to traditional over-the-air broadcasts, basic and extended tiers or programming services, whether provided through cable or other wireline, satellite, or future over-the-air terrestrial systems, may not be encoded with these technologies at all. In addition, copyright owners may only utilize these technologies to prevent the making of a ''second generation'' copy of an original transmission provided through a pay television service.

Given that copyright owners may not use these technologies to deprive consumers of their right to copy from pay television programming, the distinction between pay-per-view and pay television services is critical. Where a member of the public affirmatively selects a particular program or a specified group of programs and then pays a fee that is separate from subscription or other fees, the program offering is pay-per-view. Where, however, consumers subscribe to or pay for programming that the programmer selects, whether it be one or more discrete programs, or a month's worth of programming, then that package itself is a pay television service, even if it represents only a portion of the programming that might be available for purchase on the programmer's channel.

In short, with the conferees essentially having endorsed the approach of the Committee on Commerce to WIPO implementing legislation, we have produced a bill that should help spur creativity by content providers without stifling the growth of new technology. In fact, with a clear set of rules established for both analog and digital devices, product designers should enjoy the freedom to innovate and bring ever-more exciting new products to market.

I think we have struck fair and reasonable compromises, and have produced a bill of appropriate scope and balance. I urge my colleagues to support the conference report.

WHY THE JOINT COMMISSION ON ACCREDITING HEALTHCARE ORGANIZATIONS (JCAHO) MUST DO BETTER

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 13, 1998

Mr. STARK. Mr. Speaker, we need to take immediate action to make JCAHO accountable to the public. The Administration's July 1, 1998 report on nursing home quality [''Private Accreditation (Deeming) of Nursing Homes, Regulatory Incentives, and Non-Regulatory Initiatives, and Effectiveness of the Survey and Certification System''] shows that the nation's premier, private health accrediting organization—the Joint Commission on Accrediting Healthcare Organizations needs to do a much better job of protecting Medicare patients and dollars. Before JCAHO extends its accrediting activities to other areas—such as hospice agencies where it is applying to be an accrediting organization—it needs to prove it can do its current job of inspecting nursing homes and hospitals.

As I said in my opening remarks to the Ways and Means Health Subcommittee on July 1, 1990, ''Validating the JCAHO status is critical given that HCFA, through a process termed 'deemed Status' relies on JCAHO to assure that most hospitals are providing quality health services to Medicare beneficiaries. If a hospital (or now other health care facility) is accredited by JCAHO, it is deemed to meet the Medicare conditions of participation.'' We found many problems eight years ago and many still continue, which would indicate a fundamental problem with JCAHO culture caused, I believe, by the system of financing JCAHO inspections. This is why I have introduced H.R. 800 to increase public access to and influence on JCAHO.

H.R. 800 will require that one-third of the members of the governing boards of Medicare-accrediting agencies are members of the public. JCAHO currently claims to have 6 public members on its board. In fact, a recent appointee to one of the scarce public seats, is also a director of the second-largest investor-owned hospital company. This recent appointment is just one example of the conflict of interest rampant in JCAHO's operating procedures. My bill also outlines a definition of ''members of the public'' to prevent similar appointments in the future.

On July 1, 1998, HCFA issued a Report to Congress entitled, ''Study of Private Accreditation (Deeming) of Nursing Homes, Regulatory Incentives, and Effectiveness of the Survey and Certification System''. This damning report detailed numerous deficiencies in JCAHO's current inspection system. To extend JCAHO's deeming to hospice care would permit an inadequate program greater authority.

JCAHO recently announced its intention to expand its scope of inspection to include hospice facilities. JCAHO currently surveys nursing homes, hospitals, and other health providers. But according to a recent HCFA/Abt study, JCAHO is unable to effectively administer surveys, identify problems, and implement problem correction policies. Allowing an organization riddled with problems further authority would be a terrible mistake.

JCAHO accredits health care facilities at the facilities' request. The federal government recognizes JCAHO hospital and home health agency accreditation as equivalent to meeting its Medicare Conditions of Participation.

According to the recent HCFA/Abt report to Congress, JCAHO has to make drastic changes to meet the basic Medicare requirements. JCAHO continues to deem facilities Medicare eligible, when in fact these facilities do not meet Medicare standards. Facilities that want to be accredited pay JCAHO to survey their site. Allowing JCAHO to accredit facilities that pay for surveys represent a conflict of interest. JCAHO's lack of objectivity plagues the current accreditation process.

Furthermore, JCAHO accreditation does not meet current Medicare guidelines for allowing facilities to participate in the program. The most serious allegation against JCAHO is that it overlooks regulatory infractions at the expense of patients for example: One nursing home administrator responded to questions about JCAHO's procedures with the following. ''They (JCAHO) are big into policies and procedures * * * they are more interested in quality improvement and assessment than problem correction.''[1]

Lack of problem correction is of special concern given the nature of nursing home residents. This population is one of the most vulnerable parts of the health care population, with 48 percent of nursing home patients suffering from some form of dementia.

JCAHO is unable to effectively accredit private nursing homes, and thus should not be allowed to additionally accredit hospice facilities until its inspection system is improved. The results of empirical studies included in the Study demonstrate the need for overhaul of the current regulatory system.

While the medicare system may benefit from reduced regulatory costs by using JCAHO, the savings do not outweigh the risk of severe deficiencies in care. Although deeming may save Medicare $2 to $37 million a year by private accreditation, JCAHO surveyors often miss serious deficiencies, which in some cases may even result in unjustified deaths. We must not sacrifice the welfare of the most vulnerable for minimal financial gains.

JCAHO does not effectively administrate regulatory surveys. The timing of JCAHO surveys was easy for nursing home administrators to predict. Surveys were never conducted at night or on the weekends. Thus once a provider paid JCAHO to accredit the facility they could hypothetically increase staff levels on only Monday and Tuesday day shifts in anticipation of a pending survey.

Furthermore, the current system fails miserably to identify problems. The Incidence of serious deficiencies found decreased with the implementation of the new accreditation program. The new process may also tend to identify deficiencies as less serious than they actually are.

Flaws in the problem identification system are evidenced by the fact that simultaneous public accreditation found more serious deficiencies than JCAHO did. More importantly, the current system under-addresses malnutrition and violence problems. Currently nursing home aides are not required to undergo criminal background checks. Furthermore some employers seek out recent parolees knowing that these employees will work for a lower salary. JCAHO fails to detect inadequate and even fraudulent staff training practices: Frequently reported actions to provide in-staff training to staff result in no evidence on quality and content. Very high staff turnover suggests that the staff is not benefitting from the required training. In one case, workers were asked to sign an attendance sheet for an in-staff training session they never attended.[2]

HCFA standards are generally more stringent than JCAHO standards. JCAHO surveyors seem to miss serious deficiencies that HCFA surveyors frequently identify. JCAHO standards are heavily weighted toward structure and process measures, while HCFA standards have a more resident-centered and outcome-oriented focus.

The JCAHO accreditation and HCFA validation inspections differed widely in their approach as well. JCAHO surveyors spent little time assessing quality of life issues or observing clinical treatments. JCAHO surveyors also spent little time observing clinical care or with residents, and those residents who JCAHO surveyors did interview were often pre-selected by nursing home staff.[3]

In the Report to Congress HCFA said that JCAHO lacked the ability to enforce findings

[1] Pp. 617–618 ''Study of Private Accreditation of (Deeming) of Nursing Homes, Regulatory Incentives and Non-Regulatory Initiatives, and Effectiveness of the Survey and Certification'', Health Care Financing Administration. July 1, 1998.

[2] Pg. xii, Executive Summary; Study: HCFA

[3] Pg. 18, Vol. I Study: Health Care Financing Administration

and to regulate nursing home care: Some Nursing homes need the punitive threat of review and enforcement to secure improvements. The current system has not worked as well as it should to eliminate poor quality nursing care.[4]

The Study concludes that JCAHO is not adequately ensuring quality nursing care. The potential cost savings of deeming does not appear to justify the risk to the health and safety of the vulnerable nursing home population.

Although the study also found problems with the HCFA survey procedures, these concerns pale in comparison to the inadequacies of JCAHO survey procedures.

The result of this study raise alarming concerns about the quality of nursing care in the nations nursing homes. JCAHO has proven itself unable to identify with facilities are providing substandard care and to implement programs which will correct these problems. JCAHO should not be allowed to accredit hospice facilities until we are sure fundamental changes in JCAHO's system of inspections are in place. The federal government has a responsibility to reevaluate the current deeming system to protect its most vulnerable citizens.

INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998

SPEECH OF

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 10, 1998

Mr. MORAN of Virginia. Mr. Speaker, I was among those who voted against this bill when it came before us earlier this year. I did so primarily because I was concerned that the sanctions in the bill would have adverse impact on our ability to combat religious persecution and other abuses of human rights across the globe.

I am pleased that this bill has been amended to address these concerns and I now fully support this legislation. The sanctioning mechanism now gives the Administration a wide array of powerful tools with which to combat persecution. It also provides the flexibility necessary to ensure that our efforts to combat religious persecution do not harm our programs to combat other serious human rights abuses such as forced labor and prostitution, slavery, and female infanticide.

I commend my colleague, Mr. Wolf, for his tireless work on this important issue and urge my colleagues to support this critically important bill.

RECOGNIZING THE ACCOMPLISHMENTS OF INSPECTORS GENERAL

SPEECH OF

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 10, 1998

Mr. BURTON of Indiana. Mr. Speaker, as Chairman of the Committee on Government Reform and Oversight, responsible for overseeing the economy and efficiency of the federal government, I rise to recognize our Federal Inspectors General, who in the twenty years since their inception, have been a critical asset in the war against waste, fraud and abuse in our Federal Government.

Twenty years ago this month, the Government Reform and Oversight Committee worked to establish Inspectors General in the largest executive agencies. Today, the Inspector General Act of 1978 provides for Inspectors in 27 major agencies and in 30 of our smaller Federal agencies.

Inspectors General were established to correct deficiencies in the way Government agencies addressed performance problems: deficiencies in organizational structure which placed audit and investigative units under the supervision of the officials whose programs they were to examine; deficiencies in procedures which allowed agency officials to intervene in audits and investigations; and deficiencies in amount of resources devoted to preventing and detecting waste, fraud, and abuse.

In addition to their original duties of conducting audits and investigations under the 1978 Act, IGS are playing key roles under recent management reform laws that were enacted to address financial and programmatic problems within agencies. Among them, the Chief Financial Officers Act and the Government Performance and Results Act. The IGS hard work with regard to these laws enables agencies and the Congress to further address serious management and financial problems, making our government more efficient, more effective, and less costly.

Not only the Government Reform and Oversight Committee, but the entire Congress has come to rely heavily on the critical work of the Inspectors General. Their audits and inspections help root out serious problems in Federal programs and bring them into the light of day, saving taxpayers billions of dollars every year. The following statistics compiled by the Presidents' Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) illustrate the impact of IGS. In Fiscal Year 1997, IG audits and inspections identified a total of $25 billion in funds that could be put to better use; more than 15,000 individuals and businesses were successfully prosecuted; restitutions and investigative recoveries resulting from IG investigations returned $3 billion to the Government; and more than 6,000 individuals or firms were disqualified from doing business with the Federal Government.

Mr. chairman, American taxpayers deserve no less from us than to provide the utmost accountability for their hard-earned money. On this, the eve of the twentieth year anniversary of the Inspector General Act of 1978, I salute our Inspectors General and thank them for their extremely important work on behalf of the American taxpayers.

I urge my colleagues to support S.J. Res. 58 and join me in recognizing and thanking our Federal Inspectors General.

BACKGROUND—INSPECTOR GENERAL ACT OF 1978

Concept of inspector general dates back to the Revolutionary War when the Continental Congress appointed an Inspector General to audit expenditures by General Washington's army.

In 1976, Congress established the first statutory Inspector General in the Department of Health, Education and Welfare.

All cabinet level Departments and most major Executive Branch agencies now have a statutory Inspector General. There are 27 Presidentially appointed Inspectors General required by the Inspector General Act of 1978 as amended (including the new IG for Tax Administration which will not be formally established until January 1999). Additionally, the Inspector General Act establishes 30 Inspectors General in other Federal agencies who are appointed by the head of their agency.

CHRONOLOGY

H.R. 8588 was introduced in the 95th Congress by Congressman L.H. Fountain.

August 5, 1977: Reported by the House Committee on Government Operations by an unanimous vote.

April 18, 1978: Passed House of Representatives by a vote of 388 to 6.

August 8, 1978: Reported by Senate Committee on Governmental Affairs by a vote of 9 to 0.

September 22, 1978: Passed Senate by voice vote.

October 12, 1978: Signed into law (Public Law 95–452).

PURPOSE

The original Act established Inspectors General in six Executive Branch Departments and six government agencies.

To conduct and supervise audits and investigations relating to government programs and operations.

To provide leadership and coordination and recommend policies for activities designed to:

(a) promote economy, efficiency and effectiveness in the administration of government programs and operations.

(b) prevent and detect fraud and abuse in government programs and operations.

To provide a means for keeping the heads of Departments and agencies and the Congress informed about:

(a) problems and deficiencies relating to the administration of government programs.

(b) the necessity for and progress of corrective actions.

NEED FOR LEGISLATION (FROM REPORT OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS, S. REPT. 95–1071)

Failure by the Federal Government to make sufficient and effective efforts to prevent and detect fraud, waste and mismanagement in Federal programs and expenditures.

A lack of resources dedicated to prevent and detect fraud, waste and abuse. Audit cycles of up to 20 years in some agencies before all activities would be audited.

The lack of independence of many audit and investigative operations in the Executive Branch. Auditors and investigators must report to and are under the supervision of officials whose programs they are reviewing.

ACCOMPLISHMENTS

During Fiscal Year 1997: IG Audits identified $25 billion in funds that could be put to better use; returned to the Government $3 billion in restitution and investigative recoveries; more than 15,000 successful criminal prosecutions; over 6,000 debarments, exclusions and suspensions of firms or individuals doing business with the Government.

[4] Pg. 13 Vol. I ''Study: Health Care Financing Administration July 1, 1998