

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2599

To improve the quality, availability, diversity, personal privacy, and innovation of health care in the United States.

---

## IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2005

Mr. ROHRBACHER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce and Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To improve the quality, availability, diversity, personal privacy, and innovation of health care in the United States.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medical Independence, Privacy, and Innovation Act of  
6 2005”.

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

Sec. 1. Short title; table of contents.

## TITLE I—TAX-RELATED PROVISIONS

- Sec. 101. Findings.  
 Sec. 102. Deduction of medical expenses for individuals.  
 Sec. 103. Medical checking accounts.  
 Sec. 104. Decrease in minimum annual deductibles under a high deductible health plan for purposes of health savings accounts and Archer MSAs.

## TITLE II—MEDICAL PRIVACY

- Sec. 201. Findings.  
 Sec. 202. Modification of regulations on privacy of individually identifiable health information.

## TITLE III—MODIFICATIONS REGARDING REGULATION OF DRUGS UNDER FEDERAL FOOD, DRUG, AND COSMETIC ACT

- Sec. 301. Definition of drug.  
 Sec. 302. Striking of effectiveness requirement; modifications regarding patent listings, patent certifications, and thirty-month rule.  
 Sec. 303. Granting of exclusive or partially exclusive licenses regarding inventions made with Federal assistance.  
 Sec. 304. Importation of certain drugs.

1                   **TITLE I—TAX-RELATED**  
 2                                   **PROVISIONS**

3   **SEC. 101. FINDINGS.**

4           The Congress finds the following:

5                   (1) Current law confers tax benefits for health  
 6           insurance provided as an employee fringe benefit,  
 7           but no similar tax benefit for health insurance pur-  
 8           chased by individuals thus creating an unfair bias  
 9           toward employer provided medical insurance plans  
 10          and an unfair discrimination against individuals who  
 11          seek marketplace alternatives to health insurance.

12                   (2) Current law confers a tax benefits for third  
 13          party payment of medical expenses but no similar  
 14          tax benefits for direct individual payment of medical  
 15          expenses. This has promoted employer-provided

1 third party payment systems and discouraged direct  
2 doctor-patient relationships.

3 (3) The current tax treatment of medical ex-  
4 penses has resulted in a greatly distorted market-  
5 place in medical insurance where decreased opportu-  
6 nities for private personal health insurance has re-  
7 duced competition both for medical insurance and  
8 health care services. This has resulted in an in-  
9 creased costs of both health insurance and health  
10 care services and fostered over use of low high pre-  
11 mium health insurance plans.

12 (4) The current tax treatment of medical ex-  
13 penses has restricted the freedom of individuals to  
14 exercise direct control over their health care dollars.  
15 The exclusion from gross income for employer-pro-  
16 vided health care with no corresponding tax benefit  
17 for health insurance and health care costs bourn by  
18 individuals represents a strong incentive toward em-  
19 ployers group plans.

20 (5) The tax code's preferment of employer-pro-  
21 vided group plans has triggered a marketplace re-  
22 sponse reflected in the significant increases in large  
23 health care delivery, and the creation of a relative  
24 few health care conglomerates in lieu of thousands  
25 of competitive providers of medical insurance and

1 services. This has increasingly placed medical deci-  
2 sions in the hands of health care bureaucracies and  
3 has eroded doctor-patient relationships.

4 (6) The role of the marketplace in both medical  
5 insurance and medical services should be strength-  
6 ened. The discriminatory tax policies in the area of  
7 health insurance and health care should be ended.  
8 Private individuals should be able to contract for  
9 their health insurance and health care delivery in at-  
10 mosphere free of discriminatory tax pressures. High  
11 deductible low premium as well as catastrophic alter-  
12 natives in health insurance should be viable options  
13 for all Americans.

14 **SEC. 102. DEDUCTION OF MEDICAL EXPENSES FOR INDI-**  
15 **VIDUALS.**

16 (a) IN GENERAL.—Subsection (a) of section 213 of  
17 the Internal Revenue Code of 1986 (relating to treatment  
18 of medical, dental, etc., expenses) is amended to read as  
19 follows:

20 “(a) ALLOWANCE OF DEDUCTION.—There shall be  
21 allowed as a deduction the expenses paid during the tax-  
22 able year, not compensated for by insurance or otherwise,  
23 for medical care of the taxpayer, his spouse, or a depend-  
24 ent (as defined by section 152, determined without regard  
25 to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).”.

1 (b) DEDUCTION ALLOWED IN COMPUTING AD-  
2 JUSTED GROSS INCOME.—Subsection (a) of section 62 of  
3 such Code is amended by redesignating paragraph (19)  
4 (relating to costs involving discrimination suits, etc.) as  
5 paragraph (20) and by inserting after paragraph (20) the  
6 following new paragraph:

7 “(21) MEDICAL CARE.—The deduction allowed  
8 by section 213.”.

9 (c) CONFORMING AMENDMENTS.—

10 (1) Section 56(b)(1) of such Code is amended  
11 by striking subparagraph (B).

12 (2) Section 67(b) of such Code is amended by  
13 striking paragraph (5).

14 (3) Section 72(t)(2)(B) of such Code is amend-  
15 ed by striking “to the extent such distributions do  
16 not exceed the amount” and inserting “which are”.

17 (4) Sections 104(a) and 105(b) of such Code  
18 are both amended by striking “(and not in excess  
19 of)”.

20 (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to taxable years beginning after  
22 December 31, 2005.

1 **SEC. 103. MEDICAL CHECKING ACCOUNTS.**

2 (a) IN GENERAL.—Subchapter F of chapter 1 of the  
3 Internal Revenue Code of 1986 (relating to exempt organi-  
4 zations) is amended by adding at the end the following:

5 **“PART IX—MEDICAL CHECKING ACCOUNTS**

“Sec. 530A. Medical checking accounts.

6 **“SEC. 530A. MEDICAL CHECKING ACCOUNTS.**

7 “(a) GENERAL RULE.—A medical checking account  
8 shall be exempt from taxation under this subtitle. Not-  
9 withstanding the preceding sentence, any medical checking  
10 account shall be subject to the taxes imposed by section  
11 511 (relating to imposition of tax on unrelated business  
12 income of charitable, etc., organizations). Rules similar to  
13 the rules of paragraphs (2) and (4) of section 408(e) shall  
14 apply to medical checking accounts, and any amount treat-  
15 ed as distributed under such rules shall be treated as not  
16 used to pay qualified medical expenses.

17 “(b) DEDUCTION FOR CONTRIBUTIONS.—

18 “(1) IN GENERAL.—In the case of an indi-  
19 vidual, there shall be allowed as a deduction an  
20 amount equal to the aggregate amount paid in cash  
21 during the taxable year to a medical checking ac-  
22 count of the taxpayer.

23 “(2) LIMITATIONS.—

24 “(A) MAXIMUM ANNUAL CONTRIBUTION.—

25 The deduction under paragraph (1) for a tax-

1           able year shall not exceed \$1,000 (\$2,000 in  
2           the case of a joint return).

3           “(B) MAXIMUM ALLOWABLE DEDUCTION  
4           BASED ON BALANCE IN ACCOUNT.—No deduc-  
5           tion shall be allowed for a taxable year for any  
6           amount contributed to a medical checking ac-  
7           count if the sum of such amount plus the bal-  
8           ance in the account determined as of the end of  
9           the taxable year would exceed \$2,000 (\$4,000  
10          in the case of married individuals filing a joint  
11          return, a surviving spouse, and a head of house-  
12          hold).

13          “(c) CREDIT FOR CONTRIBUTIONS.—

14                 “(1) IN GENERAL.—In the case of an indi-  
15                 vidual, there shall be allowed as a credit against the  
16                 tax imposed by this chapter for the taxable year an  
17                 amount equal to the credit amount with respect to  
18                 contributions made during the taxable year to the  
19                 medical checking account of the taxpayer.

20                 “(2) CREDIT AMOUNT.—For purposes of para-  
21                 graph (1), the credit amount is the lesser of—

22                         “(A) the total amount of contributions to  
23                         the medical checking account for the taxable  
24                         year reduced by the amount of contributions al-  
25                         lowed as a deduction under subsection (b), and

1 “(B) \$1,000.

2 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
3 poses of this section—

4 “(1) MEDICAL CHECKING ACCOUNT.—The term  
5 ‘medical checking account’ means a trust created or  
6 organized in the United States for the exclusive ben-  
7 efit of a qualified individual or his beneficiaries, but  
8 only if the written governing instrument creating the  
9 trust meets the following requirements:

10 “(A) Except in the case of a rollover con-  
11 tribution described in paragraph (4)(D), no  
12 contribution will be accepted unless it is in  
13 cash, or it exceeds \$1,000 (\$2,000 in the case  
14 of married individuals filing a joint return, a  
15 surviving spouse, and a head of household).

16 “(B) The trustee is a bank (as defined in  
17 section 408(n), an insurance company (as de-  
18 fined in section 816), or another person who  
19 demonstrates to the satisfaction of the Sec-  
20 retary that the manner in which such person  
21 will administer the trust will be consistent with  
22 the requirements of this section.

23 “(C) No part of the trust assets will be in-  
24 vested in life insurance contracts.

1           “(D) The assets of the trust will not be  
2 commingled with other property except in a  
3 common trust fund or common investment  
4 fund.

5           “(E) The interest of an individual in the  
6 balance in his account is nonforfeitable.

7           “(2) QUALIFIED MEDICAL EXPENSES.—The  
8 term ‘qualified medical expenses’ means, with re-  
9 spect to an account holder, amounts paid by such  
10 holder for medical care (as defined in section  
11 213(d)) for such individual, the spouse of such indi-  
12 vidual, and any dependent (as defined in section  
13 152, determined without regard to subsections  
14 (b)(1), (b)(2), and (d)(1)(B) thereof) of such indi-  
15 vidual, but only to the extent such amounts are not  
16 compensated for by insurance or otherwise (includ-  
17 ing distributions from an Archer MSA which are not  
18 includible in gross income by reason of section  
19 220(f)(1) or from a health savings account which  
20 are not includible in gross income by reason of sec-  
21 tion 223(f)(1)).

22           “(3) CHANGE IN FILING STATUS.—In the case  
23 of a taxpayer whose filing status changes during the  
24 taxable year, the limitation under paragraph (1)(A)  
25 shall be apportioned among the filing statuses of the

1 taxpayer in accordance with regulations prescribed  
2 by the Secretary.

3 “(4) CERTAIN RULES TO APPLY.—Rules similar  
4 to the following rules shall apply for purposes of this  
5 section:

6 “(A) Section 219(d)(2) (relating to no de-  
7 duction for rollovers).

8 “(B) Section 219(f)(3) (relating to time  
9 when contributions deemed made).

10 “(C) Section 219(f)(5) (relating to em-  
11 ployer payments).

12 “(D) Section 220(f)(5) (relating to rollover  
13 contributions).

14 “(E) Section 220(f)(7) (relating to trans-  
15 fer of account incident to divorce).

16 “(F) Section 220(f)(8) (relating to treat-  
17 ment after death of account holder).

18 “(G) Section 408(g) (relating to commu-  
19 nity property laws).

20 “(H) Section 408(h) (relating to custodial  
21 accounts).

22 “(e) TAX TREATMENT OF DISTRIBUTIONS.—

23 “(1) AMOUNTS USED FOR QUALIFIED MEDICAL  
24 EXPENSES.—Any amount paid or distributed out of  
25 a medical checking account which is used exclusively

1 to pay qualified medical expenses of any account  
2 holder shall not be includible in gross income.

3 “(2) INCLUSION OF AMOUNTS NOT USED FOR  
4 QUALIFIED MEDICAL EXPENSES.—Any amount paid  
5 or distributed out of a medical checking account  
6 which is not used exclusively to pay the qualified  
7 medical expenses of the account holder shall be in-  
8 cluded in the gross income of such holder.

9 “(3) ADDITIONAL TAX ON DISTRIBUTIONS NOT  
10 USED FOR QUALIFIED MEDICAL EXPENSES.—For  
11 purposes of this section, rules similar to the rules of  
12 section 220(f)(4) shall apply.

13 “(4) COORDINATION WITH MEDICAL EXPENSE  
14 DEDUCTION.—For purposes of determining the  
15 amount of the deduction under section 213, any pay-  
16 ment or distribution out of a medical checking ac-  
17 count for qualified medical expenses shall not be  
18 treated as an expense paid for medical care.

19 “(f) REPORTS.—The Secretary may require the  
20 trustee of a medical checking account to make such re-  
21 ports regarding such account to the Secretary and to the  
22 account holder with respect to contributions, distributions,  
23 and such other matters as the Secretary determines appro-  
24 priate. The reports required by this subsection shall be  
25 filed at such time and in such manner and furnished to

1 such individuals at such time and in such manner as may  
2 be required by the Secretary.”.

3 (b) TAX ON EXCESS CONTRIBUTIONS.—Section 4973  
4 of such Code (relating to tax on excess contributions to  
5 individual retirement accounts, certain section 403(b) con-  
6 tracts, and certain individual retirement annuities) is  
7 amended—

8 (1) in subsection (a) by striking “or” at the end  
9 of paragraph (4), by inserting “or” at the end of  
10 paragraph (5), and by inserting after paragraph (5)  
11 the following:

12 “(6) a medical checking account (within the  
13 meaning of section 530A(d)),”, and

14 (2) by adding at the end the following new sub-  
15 section:

16 “(h) EXCESS CONTRIBUTIONS TO MEDICAL CHECK-  
17 ING ACCOUNTS.—For purposes of this section, in the case  
18 of medical checking accounts (within the meaning of sec-  
19 tion 530A(d)), the term ‘excess contributions’ means the  
20 sum of—

21 “(1) the aggregate amount contributed for the  
22 taxable year to such accounts (other than rollover  
23 contributions referred to in section 530A(d)(4)(D))  
24 which is not allowable as a deduction or credit under  
25 section 530A for such year, and

1           “(2) the amount determined under this sub-  
2           section for the preceding taxable year, reduced by  
3           the sum of—

4                   “(A) the distributions out of the accounts  
5                   which were included in gross income under sec-  
6                   tion 530A(e)(2), and

7                   “(B) the excess (if any) of—

8                           “(i) the sum of the maximum amount  
9                           allowable as a deduction or credit under  
10                          section 530A for the taxable year, over

11                           “(ii) the amount contributed to such  
12                          accounts for the taxable year.

13 For purposes of this subsection, any contribution which  
14 is distributed out of the medical checking account in a dis-  
15 tribution to which section 530A(d)(4)(B) applies shall be  
16 treated as an amount not contributed.”.

17           (c) TAX ON PROHIBITED TRANSACTIONS.—

18                   (1) Subsection (c) of section 4975 of such Code  
19                   (relating to tax on prohibited transactions) is  
20                   amended by adding at the end the following new  
21                   paragraph:

22                           “(6) SPECIAL RULE FOR MEDICAL CHECKING  
23                          ACCOUNTS.—An individual for whose benefit a med-  
24                          ical checking account (within the meaning of section  
25                          530A(d)) is established shall be exempt from the tax

1 imposed by this section with respect to any trans-  
2 action concerning such account (which would other-  
3 wise be taxable under this section) if, with respect  
4 to such transaction, the account ceases to be a med-  
5 ical checking account by reason of the application of  
6 section 530A(e)(2) to such account.”.

7 (2) Paragraph (1) of section 4975(e) of such  
8 Code is amended by striking “or” at the end of sub-  
9 paragraph (F), by redesignating subparagraph (G)  
10 as subparagraph (H), and by inserting after sub-  
11 paragraph (F) the following new subparagraph:

12 “(G) a medical checking account described  
13 in section 530A(d), or”.

14 (d) FAILURE TO PROVIDE REPORTS ON MEDICAL  
15 CHECKING ACCOUNTS.—Paragraph (2) of section 6693(a)  
16 of such Code (relating to general rule on reports) is  
17 amended by striking “and” at the end of subparagraph  
18 (D), by striking the period at the end of subparagraph  
19 (E) and inserting “, and”, and by inserting after subpara-  
20 graph (E) the following new subparagraph:

21 “(F) section 530A(g) (relating to medical  
22 savings accounts).”.

23 (e) CLERICAL AMENDMENT.—The table of parts for  
24 subchapter F of chapter 1 of such Code is amended by  
25 adding at the end the following new item:

“PART IX. MEDICAL CHECKING ACCOUNTS”.

1 (f) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2005.

4 **SEC. 104. DECREASE IN MINIMUM ANNUAL DEDUCTIBLES**  
5 **UNDER A HIGH DEDUCTIBLE HEALTH PLAN**  
6 **FOR PURPOSES OF HEALTH SAVINGS AC-**  
7 **COUNTS AND ARCHER MSAS.**

8 (a) ANNUAL DEDUCTIBLE AND OUT-OF-POCKET EX-  
9 PENSES WITH RESPECT TO HEALTH SAVINGS AC-  
10 COUNTS.—

11 (1) IN GENERAL.—Subclause (I) of section  
12 223(c)(2)(A) (ii) of the Internal Revenue Code of  
13 1986 (defining high deductible health plan) is  
14 amended by striking “\$5,000” and inserting  
15 “\$4,000”.

16 (2) MINIMUM DEDUCTIBLE DECREASED;  
17 AMOUNTS NOT INCREASED BY INFLATION.—Para-  
18 graph (1) of section 223(g) of such Code is amend-  
19 ed—

20 (A) in the matter preceding subparagraph  
21 (A) by striking “subsections (b)(2) and  
22 (c)(2)(A)” and inserting “subsection (b)(2)”,  
23 and

24 (B) in subparagraph (B) by striking “sub-  
25 stituting” and all that follows and inserting

1 “substituting calendar year 1997 for ‘calendar  
2 year 1992’ in subparagraph (B) thereof.”.

3 (b) ARCHER MSAs.—

4 (1) DECREASE IN MINIMUM DEDUCTIBLE.—

5 Subparagraph (A) of section 220(c)(2) of the Inter-  
6 nal Revenue Code of 1986 (defining high deductible  
7 health plan) is amended—

8 (A) in clause (i) by striking “\$1,500” and  
9 inserting “\$1,000”, and

10 (B) in clause (ii) by striking “\$3,000” and  
11 inserting “\$2,000”.

12 (2) MINIMUM NOT INCREASED BY INFLA-  
13 TION.—Section 220(g) of such Code is amended by  
14 inserting “(other than the \$1,000 amount in sub-  
15 paragraph (A)(i) and the \$2,000 amount in sub-  
16 paragraph (A)(ii) thereof)” after “subsection  
17 (c)(2)”.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 December 31, 2005.

## 21 **TITLE II—MEDICAL PRIVACY**

### 22 **SEC. 201. FINDINGS.**

23 The Congress finds the following:

24 (1) Medical privacy is an issue that concerns a  
25 growing number of people in the United States. The

1 culture of the United States has always strongly fa-  
2 vored a close physician-patient relationship. One of  
3 the key elements of this relationship is the trust that  
4 a patient has that their personal information will be  
5 treated as confidential by medical personnel and will  
6 not be made public or accessible to other persons  
7 without their permission.

8 (2) In our increasingly complex times, two  
9 trends are combining to exert pressure on maintain-  
10 ing the confidentiality of health care information.  
11 First, public policy favors an increased ability to  
12 provide protection against harmful prescription  
13 interactions and for the reporting of medications' se-  
14 rious side effects. Second, health care insurers desire  
15 to take advantage of economies of scale in control-  
16 ling health care costs. These trends have greatly re-  
17 duced expectations for the privacy of health care in-  
18 formation.

19 (3) For the first time in our Nation's history,  
20 serious loopholes have been written into privacy pro-  
21 tections that were created to protect the right of in-  
22 dividuals. Positive changes in privacy law have been  
23 made in recent years to guarantee that patients are  
24 notified regarding the use of their health informa-  
25 tion, have access to their own medical records, and

1 are able to request corrections of such records.  
2 These protections must be maintained and strength-  
3 ened.

4 (4) One of the greatest needs in the area of  
5 health privacy is to protect individuals against the  
6 use of their confidential health information for prof-  
7 it-generating consumer marketing. Patients justifi-  
8 ably have objections to this use of their information  
9 without their consent.

10 (5) There recently have been implemented a se-  
11 ries of alarming modifications to the standards pre-  
12 viously finalized to protect the privacy of individually  
13 identifiable health information. These include  
14 changes in important definitions, additions to the  
15 category of health care operations for which patient  
16 consent for the use of their information is not re-  
17 quired, and changes in permitted use of patient in-  
18 formation without consent for public health pur-  
19 poses.

20 (6) Recent rollbacks in health privacy need to  
21 be reversed, and the individuals' confidence that  
22 their private conversations with medical personnel  
23 will remain private needs to be strengthened.

24 (7) There is also a need to protect the integrity  
25 and confidentiality of social security account num-

1       bers and to prohibit Federal agencies from imposing  
2       national standards for identification of individuals.

3   **SEC. 202. MODIFICATION OF REGULATIONS ON PRIVACY OF**  
4                   **INDIVIDUALLY IDENTIFIABLE HEALTH IN-**  
5                   **FORMATION.**

6       (a) **MARKETING.**—

7           (1) **IN GENERAL.**—The modifications made by  
8       the August 2002 medical privacy rule to the defini-  
9       tion of the term “marketing” in section 164.501 of  
10      title 45, Code of Federal Regulations, shall have no  
11      force or effect.

12          (2) **AUTHORIZATIONS FOR MARKETING.**—Sec-  
13      tion 164.508 of title 45, Code of Federal Regula-  
14      tions, shall be construed and applied so as to require  
15      that, if an authorization is required for a use or dis-  
16      closure of protected health information for mar-  
17      keting, the authorization shall be considered invalid  
18      unless it—

19                  (A) uses the term “marketing”;

20                  (B) states that the purpose of the use or  
21      disclosure involved is marketing; and

22                  (C) describes the specific marketing uses  
23      and disclosures authorized.

1 (b) CONSENT FOR USES OR DISCLOSURES TO CARRY  
2 OUT TREATMENT, PAYMENT, OR HEALTH CARE OPER-  
3 ATIONS.—

4 (1) IN GENERAL.—The modifications made to  
5 section 164.506 of title 45, Code of Federal Regula-  
6 tions, by the August 2002 medical privacy rule shall  
7 have no force or effect.

8 (2) USE OR DISCLOSURE WITHOUT CONSENT.—

9 (A) IN GENERAL.—Section 164.506 of title  
10 45, Code of Federal Regulations, insofar as it  
11 permits any use or disclosure of protected  
12 health information without consent, shall have  
13 no force or effect.

14 (B) CIRCUMSTANCES WHERE CONSENT  
15 NOT REQUIRED.—A health care provider may  
16 use or disclose an individual's protected health  
17 information without obtaining the prior consent  
18 of the individual only in the following cir-  
19 cumstances:

20 (i) To fill or dispense a prescription,  
21 and to search for drug interactions related  
22 to that prescription, if the health care pro-  
23 vider obtains written consent from the in-  
24 dividual as soon as practicable.

1 (ii) To carry out treatment of that in-  
2 dividual if—

3 (I) the individual has not exe-  
4 cuted a Universal Health Privacy  
5 Declaration promulgated under sub-  
6 paragraph (C);

7 (II) the individual and the health  
8 care provider have not had in-person  
9 communication regarding such treat-  
10 ment; and

11 (III) obtaining consent would be  
12 impracticable.

13 (C) UNIVERSAL HEALTH PRIVACY DEC-  
14 LARATION.—

15 (i) IN GENERAL.—The Secretary of  
16 Health and Human Services shall promul-  
17 gate a document which shall be known as  
18 the “Universal Health Privacy Declara-  
19 tion”.

20 (ii) ELIGIBILITY.—A Universal  
21 Health Privacy Declaration may be exe-  
22 cuted by any individual who is a citizen of  
23 the United States or an alien lawfully ad-  
24 mitted to the United States for permanent  
25 residence.

1 (iii) PURPOSE.—A Universal Health  
2 Privacy Declaration, once executed by an  
3 individual described in clause (ii) and not  
4 revoked, shall be considered to prohibit, as  
5 provided under subparagraph (B), a health  
6 care provider from using or disclosing the  
7 individual’s protected health information  
8 for treatment without obtaining the prior  
9 consent of the individual.

10 (iv) ENFORCEMENT.—There is estab-  
11 lished in the Department of Health and  
12 Human Services an Office of the Health  
13 Privacy Ombudsman, which shall be head-  
14 ed by an individual known as the “Health  
15 Privacy Ombudsman”. The Health Privacy  
16 Ombudsman shall be charged with inves-  
17 tigating complaints submitted by individ-  
18 uals described in clause (ii) regarding a  
19 use or disclosure of protected health infor-  
20 mation in violation of their Universal  
21 Health Privacy Declaration.

22 (c) DISCLOSURES FOR LAW ENFORCEMENT PUR-  
23 POSES.—Subparagraph (C) of section 164.506(f)(1)(ii) of  
24 title 45, Code of Federal Regulations shall have no force  
25 or effect.

1 (d) DEFINITIONS.—

2 (1) IN GENERAL.—For purposes of this section:

3 (A) DECEMBER 2000 MEDICAL PRIVACY  
4 RULE.—The term “December 2000 medical pri-  
5 vacy rule” means the final rule on standards  
6 for privacy of individually identifiable health in-  
7 formation published on December 28, 2000, in  
8 the Federal Register (65 Fed. Reg. 82462), in-  
9 cluding the provisions of title 45, Code of Fed-  
10 eral Regulations, revised or added by such rule.

11 (B) AUGUST 2002 MEDICAL PRIVACY  
12 RULE.—The term “August 2002 medical pri-  
13 vacy rule” means the final rule, published on  
14 August 14, 2002, in the Federal Register (67  
15 Fed. Reg. 53182), that modified the December  
16 2000 medical privacy rule.

17 (2) OTHER TERMS DEFINED.—For purposes of  
18 this section:

19 (A) HEALTH CARE PROVIDER.—The term  
20 “health care provider” shall have the meaning  
21 given such term in section 160.103 of title 45,  
22 Code of Federal Regulations, as contained in  
23 the December 2000 medical privacy rule.

24 (B) DISCLOSURE; INDIVIDUAL; PROTECTED  
25 HEALTH INFORMATION; TREATMENT; USE.—

1           The terms “disclosure”, “individual”, “pro-  
2           tected health information”, “treatment”, and  
3           “use” shall have the meaning given such terms  
4           in section 164.501 of title 45, Code of Federal  
5           Regulations, as contained in the December  
6           2000 medical privacy rule.

7   **TITLE III—MODIFICATIONS RE-**  
8   **GARDING REGULATION OF**  
9   **DRUGS UNDER FEDERAL**  
10  **FOOD, DRUG, AND COSMETIC**  
11  **ACT**

12 **SEC. 301. DEFINITION OF DRUG.**

13           Section 201(g)(1) of the Federal Food, Drug, and  
14           Cosmetic Act (21 U.S.C. 321(g)(1)) is amended in the  
15           first sentence by striking “and (B) articles intended” and  
16           all that follows and inserting the following: “and (B) arti-  
17           cles intended for use in the diagnosis, cure, or treatment  
18           (but not mitigation or prevention) of disease in man or  
19           other animals.”.

20 **SEC. 302. STRIKING OF EFFECTIVENESS REQUIREMENT;**  
21                   **MODIFICATIONS REGARDING PATENT LIST-**  
22                   **INGS, PATENT CERTIFICATIONS, AND THIRTY-**  
23                   **MONTH RULE.**

24           (a) **STRIKING OF EFFECTIVENESS REQUIREMENT;**  
25 **PROHIBITION AGAINST LISTING OF CERTAIN PATENTS.—**

1           (1) IN GENERAL.—Section 505(b) of the Fed-  
2           eral Food, Drug, and Cosmetic Act (21 U.S.C.  
3           355(b)) is amended by striking “(b)(1)” and all that  
4           follows through “clinical trials required by clause  
5           (A).” and inserting the following:

6           “(b) APPLICATION.—

7           “(1) CONTENTS.—

8           “(A) IN GENERAL.—Any person may file  
9           with the Secretary an application with respect  
10          to any drug subject to the provisions of sub-  
11          section (a). Such persons shall submit to the  
12          Secretary as a part of the application—

13                 “(i) full reports of investigations  
14                 which have been made to show whether or  
15                 not such drug is safe for use;

16                 “(ii) a full list of the articles used as  
17                 components of such drug;

18                 “(iii) a full statement of the composi-  
19                 tion of such drug;

20                 “(iv) a full description of the methods  
21                 used in, and the facilities and controls  
22                 used for, the manufacture, processing, and  
23                 packing of such drug;

1           “(v) such samples of such drug and of  
2           the articles used as components thereof as  
3           the Secretary may require; and

4           “(vi) specimens of the labeling pro-  
5           posed to be used for such drug.

6           “(B) PATENT INFORMATION.—

7           “(i) REQUIREMENT.—The applicant  
8           shall file with the application the patent  
9           number and the expiration date of any pat-  
10          ent which claims the drug for which the  
11          applicant submitted the application or  
12          which claims a method of using such drug  
13          and with respect to which a claim of patent  
14          infringement could reasonably be asserted  
15          if a person not licensed by the owner en-  
16          gaged in the manufacture use, or sale of  
17          the drug.

18          “(ii) TYPES OF PATENTS.—

19               “(I) PATENTS SUBJECT TO RE-  
20               QUIREMENT.—The patents for which  
21               information under clause (i) is re-  
22               quired to be filed with the Secretary  
23               are drug substance (ingredient) pat-  
24               ents, drug product (formulation and  
25               composition) patents, product by proc-

1           ess patents, and method of use pat-  
2           ents.

3           “(II) PROHIBITION REGARDING  
4           CERTAIN PATENTS.—Process patents,  
5           patents claiming packaging, patents  
6           claiming metabolites, and patents  
7           claiming intermediates are not patents  
8           described in subclause (I), and infor-  
9           mation on such patents may not be  
10          filed with the Secretary.

11          “(III) PATENT REGARDING DRUG  
12          SUBSTANCE.—For patents that claim  
13          the drug substance, the applicant  
14          shall submit information only on pat-  
15          ents that claim the drug substance  
16          that is the subject of the pending or  
17          approved application or that claim a  
18          drug substance that is the same as  
19          the active ingredient that is the sub-  
20          ject of an approved or pending appli-  
21          cation within the meaning of sub-  
22          section (j)(2)(A)(ii).

23          “(IV) PATENT REGARDING DRUG  
24          PRODUCT.—For patents that claim a  
25          drug product, the applicant shall sub-

1 mit information only on those patents  
2 that claim a drug product that is the  
3 subject of a pending or approved ap-  
4 plication.

5 “(V) PATENT REGARDING METH-  
6 OD OF USE.—For patents that claim a  
7 method of use, the applicant shall  
8 submit information only on those pat-  
9 ents that claim indications or other  
10 conditions of use that are the subject  
11 of a pending or approved application.  
12 For approved applications, the appli-  
13 cant shall identify the indication or  
14 other condition of use in the approved  
15 labeling that corresponds to the listed  
16 patent and claim identified.

17 “(iii) FILING OF PATENT AFTER SUB-  
18 MISSION OF APPLICATION.—If an applica-  
19 tion is filed under this subsection for a  
20 drug and a patent which claims such drug  
21 or a method of using such drug is issued  
22 after the filing date but before approval of  
23 the application, the applicant shall amend  
24 the application to include the information  
25 required by clauses (i) and (ii).

1                   “(iv) PUBLICATION OF PATENT IN-  
2                   FORMATION.—Upon approval of the appli-  
3                   cation, the Secretary shall publish informa-  
4                   tion submitted under clauses (i) through  
5                   (iii).

6                   “(C) GUIDANCE REGARDING INCLUSION OF  
7                   WOMEN AND MINORITIES IN CLINICAL  
8                   TRIALS.—The Secretary shall, in consultation  
9                   with the Director of the National Institutes of  
10                  Health and with representatives of the drug  
11                  manufacturing industry, review and develop  
12                  guidance, as appropriate, on the inclusion of  
13                  women and minorities in clinical trials required  
14                  by subparagraph (A)(i).”.

15                  (2) CONFORMING AMENDMENTS.—The Federal  
16                  Food, Drug, and Cosmetic Act (21 U.S.C. 301 et  
17                  seq.) is amended—

18                         (A) in section 201(p)—

19                                 (i) by striking “safety and effective-  
20                                 ness of” and inserting “safety of”; and

21                                 (ii) by striking “safe and effective for  
22                                 use” and inserting “safe for use”; and

23                         (B) in section 505—

1 (i) by striking “safety and effective-  
2 ness” each place such term appears and  
3 inserting “safety”;

4 (ii) by striking “safety or effective-  
5 ness” each place such term appears and  
6 inserting “safety”; and

7 (iii) in subsection (i)(1)(D), by strik-  
8 ing “pediatric safety and efficacy” and in-  
9 serting “pediatric safety”.

10 (b) ABBREVIATED APPLICATIONS; AMENDMENTS RE-  
11 GARDING THIRTY-MONTH DELAY IN APPROVAL.—Section  
12 505 of the Federal Food, Drug, and Cosmetic Act (21  
13 U.S.C. 355(j)) is amended—

14 (1) in subsection (c)(3)—

15 (A) in subparagraph (C), in the matter  
16 preceding clause (i), by striking “thirty-month  
17 period” and inserting “twenty-month period”;  
18 and

19 (B) in subparagraph (E)(ii), by striking  
20 “thirty-month period” and inserting “twenty-  
21 month period”; and

22 (2) in subsection (j)(5)—

23 (A) in subparagraph (B)(iii), in the matter  
24 preceding subclause (I), by striking “thirty-

1 month period” and inserting “twenty-month pe-  
2 riod”; and

3 (B) in subparagraph (F)(ii), by striking  
4 “thirty-month period” and inserting “twenty-  
5 month period”.

6 **SEC. 303. GRANTING OF EXCLUSIVE OR PARTIALLY EXCLU-  
7 SIVE LICENSES REGARDING INVENTIONS  
8 MADE WITH FEDERAL ASSISTANCE.**

9 No grant of an exclusive or partially exclusive license  
10 pursuant to chapter 18 of title 35, United States Code,  
11 may be made, except in accordance with section 209 of  
12 such title (relating to the availability to the public of an  
13 invention and its benefits on reasonable terms).

14 **SEC. 304. IMPORTATION OF CERTAIN DRUGS.**

15 Chapter VIII of the Federal Food, Drug, and Cos-  
16 metic Act (21 U.S.C. 381 et seq.) is amended by striking  
17 section 804 and inserting the following:

18 “IMPORTATION OF CERTAIN DRUGS

19 “SEC. 804. (a) REGULATIONS.—The Secretary, after  
20 consultation with the United States Trade Representative  
21 and the Commissioner of Customs, shall promulgate regu-  
22 lations permitting pharmacists and wholesalers to import  
23 prescription drugs from foreign nations.

24 “(b) LIMITATION.—The regulations under subsection  
25 (a) shall require that safeguards be in place to ensure that  
26 each prescription drug imported under the regulations

1 complies with section 505 (including being safe for the in-  
2 tended use of the prescription drug) with sections 501 and  
3 502 and with other applicable requirements of this Act.”.

○