LEWIS in the Congress, the House of Representatives, who made this possible, and many organizations that helped us shepherd this legislation through the Senate: the NAACP, the Southern Law Poverty Center, the Leadership Conference on Civil Rights, and so many others.

In addition, I thank the Emmett Till Justice Campaign and its president, Alvin Sykes. We heard Senator COBURN talk about this a few moments ago, and I wish to associate myself with his remarks. He is a remarkable individual. Mr. Sykes's determination has helped the Senate get to this historic moment.

I wish to mention Simeon Wright, as I had the pleasure of meeting Simeon Wright and his wife a few weeks ago. Simeon Wright is Emmett Till's cousin, and he was sharing that bed with him that night 53 years ago when his cousin was ripped out of that bed, never to be seen again, except for his mutilated body. Simeon Wright is getting on in years now. But it was an honor to meet him and his wife, and his determination and commitment on behalf of his family helped us arrive at this moment. So to Simeon Wright and his family, the moment has come, and this bill will now become law.

It is vital that we bring to justice those individuals who committed these heinous crimes. It is essential to their families that we reaffirm this Nation's commitment to the rule of law.

I thank all of my colleagues for supporting the Emmett Till Unsolved Civil Rights Crime Act.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming is recognized.

MEDICAL ''NEVER EVENTS''

Mr. BARRASSO. Mr. President, this morning I would like to speak about medical safety, about patient care, about the cost of that care, and about how Medicare is dealing with this.

In 1999, the Institute of Medicine issued a groundbreaking report on medical errors. The report was called ''To Err Is Human: Building a Safer Health System.'' The Institute of Medicine findings provoked heated and extensive professional and public dialog. The report left few doubting that preventable medical injuries occur and continue to be a serious problem in America.

It identified a number of solutions, solutions to stop hospitals and physicians from performing unsafe practices. It also asked lawmakers to partner with health care providers to create and to adhere to strict, ambitious, quantitative and well-tracked national goals.

The National Quality Forum Set out to do just that. The forum's mission is to bring people together to create health care quality initiatives that are safe, effective, and patient-centered.

In 2001, the former National Quality Forum CEO first coined the term ''never event.'' Well, he was referring to particularly shocking medical errors that really should never happen, medical errors such as surgery performed on the wrong body part, surgery performed on the wrong patient, or the wrong surgical procedure performed on a patient.

By 2002, the National Quality Forum had identified 27 so-called never events. Now, the ''group'' is listed in six different categories: surgical, product or device, patient protection, care management, environmental, and criminal.

The Agency for Healthcare Research and Quality says that most never events are very rare. They estimate that a typical hospital might have a wrong-site surgery case once every 5 or 10 years.

As public reporting on health care quality gained momentum, lawmakers focused on eliminating never events. They did it as a way to increase accountability as well as to contain costs. More and more surgeons began physically signing the surgical site with a marking pen in the pre-op holding area. Now, they did this while the patient was still awake just to make sure everyone agreed what operation was being done on what body part.

The Deficit Reduction Act of 2005 required the Secretary of Health and Human Services to select at least two conditions that could be reasonably prevented. This is where Washington went too far. The Washington bureaucrats identified eight conditions as never events. Here is the list: object left in during surgery; air embolism; blood incompatibility; pressure ulcers; falls and trauma; catheter-associated urinary tract infections; vascular catheter-associated infections; and surgical-site infection. Why is this important, this list of eight? Well, it is important because some of this list of eight conditions really should never happen. Some of these eight conditions, though, can and do occur with regularity, even under the best of circumstances.

Well, what is the impact of the rules on patients and the medical profession? Medicare says it will pay to treat the underlying diagnosis but will not pay the hospital to treat complications from any of these eight conditions if the medical problem develops during the patient's hospital stay. For example, the patient is treated for a stroke, has no other complications during the hospital stay, and the hospital is paid a little over $5,000 by Medicare. If the same patient was to have a severe pressure ulcer when they arrived at the hospital in addition to the stroke, Medicare pays about $3,000 more for the treatment of both the stroke and the ulcers. But Medicare says: If the pressure ulcers developed after the patient arrived at the hospital, then Medicare will only reimburse to treat the stroke, not to treat the pressure ulcer.

The problem with pressure ulcers is they will not show up until the patient has usually been in the hospital for awhile. The damage to the tissue occurs at the time the patient with the stroke or with a broken hip lies motionless at home waiting until someone finds them, as often happens with somebody who lives alone. The damage occurs before the patient is even taken to the hospital, but the hospital is going to lose up to $3,000 to treat the pressure ulcer regardless of the medical condition that caused the problem in the first place. The bureaucrats are saying it should never happen, yet it happens all the time.

Although the never events program is in its infancy, I am troubled by the direction these Washington bureaucrats are headed. I believe the negative long-term impact on patient care is going to be significant. This year, Washington bureaucrats expanded the never events. They expanded the list to include even more conditions: surgical-site infections following elective procedures, blood sugar control, and deep-vein thrombosis/pulmonary embolism.

When you take a closer look at the entire process, it does show a disturbing trend. I agree that a foreign object left behind inside a patient after surgery is an event that should never occur. The fact is that most of the never events on the Government's list, selected and targeted in the rule-making process, are impossible to eliminate.

These bureaucrats clearly did not fulfill their requirement in the Deficit Reduction Act, a requirement to choose never events that are reasonably preventable by applying evidence-based guidelines. To be reasonably preventable, the Washington bureaucrats must have peer-reviewed, published literature showing clinicians can reduce the incidence of the chosen never event to zero or near zero. Current data shows that even when all appropriate care is administered, we do not know how to reduce the rates to zero or near zero of many of the conditions now on the list. Some patients, particularly high-risk folks, will develop conditions on the list regardless of how good the care is that they receive at the hospital.

Here is an example. The bureaucrats have listed deep-vein thrombosis/pulmonary embolism as a never event. Well, the best scientific studies on large numbers of total hip and total knee procedures—and this is from the time I started in medical school and we were trying to lower the risk of those blood clots—showed that under no circumstances, no matter what different treatments the best scientists have come up with, there is no current treatment available today worldwide that would decrease the blood clot risk to zero.

Now, I want to tell you about a patient who had a broken hip, a broken hip on the left side, and at the same time of the injury, she bruised her right hip but did not break it. We know that patients with either a broken hip or who have received an artificial hip,

that right after surgery, for the first couple of weeks, they have an increased risk of getting a blood clot. We treat them with blood thinners. Still, blood clots happen.

So this is a patient who was given a blood thinner. We were trying to find out what the right delicate balance was. We worked with an internist and others. We thought we had the right delicate balance for the right dose of medication. On her right side where she had the bruise, she bled into that wound, and that bruise got more blood accumulated, a hematoma. On the left side, the side with the broken hip, she got a blood clot. She was on the blood thinners and bled into the one side, had a blood clot on the other side, and yet they call it a never event. How can Washington bureaucrats say that this is a never event?

Let's look at another so called never event that made the list. Many of the ventilator-assisted pneumonia cases I saw practicing medicine in Casper, WY, occurred in trauma patients. The Wyoming Medical Center is a centrally located trauma facility. I saw patients brought in from accidents that occurred around all the State.

Many of the patients are treated and stabilized at a local hospital 100 to 250 miles away. They are transferred to the Wyoming Medical Center. Trauma physicians have no way to determine whether the pneumonia is secondary to aspiration that occurred right there at the site of the accident or whether it occurred as a result of something that happened at the first hospital. In the physician's initial assessment, a pneumonia has not yet developed. It takes time before it shows signs. Even the Washington bureaucrats that wrote the proposed rule agree. The rule is clear and scientific evidence is clear that 60 to 80 percent of ventilator-assisted pneumonia cases cannot be prevented. How can they call that a never event?

I have been a doctor for 30 years. I can share lots of similar examples with Members. Each example begs the following question: So what if the never event occurs in one hospital and then the patient needs to be transferred to another medical facility for advanced specialty care? Medicare says they are not going to pay for that treatment. Does that mean the second physician in the second hospital will not get paid? If the receiving hospital will get paid but the first one will not, isn't that surely going to lead to more transfers from one hospital to another, moving the patient from a hospital where the hospital will not get paid to the hospital where payment will occur?

Look at it on the other side. If the receiving hospital will not get paid for a complication that occurred at the first hospital, then why should they accept the patient in transfer for the care they need? Is there any way for hospitals to appeal the decision of the Washington bureaucrats? What impact will this whole process have on medical liability? Will this list of so-called never events lead to increased litigation? After all, if something is never supposed to happen because the Government list says it doesn't but then it happens, does that mean someone is at fault?

Where guidelines and proven medical strategies exist, doctors and hospitals strive every day to make sure serious adverse events do not ever occur. Never events should never occur.

It is important to remember that the 1999 Institute of Medicine report which called attention to medical errors in the first place said bad systems and not bad people lead to most errors. As an orthopedic surgeon, I have spent my entire professional career trying to make people better. I have been on call in the middle of the night when folks have been involved in traumatic accidents. There are people with incredible talents practicing medicine, trying to do their best, but government policies continue to needlessly hamstring the ability to help their patients. The health care of this Nation is going to be hurt by the direction that Washington bureaucrats are headed.

''Never events'' should never happen. When Washington bureaucrats stretch the meaning of the word ''never'' to keep from paying hospitals, they mislead the public and cheat our Nation's hospitals and health care providers. Perhaps Washington should start to focus its regulatory efforts on eliminating waste, fraud, and abuse in the Medicare system. This year alone we have seen one news report after another uncovering Medicare wasting American tax dollars. Medicare is paying billions for wheelchairs, prosthetics, canes, prescription drugs, and other medical supplies, as the report shows, all prescribed by doctors who are dead, some who died 10 years ago. The Washington check writers honored hundreds of thousands of these fraudulent claims. I wonder who is holding these bureaucrats accountable.

In 2001, they pledged to fix the problem identified by the Health and Human Services Office of the Inspector General. That was 7 years ago. Recent reports estimate Medicare loses approximately $70 to $90 billion each year to waste, fraud, and abuse. This strips our health care system of vital resources, resources we should be devoting to care for the elderly, the frail, the vulnerable. Federal officials have an opportunity to show leadership. They could have chosen to work with hospitals and physicians to develop evidence-based guidelines. Instead they have decided to issue a rule aimed at withholding money from hospitals, not improving patient care.

It is time to rethink this flawed policy. Policies must work to improve patient care, not to punish hospitals. Hospital doors must remain open.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. I ask unanimous consent that the order for the quorum call be rescinded.

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

ENERGY

Mr. CORNYN. Mr. President, I was pleased to see a report that the continuing resolution that will keep the Government running while Congress adjourns during the election period and beyond, that the continuing resolution proposed by the Democratic leadership in the House will actually eliminate a moratorium or a ban on drilling and exploration in the Outer Continental Shelf, which is, of course, the submerged Federal lands off our coastlines which are reported to have, by all of the experts, huge volumes of oil and gas. This actually represents a tremendous development in the Congress.

For a long time now we have been saying we need to develop more of America's natural resources, American energy at home, so we would be less dependent on imported oil and gas from the Middle East. Until this point, those entreaties, those pleadings, those requests had fallen on deaf ears, it seemed. But I congratulate the Democratic leadership in the House. This could go down as a bipartisan success of which we should be proud.

I remind our colleagues this is only part of the equation. We have said we need to find more American energy so we would be less dependent on imported oil from the Middle East. Where might we find that? It has been documented that deep sea exploration in the Outer Continental Shelf, the submerged lands off our coastlines, could produce as much as 14.3 billion barrels of oil. That is a lot. The western oil shale—which I am unclear whether the continuing resolution will deal with, but which has currently received a ban on development and exploration of western oil shale—is projected to have the equivalent of 800 billion barrels of oil. That is even more than the Outer Continental Shelf. Then there is, of course, the Arctic Coastal Plain which is estimated to have 10.4 billion barrels of oil, for a total estimate of 824.7 billion barrels of oil right in the good old U.S. of A. This would eliminate all oil imports, once it was on line and was being produced, for more than 198 years. These are fantastic numbers and time periods. I know it is hard to conceive, but even if these numbers are not exactly right, what it demonstrates is that we have a lot of great oil and gas reserves in America. And all of the money that T. Boone Pickens, through his advertising campaign to raise the visibility of this issue, all the money which he has documented, which we are sending overseas to buy oil and gas, we could actually reduce that dramatically by producing more at home.