

106TH CONGRESS  
1ST SESSION

# S. 794

Entitled the “Hospital Length of Stay Act of 1999”.

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IN THE SENATE OF THE UNITED STATES

APRIL 14, 1999

Mrs. FEINSTEIN (for herself and Ms. SNOWE) introduced the following bill;  
which was read twice and referred to the Committee on Health, Edu-  
cation, Labor, and Pensions

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## A BILL

Entitled the “Hospital Length of Stay Act of 1999”.

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.**

4       This Act may be cited as the “Hospital Length of  
5       Stay Act of 1999”.

6       **SEC. 2. COVERAGE OF HOSPITAL LENGTH OF STAY.**

7       (a) GROUP HEALTH PLANS.—

8               (1) PUBLIC HEALTH SERVICE ACT AMEND-  
9       MENTS.—

10               (A) IN GENERAL.—Subpart 2 of part A of  
11       title XXVII of the Public Health Service Act

1 (42 U.S.C. 300gg–4 et seq.) is amended by  
2 adding at the end the following new section:

3 **“SEC. 2707. STANDARDS RELATING TO COVERAGE OF HOS-**  
4 **PITAL LENGTHS OF STAY.**

5 “(a) REQUIREMENT.—A group health plan and a  
6 health insurance issuer offering group health insurance  
7 coverage in connection with a group health plan (including  
8 a self-insured issuer) that provides coverage for inpatient  
9 hospital services—

10 “(1) shall provide coverage for the length of an  
11 inpatient hospital stay as determined by the attend-  
12 ing physician (or other attending health care pro-  
13 vider to the extent permitted under State law) in  
14 consultation with the patient to be medically appro-  
15 priate; and

16 “(2) may not require that a provider obtain au-  
17 thorization from the plan or the issuer for pre-  
18 scribing any length of stay required under para-  
19 graph (1).

20 “(b) PROHIBITIONS.—A group health plan and a  
21 health insurance issuer offering group health insurance  
22 coverage in connection with a group health plan (including  
23 a self-insured issuer) may not—

24 “(1) deny to an individual eligibility, or contin-  
25 ued eligibility, to enroll or to renew coverage under

1 the terms of the plan, solely for the purpose of  
2 avoiding the requirements of this section;

3 “(2) provide monetary payments or rebates to  
4 an individual to encourage the individual to accept  
5 less than the minimum protections available under  
6 this section;

7 “(3) penalize or otherwise reduce or limit the  
8 reimbursement of an attending provider because  
9 such provider provided care to an individual partici-  
10 pant or beneficiary in accordance with this section;

11 “(4) provide incentives (monetary or otherwise)  
12 to an attending provider to induce such provider to  
13 provide care to an individual participant or bene-  
14 ficiary in a manner inconsistent with this section; or

15 “(5) subject to subsection (c)(4), restrict bene-  
16 fits for any portion of a period within a hospital  
17 length of stay required under subsection (a) in a  
18 manner which is less favorable than the benefits pro-  
19 vided for any preceding portion of such stay.

20 “(c) RULES OF CONSTRUCTION.—

21 “(1) NO REQUIREMENT TO STAY.—Nothing in  
22 this section shall be construed to require an indi-  
23 vidual who is a participant or beneficiary to stay in  
24 the hospital for a fixed period of time for any proce-  
25 dure.

1           “(2) NO EFFECT ON REQUIREMENTS FOR MIN-  
2           IMUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing  
3           in this section shall be construed as modifying the  
4           requirements of section 2704.

5           “(3) NONAPPLICABILITY.—This section shall  
6           not apply with respect to any group health plan, or  
7           any group health insurance coverage offered by a  
8           health insurance issuer (including a self-insured  
9           issuer), which does not provide benefits for hospital  
10          lengths of stay.

11          “(4) COST-SHARING.—Nothing in this section  
12          shall be construed as preventing a group health  
13          plan, or a health insurance issuer offering group  
14          health insurance coverage in connection with a group  
15          health plan (including a self-insured issuer), from  
16          imposing deductibles, coinsurance, or other cost-  
17          sharing in relation to benefits for hospital lengths of  
18          stay under the plan, health insurance coverage of-  
19          fered in connection with a group health plan, or the  
20          supplemental policy, except that such coinsurance or  
21          other cost-sharing for any portion of a period within  
22          a hospital length of stay required under subsection  
23          (a) may not be greater than such coinsurance or  
24          cost-sharing for any preceding portion of such stay.

1       “(d) NOTICE.—A group health plan under this part  
2 shall comply with the notice requirement under section  
3 714(d) of the Employee Retirement Income Security Act  
4 of 1974 with respect to the requirements of this section  
5 as if such section applied to such plan.

6       “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
7 Nothing in this section shall be construed to prevent a  
8 group health plan or a health insurance issuer offering  
9 group health insurance coverage in connection with a  
10 group health plan (including a self-insured issuer) from  
11 negotiating the level and type of reimbursement with a  
12 provider for care provided in accordance with this section.

13       “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
14 ANCE COVERAGE IN CERTAIN STATES.—

15           “(1) IN GENERAL.—The requirements of this  
16 section shall not apply with respect to health insur-  
17 ance coverage if there is a State law (as defined in  
18 section 2723(d)(1)) for a State that regulates such  
19 coverage and provides greater protections to patients  
20 than those provided under this section.

21           “(2) CONSTRUCTION.—Section 2723(a)(1) shall  
22 not be construed as superseding a State law de-  
23 scribed in paragraph (1).”.

24           (B) CONFORMING AMENDMENT.—Section  
25 2723(c) of the Public Health Service Act (42

1 U.S.C. 300gg-23(c)) is amended by striking  
2 “section 2704” and inserting “sections 2704  
3 and 2707”.

4 (2) ERISA AMENDMENTS.—

5 (A) IN GENERAL.—Subpart B of part 7 of  
6 subtitle B of title I of the Employee Retirement  
7 Income Security Act of 1974 (29 U.S.C. 1185  
8 et seq.) is amended by adding at the end the  
9 following new section:

10 **“SEC. 714. STANDARDS RELATING TO COVERAGE OF HOS-**  
11 **PITAL LENGTHS OF STAY.**

12 “(a) REQUIREMENT.—A group health plan and a  
13 health insurance issuer offering group health insurance  
14 coverage in connection with a group health plan (including  
15 a self-insured issuer), that provides coverage for inpatient  
16 hospital services—

17 “(1) shall provide coverage for the length of an  
18 inpatient hospital stay as determined by the attend-  
19 ing physician (or other attending health care pro-  
20 vider to the extent permitted under State law) in  
21 consultation with the patient to be medically appro-  
22 priate; and

23 “(2) may not require that a provider obtain au-  
24 thorization from the plan or the issuer for pre-

1 scribing any length of stay required under para-  
2 graph (1).

3 “(b) PROHIBITIONS.—A group health plan and a  
4 health insurance issuer offering group health insurance  
5 coverage in connection with a group health plan (including  
6 a self-insured issuer), may not—

7 “(1) deny to an individual eligibility, or contin-  
8 ued eligibility, to enroll or to renew coverage under  
9 the terms of the plan, solely for the purpose of  
10 avoiding the requirements of this section;

11 “(2) provide monetary payments or rebates to  
12 an individual to encourage the individual to accept  
13 less than the minimum protections available under  
14 this section;

15 “(3) penalize or otherwise reduce or limit the  
16 reimbursement of an attending provider because  
17 such provider provided care to an individual partici-  
18 pant or beneficiary in accordance with this section;

19 “(4) provide incentives (monetary or otherwise)  
20 to an attending provider to induce such provider to  
21 provide care to an individual participant or bene-  
22 ficiary in a manner inconsistent with this section; or

23 “(5) subject to subsection (c)(4), restrict bene-  
24 fits for any portion of a period within a hospital  
25 length of stay required under subsection (a) in a

1 manner which is less favorable than the benefits pro-  
2 vided for any preceding portion of such stay.

3 “(c) RULES OF CONSTRUCTION.—

4 “(1) NO REQUIREMENT TO STAY.—Nothing in  
5 this section shall be construed to require an indi-  
6 vidual who is a participant or beneficiary to stay in  
7 the hospital for a fixed period of time for any proce-  
8 dure.

9 “(2) NO EFFECT ON REQUIREMENTS FOR MIN-  
10 IMUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing  
11 in this section shall be construed as modifying the  
12 requirements of section 711.

13 “(3) NONAPPLICABILITY.—This section shall  
14 not apply with respect to any group health plan or  
15 any group health insurance coverage offered by a  
16 health insurance issuer (including a self-insured  
17 issuer), which does not provide benefits for hospital  
18 lengths of stay.

19 “(4) COST-SHARING.—Nothing in this section  
20 shall be construed as preventing a group health plan  
21 or a health insurance issuer offering group health  
22 insurance coverage in connection with a group health  
23 plan (including a self-insured issuer), from imposing  
24 deductibles, coinsurance, or other cost-sharing in re-  
25 lation to benefits for hospital lengths of stay under

1 the plan or health insurance coverage offered in con-  
2 nection with a group health plan, except that such  
3 coinsurance or other cost-sharing for any portion of  
4 a period within a hospital length of stay required  
5 under subsection (a) may not be greater than such  
6 coinsurance or cost-sharing for any preceding por-  
7 tion of such stay.

8 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
9 imposition of the requirements of this section shall be  
10 treated as a material modification in the terms of the plan  
11 described in section 102(a)(1), for purposes of assuring  
12 notice of such requirements under the plan; except that  
13 the summary description required to be provided under the  
14 last sentence of section 104(b)(1) with respect to such  
15 modification shall be provided by not later than 60 days  
16 after the first day of the first plan year in which such  
17 requirements apply.

18 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
19 Nothing in this section shall be construed to prevent a  
20 group health plan or a health insurance issuer offering  
21 group health insurance coverage in connection with a  
22 group health plan (including a self-insured issuer), from  
23 negotiating the level and type of reimbursement with a  
24 provider for care provided in accordance with this section.

1       “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
2 ANCE COVERAGE IN CERTAIN STATES.—

3           “(1) IN GENERAL.—The requirements of this  
4 section shall not apply with respect to health insur-  
5 ance coverage if there is a State law (as defined in  
6 section 731(d)(1)) for a State that regulates such  
7 coverage and provides greater protections to patients  
8 than those provided under this section.

9           “(2) CONSTRUCTION.—Section 731(a)(1) shall  
10 not be construed as superseding a State law de-  
11 scribed in paragraph (1).”.

12           (B) CONFORMING AMENDMENTS.—

13           (i) Section 731(c) of the Employee  
14 Retirement Income Security Act of 1974  
15 (29 U.S.C. 1191(c)) is amended by strik-  
16 ing “section 711” and inserting “sections  
17 711 and 714”.

18           (ii) Section 732(a) of the Employee  
19 Retirement Income Security Act of 1974  
20 (29 U.S.C. 1191a(a)), as amended by sec-  
21 tion 603(b)(2) of Public Law 104–204, is  
22 amended by striking “section 711” and in-  
23 sserting “sections 711 and 714”.

24           (iii) The table of contents in section 1  
25 of the Employee Retirement Income Secu-

1                   rity Act of 1974 is amended by inserting  
 2                   after the item relating to section 713 the  
 3                   following new item:

“Sec. 714. Standards relating to coverage of hospital lengths of stay.”.

4           (b) INDIVIDUAL MARKET.—Subpart 3 of part B of  
 5 title XXVII of the Public Health Service Act (42 U.S.C.  
 6 300gg–51 et seq.) is amended by adding at the end the  
 7 following new section:

8   **“SEC. 2753. STANDARDS RELATING TO COVERAGE OF HOS-**  
 9                   **PITAL LENGTHS OF STAY.**

10           “The provisions of section 2707 shall apply to health  
 11 insurance coverage offered by a health insurance issuer  
 12 in the individual market in the same manner as they apply  
 13 to health insurance coverage offered by a health insurance  
 14 issuer in connection with a group health plan in the small  
 15 or large group market.”.

16           (c) EFFECTIVE DATES.—

17           (1) GROUP HEALTH PLANS.—Subject to para-  
 18 graph (3), the amendments made by subsection (a)  
 19 shall apply with respect to group health plans for  
 20 plan years beginning on or after January 1, 2000.

21           (2) HEALTH INSURANCE COVERAGE.—The  
 22 amendment made by subsection (b) shall apply with  
 23 respect to health insurance coverage offered, sold,  
 24 issued, renewed, in effect, or operated in the indi-  
 25 vidual market on or after such date.

1 (3) COLLECTIVE BARGAINING AGREEMENTS.—

2 In the case of a group health plan maintained pur-  
 3 suant to 1 or more collective bargaining agreements  
 4 between employee representatives and 1 or more em-  
 5 ployers ratified before the date of enactment of this  
 6 Act, the amendments made subsection (a) shall not  
 7 apply to plan years beginning before the later of—

8 (A) the date on which the last collective  
 9 bargaining agreements relating to the plan ter-  
 10 minates (determined without regard to any ex-  
 11 tension thereof agreed to after the date of en-  
 12 actment of this Act), or

13 (B) January 1, 2000.

14 For purposes of subparagraph (A), any plan amend-  
 15 ment made pursuant to a collective bargaining  
 16 agreement relating to the plan which amends the  
 17 plan solely to conform to any requirement added by  
 18 subsection (a) shall not be treated as a termination  
 19 of such collective bargaining agreement.

20 **SEC. 3. APPLICATION TO MEDICARE AND MEDICAID BENE-**  
 21 **FICIARIES.**

22 (a) MEDICARE.—

23 (1) IN GENERAL.—Title XVIII of the Social Se-  
 24 curity Act (42 U.S.C. 1395 et seq.) is amended by  
 25 adding at the end the following:

1 “STANDARDS RELATING TO COVERAGE OF HOSPITAL  
2 LENGTHS OF STAY

3 “SEC. 1897. (a) APPLICATION TO MEDICARE.—Not-  
4 withstanding the limitation on benefits described in sec-  
5 tion 1812, or any other limitation on benefits imposed  
6 under this title, the provisions of section 2707 of the Pub-  
7 lic Health Service Act shall apply to the provision of items  
8 and services under this title.

9 “(b) MEDICARE+CHOICE AND ELIGIBLE ORGANIZA-  
10 TIONS.—The Secretary may not enter into a contract with  
11 a Medicare+Choice organization under part C, or with an  
12 eligible organization with a risk-sharing contract under  
13 section 1876, unless the organization meets the require-  
14 ments of section 2707 of the Public Health Service Act  
15 with respect to individuals enrolled with the organiza-  
16 tion.”.

17 (2) MEDICARE SUPPLEMENTAL POLICIES.—

18 (A) IN GENERAL.—Section 1882(c) of the  
19 Social Security Act (42 U.S.C. 1395ss(c)) is  
20 amended—

21 (i) in paragraph (4), by striking  
22 “and” at the end;

23 (ii) in paragraph (5), by striking the  
24 period and inserting “, and”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(6) meets the requirements of section 2707 of  
4 the Public Health Service Act with respect to indi-  
5 viduals enrolled under the policy.”.

6 (B) CONFORMING AMENDMENT.—Section  
7 1882(b)(1)(B) of the Social Security Act (42  
8 U.S.C. 1395ss(b)(1)(B)) is amended by striking  
9 “(5)” and inserting “(6)”.

10 (3) COST SHARING.—Nothing in this subsection  
11 or section 2707(c) of the Public Health Service Act  
12 shall be construed as authorizing the imposition of  
13 cost sharing with respect to the coverage or benefits  
14 required to be provided under the amendments to  
15 the Social Security Act made by paragraphs (1) and  
16 (2) that is inconsistent with the cost sharing that is  
17 otherwise permitted under title XVIII of the Social  
18 Security Act.

19 (b) MEDICAID.—Title XIX of the Social Security Act  
20 (42 U.S.C. 1396 et seq.) is amended by redesignating sec-  
21 tion 1935 as section 1936 and by inserting after section  
22 1934 the following:

23 “STANDARDS RELATING TO COVERAGE OF HOSPITAL  
24 LENGTHS OF STAY

25 “SEC. 1935. (a) IN GENERAL.—A State plan may  
26 not be approved under this title unless the plan requires

1 each health insurance issuer or other entity with a con-  
2 tract with such plan to provide coverage or benefits to in-  
3 dividuals eligible for medical assistance under the plan, in-  
4 cluding a managed care entity, as defined in section  
5 1932(a)(1)(B), to comply with the provisions of section  
6 2707 of the Public Health Service Act with respect to such  
7 coverage or benefits.

8       “(b) COST SHARING.—Nothing in this section or sec-  
9 tion 2707(c) of the Public Health Service Act shall be con-  
10 strued as authorizing a health insurance issuer or entity  
11 to impose cost sharing with respect to the coverage or ben-  
12 efits required to be provided under section 2707 of the  
13 Public Health Service Act that is inconsistent with the  
14 cost sharing that is otherwise permitted under this title.

15       “(c) WAIVERS PROHIBITED.—The requirement of  
16 subsection (a) may not be waived under section 1115 or  
17 section 1915(b) of the Social Security Act.”.

18       (c) EFFECTIVE DATE.—The amendments made by  
19 this section apply to contract years under titles XVIII and  
20 XIX of the Social Security Act beginning on or after Jan-  
21 uary 1, 2000.

22       (d) MEDIGAP TRANSITION PROVISIONS.—

23           (1) IN GENERAL.—If the Secretary of Health  
24 and Human Services identifies a State as requiring  
25 a change to its statutes or regulations to conform its

1 regulatory program to the changes made by sub-  
2 section (a)(2), the State regulatory program shall  
3 not be considered to be out of compliance with the  
4 requirements of section 1882 of the Social Security  
5 Act due solely to failure to make such change until  
6 the date specified in paragraph (4).

7 (2) NAIC STANDARDS.—If, within 9 months  
8 after the date of the enactment of this Act, the Na-  
9 tional Association of Insurance Commissioners (in  
10 this subsection referred to as the “NAIC”) modifies  
11 its NAIC Model Regulation relating to section 1882  
12 of the Social Security Act (referred to in such sec-  
13 tion as the 1991 NAIC Model Regulation, as modi-  
14 fied pursuant to section 171(m)(2) of the Social Se-  
15 curity Act Amendments of 1994 (Public Law 103–  
16 432) and as modified pursuant to section  
17 1882(d)(3)(A)(vi)(IV) of the Social Security Act, as  
18 added by section 271(a) of the Health Insurance  
19 Portability and Accountability Act of 1996 (Public  
20 Law 104–191) to conform to the amendments made  
21 by this section, such revised regulation incorporating  
22 the modifications shall be considered to be the appli-  
23 cable NAIC model regulation (including the revised  
24 NAIC model regulation and the 1991 NAIC Model  
25 Regulation) for the purposes of such section.

1           (3) SECRETARY STANDARDS.—If the NAIC  
2 does not make the modifications described in para-  
3 graph (2) within the period specified in such para-  
4 graph, the Secretary of Health and Human Services  
5 shall make the modifications described in such para-  
6 graph and such revised regulation incorporating the  
7 modifications shall be considered to be the appro-  
8 priate Regulation for the purposes of such section.

9           (4) DATE SPECIFIED.—

10           (A) IN GENERAL.—Subject to subpara-  
11 graph (B), the date specified in this paragraph  
12 for a State is the earlier of—

13           (i) the date the State changes its stat-  
14 utes or regulations to conform its regu-  
15 latory program to the changes made by  
16 this section, or

17           (ii) 1 year after the date the NAIC or  
18 the Secretary first makes the modifications  
19 under paragraph (2) or (3), respectively.

20           (B) ADDITIONAL LEGISLATIVE ACTION RE-  
21 QUIRED.—In the case of a State which the Sec-  
22 retary identifies as—

23           (i) requiring State legislation (other  
24 than legislation appropriating funds) to

1 conform its regulatory program to the  
2 changes made in this section, but

3 (ii) having a legislature which is not  
4 scheduled to meet in 2000 in a legislative  
5 session in which such legislation may be  
6 considered,

7 the date specified in this paragraph is the first  
8 day of the first calendar quarter beginning after  
9 the close of the first legislative session of the  
10 State legislature that begins on or after July 1,  
11 2000. For purposes of the previous sentence, in  
12 the case of a State that has a 2-year legislative  
13 session, each year of such session shall be  
14 deemed to be a separate regular session of the  
15 State legislature.

16 **SEC. 4. APPLICATION TO OTHER HEALTH CARE COVERAGE.**

17 (a) FEHBP.—Chapter 89 of title 5, United States  
18 Code, is amended by adding at the end the following:

19 **“§ 8915. Standards relating to coverage of hospital**  
20 **lengths of stay**

21 “(a) The provisions of section 2707 of the Public  
22 Health Service Act shall apply to the provision of items  
23 and services under this chapter.

24 “(b) Nothing in this section or section 2707(c) of the  
25 Public Health Service Act shall be construed as author-

1 izing a health insurance issuer or entity to impose cost  
 2 sharing with respect to the coverage or benefits required  
 3 to be provided under section 2707 of the Public Health  
 4 Service Act that is inconsistent with the cost sharing that  
 5 is otherwise permitted under this chapter.”.

6 (b) MEDICAL CARE FOR MEMBERS AND CERTAIN  
 7 FORMER MEMBERS OF THE UNIFORMED SERVICES AND  
 8 THEIR DEPENDENTS.—Chapter 55 of title 10, United  
 9 States Code, is amended by adding at the end the fol-  
 10 lowing:

11 **“§ 1110. Standards relating to coverage of hospital**  
 12 **lengths of stay**

13 “(a) APPLICATION OF STANDARDS.—The provisions  
 14 of section 2707 of the Public Health Service Act shall  
 15 apply to the provision of items and services under this  
 16 chapter.

17 “(b) COST-SHARING.—Nothing in this section or sec-  
 18 tion 2707(c) of the Public Health Service Act shall be con-  
 19 strued as authorizing the imposition of cost sharing with  
 20 respect to the coverage or benefits required to be provided  
 21 under section 2707 of the Public Health Service Act that  
 22 is inconsistent with the cost sharing that is otherwise per-  
 23 mitted under this chapter.”.

1 (c) VETERANS.—Subchapter II of chapter 17 of title  
 2 38, United States Code, is amended by adding at the end  
 3 the following:

4 **“§ 1720E. Standards relating to coverage of hospital**  
 5 **lengths of stay**

6 “(a) The provisions of section 2707 of the Public  
 7 Health Service Act shall apply to the provision of items  
 8 and services under this chapter.

9 “(b) Nothing in this section or section 2707(c) of the  
 10 Public Health Service Act shall be construed as author-  
 11 izing the imposition of cost sharing with respect to the  
 12 coverage or benefits required to be provided under section  
 13 2706 of the Public Health Service Act that is inconsistent  
 14 with the cost sharing that is otherwise permitted under  
 15 this chapter.”.

16 (d) STATE CHILDREN’S HEALTH INSURANCE PRO-  
 17 GRAM.—Section 2109 of the Social Security Act (42  
 18 U.S.C. 1397ii) is amended by adding at the end the fol-  
 19 lowing:

20 “(b) APPLICATION OF STANDARDS RELATING TO  
 21 COVERAGE OF HOSPITAL LENGTHS OF STAY.—

22 “(1) IN GENERAL.—The provisions of section  
 23 2707 of the Public Health Service Act shall apply to  
 24 the provision of items and services under this title.



1           (f) HEALTH CARE PROVIDED TO PEACE CORPS VOL-  
2 UNTEERS.—Section 5(e) of the Peace Corps Act (22  
3 U.S.C. 2504(e)) is amended by adding at the end the fol-  
4 lowing: “The provisions of section 2707 of the Public  
5 Health Service Act shall apply to the provision of items  
6 and services under this section. Nothing in this section  
7 or section 2707(c) of the Public Health Service Act shall  
8 be construed as authorizing the imposition of cost sharing  
9 with respect to the coverage or benefits required to be pro-  
10 vided under section 2707 of the Public Health Service Act  
11 that is inconsistent with the cost sharing that is otherwise  
12 permitted under this section.”.

○