despite their enormous influence, GPOs have until now operated with little, if any, governmental oversight. Quite the contrary, these GPOs have operated under special government protection—a Congressionally granted exemption from anti-kickback law. This exemption—commonly known as the “safe harbor” for GPOs—allows GPOs to accept payments from hospital suppliers even though these purchases are reimbursed by the Medicare program. Acceptance of these payments from suppliers would be illegal absent this special exemption. The fact the hospital purchasing has this specially, Congressionally granted immunity from kickback mandates that government have the ability to oversee the manner GPOs are behaving under the protection of this exemption—oversight currently not required by law.

We are therefore today introducing legislation which will ensure that the Department of Health and Human Services will have the authority to oversee the functioning of the safe harbor and prevent anti-competitive or unethical GPO business practices. This is moderate and measured legislation which is not prescriptive in almost all respects. With only one exception, it does not outlaw any GPO practices or business arrangements. Instead, the bill grants oversight authority over hospital purchasing to HHS, and directs the HHS to draft regulations to prevent improper GPO conduct—that is, unethical conduct, anti-competitive practices, or practices which preclude products necessary for patient care or worker safety from reaching physicians and patients. HHS is further directed to consult with the Federal Trade Commission and the Attorney General in