TABLE 3.—FEDERAL COST OF AN ILLUSTRATIVE MEDICARE BENEFITS PACKAGE THAT INCLUDES PRESCRIPTION DRUG AND STOP-LOSS COVERAGE—Continued

[In billions of dollars]

	Prescription Drug Benefit: $500 Deductible, 20 Percent Copay, $1,500 Benefit Cap			Stop-Loss Benefit: $5,000 Out-of-Pocket Stop-Loss Cap			Total Cost of Illustrative Benefits Package		
	Medicare Cost	Federal Medicaid Savings	Net Federal Cost	Medicare Cost	Federal Medicaid Savings	Net Federal Cost	Medicare Cost	Federal Medicaid Savings	Net Federal Cost
2005	18.6	2.0	16.6	8.7	1.2	7.5	27.3	3.2	24.1
2006	20.2	2.2	18.0	9.4	1.3	8.1	29.6	3.5	26.1
2007	21.9	2.4	19.5	9.9	1.5	8.4	31.8	3.9	27.9
2008	23.9	2.6	21.3	10.5	1.6	8.9	34.4	4.2	30.2
Total, 1999–2003	67.5	7.5	60.0	31.1	4.3	26.8	98.6	11.8	86.8
total, 1999–2008	169.2	18.6	150.6	77.5	11.0	66.5	246.7	29.6	217.1

Source: Lewin Group estimates using the Medicare Benefits Simulation Model (MBSM).

TRIBAL SELF-GOVERNANCE AMENDMENTS OF 1998

SPEECH OF

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 5, 1998

Mr. MILLER of California. Mr. Speaker, I am proud to have sponsored this bill, the Tribal Self-Governance Amendments of 1998, which I believe will mark yet another milestone in the history of Indian self-determination. This major legislation is the product of more than two years of hard work and consultation with Indian tribes and the Administration. We have worked diligently with the tribes and the Department of Health and Human Services to make this bill as fair as possible. I would like to extend my appreciation to the tribal leaders, their representatives, and the Departmental staff who have made passage of this bill possible.

It is important to note that subsequent to the full committee mark up that occurred this spring, the tribes and the Department were able to work out additional differences. Thus there are several changes that I want to highlight. We were able to come to agreement on issues regarding reassumption, regulation waiver, trial de novo, rejection of final offer, and the creation of a new title VI to carry out the non-IHS demonstration project study.

Let me briefly explain what this bill does. H.R. 1833, the Tribal Self-Governance Amendments Act of 1998, would create two new titles in the 1975 Indian Self-Determination and Education Assistance Act. The 1975 Act allows Indian tribes to contract for or take over the administration and operation of certain federal programs which provide services to Indian tribes. Subsequent amendments to the 1975 Act created Title III of the Act which provided for a Self-Governance Demonstration Project that allows for large-scale tribal Self-Governance compacts and funding agreements on a ''demonstration'' basis.

The new title V created by H.R. 1833 would make this contracting by tribes permanent for programs contracted for within the Indian Health Service (IHS). Thus, Indian and Alaska Native tribes would be able to contract for the operation, control, and redesign of various IHS activities on a permanent basis. In short, what was a demonstration project would become a permanent IHS Self-Governance program. Pursuant to H.R. 1833, tribes which have already contracted for IHS activities would continue under the provisions of their contracts while an additional 50 new tribes would be selected each year to enter into contracts.

The 1998 amendments require that Indian tribes must meet certain criteria—they have to have experience in government contracting, have clean audits, and demonstrate management capability—in order to exercise the right to take over the operation of IHS functions, including the funds necessary to run them.

H.R. 1833 also adds a new title VI which authorizes a feasibility study regarding the execution of tribal Self-Governance compacts and funding agreements of Indian-related programs outside the IHS but within the Department of Health and Human Services on a demonstration project basis.

Although this issue was not addressed in this legislation, I want to express my continued concern about the poor labor relations at various Indian Health Service facilities throughout the West, but particularly the IHS facilities at Sacaton, Arizona and Owyhee, Nevada. Contrary to both the law and agency decisions, the IHS has refused to complete its obligation to meet and negotiate with the Laborers' International Union which represents workers at these facilities. I also understand that the IHS continues to commit unfair labor practices. I want to send a strong message to the IHS that I will continue to monitor labor relations at IHS facilities and that continued indifference to the law and agency decisions will not be ignored by Congress. I understand that the Administration is aware of my concerns and has agreed to correct these issues in the very near future.

I firmly believe that this bill advances the principle focus of the Self-Governance program—to remove needless and sometimes harmful layers of federal bureaucracy that dictate Indian affairs. By giving tribes direct control over federal programs run for their benefit and making them directly accountable to their members, we are enabling Indian tribes to run programs more efficiently and more innovatively than federal officials have in the past. And, allowing tribes to run these programs furthers the Congressional policy of strengthening and promoting tribal governments.

The Self-Governance program recognizes that Indian tribes care for the health, safety, and welfare of their own members as well as that of non-Indians who either live on their reservations or conduct business with the tribes and are thus committed to safe and fair working conditions and practices.

A comprehensive description of the substitute follows. I strongly urge my colleagues to pass this legislation.

SECTION-BY-SECTION DESCRIPTION OF SUBSTITUTE

SECTION 1. SHORT TITLE.

This provision sets forth the short title, ''The Tribal Self-Governance Act Amendments of 1998.''

SECTION 2. FINDINGS

This provision sets forth the findings of Congress which reaffirm the inherent sovereignty of Indian tribes and the unique government-to-government relationship between the United States and Indian tribes. The findings make clear that while progress has been made, the federal bureaucracy has eroded tribal self-governance. The findings state that the Federal Government has failed to fully meet its trust responsibility and to satisfy its obligations under treaties and other laws. The findings explain that Congress has reviewed the tribal self-governance demonstration project and concluded that self-governance is an effective mechanism to implement and strengthen the federal policy of government-to-government relations with Indian tribes by transferring Indian tribes full control and funding for federal programs, functions, services, or activities, or portions thereof.

SECTION 3. DECLARATION OF POLICY

This section provides that it is Congress' policy to permanently establish and implement tribal self-governance within the Department of Health and Human Services with the full cooperation of its agencies. Among the key policy objectives Congress seeks to achieve through the self-governance program are to (1) maintain and continue the United States' unique relationship with Indian tribes; (2) allow Indian tribes the flexibility to choose whether they wish to participate in self-governance; (3) ensure the continuation and fulfillment of the United States' trust responsibility and other responsibilities towards Indian Tribes that are contained in treaties and other laws; (4) permit a transition to tribal control and authority over programs, functions, services, or activities (or portions thereof); and (5) provide a corresponding parallel reduction in the Federal bureaucracy.

SECTION 4. TRIBAL SELF GOVERNANCE

This section sets out the substantive provisions of the Self-Governance program within the Indian Health Service and authorizes a feasibility study of the applicability of Self-Governance to other Departmental agencies by adding Titles V and VI to the Indian Self-Determination and Education Assistance Act.

SECTION 501. ESTABLISHMENT

This provision directs the Secretary of HHS to establish a permanent Tribal Self-Governance Program in the Indian Health Service.

SECTION 502. DEFINITIONS

Subsection (a)(1) defines the term ''construction project''. The Committee does not

intend this legislation to preclude agreements between self-governance tribes and the Indian Health Service for carrying out sanitary facilities construction projects pursuant to a ''Project Funding Agreement'' or ''Memorandum of Agreement'' executed as an addendum to a Title V Annual Funding Agreement as authorized by Section 7(a)(3) of Pub. L. 86–121, 73 Stat. 267 (42 U.S.C. § 2004(a)).

Subsection (a)(2) provides that a ''construction project agreement'' is one between the Secretary and the Indian tribe that, at a minimum, establishes start and completion dates, scope of work and standards, identifies party responsibilities, addresses environmental considerations, identifies the owner and maintenance entity of the proposed work, provides a budget, provides a payment process, and establishes a duration of the construction project agreement.

Subsection (a)(3) defines ''inherent federal functions'' as those functions which cannot be legally delegated to Indian tribes. This definition states the obvious. Inherent federal functions are functions which the Executive Branch cannot by law delegate to other branches of governments, or non-governmental entities. The Committee's definition is consistent with the Department of the Interior Solicitor's Memorandum of May 17, 1996 entitled ''Inherently Federal Functions under the Tribal Self-Governance Act of 1994.'' The Committee's definition is expressly intended to provide flexibility so as to allow the Secretary and the tribes to come to agreement on which functions are inherently federal on a case-by-case basis. It is important to note that, in the tribal procurement context, there is another factor the Committee has considered—when the federal government is returning tribal governmental powers and functions that are inherent in tribes governmental status such as those possessed by tribes before the establishment of the federal Indian bureaucracy, the scope of allowable transfers is broader than in the transfer of federal government powers to private or other governmental entities.

Subsection (a)(4) defines ''inter-tribal consortium''. The Committee notes that during the Title III Demonstration Project the IHS authorized intertribal consortia, such as the co-signers to the Alaska Tribal Health Compact, to participate in the Project and that participation has had great success. The definition of ''inter-tribal consortium'' is intended to include ''tribal organizations'' as that term is defined in Section 4(l) of the Indian Self-Determination Act, Pub. L. No. 93–638. This would include consortia such as those involved in the Alaska Tribal Health Consortium. It is the Committee's intent that inter-tribal consortia and tribal organizations shall count as one tribe for purposes of the 50 tribe per year limitation contained in section 503(a).

Subsection (a)(5) defines ''gross mismanagement''. The inclusion of this term is to govern one of the criteria that the Secretary is to consider in the reassumption of a tribally-operated program. The Secretary will be given the authority to reassume programs that imminently endanger the public health where the danger arises out of a compact or funding agreement violation. The Committee believes that the inclusion of a performance standard, in this case gross mismanagement, is also an appropriate grounds for reassumption. Gross mismanagement is defined as a significant, clear, and convincing violation of compact, funding agreement, regulatory or statutory requirements related to the transfer of Self-Governance funds to the tribe that results in a significant reduction of funds to the tribe's Self-Governance program. The Committee's definition of gross mismanagement is narrowly tailored and will require a high degree of proof by the Secretary. The Committee is well aware of tribal concerns and agrees that the inclusion of this performance standard must not be utilized by the Secretary in such a manner as to needlessly impose monitoring and auditing requirements that hinder the efficient operation of tribal programs. Intrusive and overburdensome monitoring and auditing activities are antithetical to the goals of Self-Governance.

Subsection (a)(6) defines ''tribal shares''. This definition is consistent with the Title IV Rule-making Committee's determination that residual funds are those ''necessary to carry out the inherently federal functions that must be performed by federal officials if all tribes assume responsibilities for all BIA programs.'' Fed. Reg. Vol. 63, No. 29, 7235, (Feb. 12, 1998) (Proposed Rule, 25 CFR Sec. 1000.91). All funds appropriated under the Indian Self-Determination and Education Assistance Act are either tribal shares or Agency residual.

Subsection (a)(7) defines ''Secretary'' as the Secretary of Health and Human Services.

Subsection (a)(8) defines ''Self-Governance'' as the program established under this title.

Section (b) defines ''Indian Tribe''. This definition enables an Indian tribe to authorize another Indian tribe, inter-tribal consortium or tribal organization to participate in self-governance of its behalf. The authorized Indian Tribe, inter-tribal consortium or tribal organization may exercise the authorizing Indian tribe's rights as specified by Tribal resolution.

SECTION 503. SELECTION OF PARTICIPATING TRIBES

This section describes the eligibility criteria that must be satisfied by any Indian tribe interested in participating.

(a) Continuing Participation. All tribes presently participating in the Tribal Self-Governance Demonstration Project under Title III of the Indian Self-Determination Act may elect to participate in the permanent Self-Governance program. Tribes must do so through tribal resolution.

(b) Additional Participants. (1) This section allows an additional 50 tribes a year to participate in self-governance.

(2) This section allows an Indian tribe that chooses to withdraw from an inter-tribal consortium or tribal organization to participate in self-governance provided it independently meets the eligibility criteria in Title V. Tribes and tribal organizations that withdraw from tribal organizations and inter-tribal consortia under this section shall be entitled to participate in the permanent program under section 503(b)(2) and such participation shall not be counted against the 50 tribe a year limitation contained in section 503(a).

(c) Applicant Pool. The eligibility criteria for self-governance tribes are the same as those that apply under Title IV. To participate, an Indian tribe must successfully complete a planning phase, must request participation in the program through a resolution or official action of the governing body, and must have demonstrated financial stability and financial management capability for the past three years. Proof of no material audit exceptions in the tribe's self determination contracts or Self Governance funding agreements is conclusive proof of such qualification. The Committee notes that the financial examination addressed in subsection 503(c)(3) refers solely to funds managed by the tribe under Title I and Title IV of the Indian Self-Determination Act. The bill has been deliberately crafted to make clear that a tribe's activities in other economic endeavors are not subject of the Section 503(c) examination. Similarly, the ''budgetary research'' referred to in section 503(d)(1) of the bill requires a tribe to research only budgetary issues related to the administration of the programs the tribe anticipates transferring to tribal operation under Self-Governance.

(d) Planning Phase. Every Indian tribe interested in participating in self-governance shall complete a planning phase prior to participating in the program. The planning phase is to include legal and budgetary research and internal tribal government planning and organizational preparation. The planning phase is to be completed to the satisfaction of the tribe.

(e) Grants. Subject to available appropriations, any Indian tribe interested in participating in self-governance is eligible to receive a grant to plan for participation in the Program or to negotiate the terms of a Compact and funding agreement.

(f) Receipt of Grant not Required. This section provides that receipt of a grant from HHS is not required to participate in the permanent program.

SECTION 504. COMPACTS

This section authorizes Indian tribes to negotiate Compacts with the Secretary and identifies generally the contents of Compacts. While the Compact process was not specifically part of prior legislative enactment, the Committee understands that Compacts have developed as an integral part of Self Governance. The Committee believes that Compacts serve an important and necessary function in establishing government-to-government relations, which as noted earlier, is the keystone of modern federal Indian policy.

(a) Compact Required. The Secretary is required to negotiate and enter into a written Compact consistent with the trust responsibility, treaty obligations and the government-to-government relationship between the United States and each participating tribe.

(b) Contents. This section requires that Compacts state the terms of the government-to-government relationship between the Indian Tribe and the United States. Compacts may only be amended by agreement of both parties.

(c) Existing Compacts. Upon enactment of Title V, Indian tribes have the option of retaining their existing Compacts, or any portion of the Compacts that do not contradict the provisions of Title V.

(d) Term and Effective Date. The date of approval and execution by the Indian Tribe is generally the effective date of a Compact, unless otherwise agreed to by the parties. A Compact will remain in effect as long as permitted by federal law or until terminated by written agreement of the parties, or by retrocession or reassumption.

SECTION 505. FUNDING AGREEMENTS

This section authorizes Indian tribes to negotiate funding agreements with the Secretary and identifies generally the contents of those agreements.

(a) Funding Agreement Required. The Secretary is required to negotiate and enter into a written funding agreement consistent with the trust responsibility, treaty obligations and the government-to-government relationship between the United States and each participating tribe.

(b) Contents. An Indian tribe may include in an funding agreement all programs, functions, services, or activities, (or portions thereof) that it is authorized to carry out under Title I of the Act. Funding agreements may, at the option of the Indian tribe, authorize the Tribe to plan and carry-out all programs, functions, services, or activities (or portion thereof) administered by the IHS

that are carried out for the benefit of Indians because of their status as Indians or where Indian tribes or Indian beneficiaries are the primary or significant beneficiaries, as set forth in status. For each program, function, service, or activity (or portion thereof) included in a funding agreement, an Indian tribe is entitled to receive its full tribal share of funding, including funding for all local, field, service unit, area, regional, and central/headquarters or national office locations. Available funding includes the Indian tribe's share of discretionary IHS competitive grants but not statutorily mandated competitive grants.

The Committee is concerned with the reluctance of the Indian Health Service to include all available federal health funding in self governance funding agreements. We note, as an example, the refusal of the IHS to so include the Diabetes Prevention Initiative funding. As a result, funding was delayed and undue administrative requirements diverted resources from direct services. This section is intended to directly remedy this situation.

The Committee has received ample testimony showing the benefits of self governance. In 1998, the National Indian Health Board recently released its' ''National Study on Self-Determination and Self-Governance,'' providing empirical evidence that self-governance leads to more efficient management of tribal health service delivery, especially preventive services. This study consistently observed an overall improvement in quality of care when tribes operate their own Health Care systems. Less than full funding agreements will result in less than maximum use of federal resources to address the health care in Indian country. Accordingly, this section is to be interpreted broadly by affording a presumption in favor of including in a tribe's self-governance funding agreement any federal funding administered by that Agency.

(c) Inclusion in Compact or Funding Agreement. Indians do not need to be specifically identified in authorizing legislation for a program to be eligible for inclusion in a Compact or funding agreement.

(d) Funding Agreement Terms. Each funding agreement should generally set out the programs, functions, services, or activities, (or portions thereof) to be performed by the Indian tribe, the general budget category assigned to each program, function, service, or activity (or portion thereof), the funds to be transferred, the time and method of payment and other provisions that the parties agree to.

(e) Subsequent Funding Agreements. Each funding agreement remains in full force and effect unless the Secretary receives notice from the Indian tribe that it will no longer operate one or more of the programs, functions, services, or activities, (or portions thereof) included in the funding agreement or until a new funding agreement is executed by the parties.

The Committee is concerned with reports that the IHS has been able to use the annual negotiations provisions of Section 303(a) of the Act to obtain an unfair bargaining advantage during negotiations by threatening to suspend application of the Act to a tribe if it does not sign an Annual Funding Agreement. This subsection is meant to facilitate negotiation between the tribes and the Indian Health Service on a true government-to-government basis. The Committee believes the retroactive provision is fair because this assures that no act or omission of the federal government endangers the health and welfare of tribal members.

(f) Existing Funding Agreements. Upon enactment of Title V, Tribes may either retain their existing annual funding agreements, or any portion thereof, that do not conflict with provisions of title V, or negotiate new funding agreements that conform to Title V.

(g) Stable Base Funding. An Indian tribe may include a stable base budget in its funding agreement. A stable base budget contains the tribe's recurring funding amounts and provides for transfer of the funds in a predictable and consistent manner over a specific period of time. Adjustments are made annually only if there are changes in the level of funds appropriated by Congress. Nonrecurring funds are not included and must be negotiated on an annual basis. The Committee intends this section to codify the existing Agency policy guidance on stable base funding.

SECTION 506. GENERAL PROVISIONS

(a) Applicability. The provisions in this section may, at the tribe's option, be included in a Compact or funding agreement negotiated under Title V.

(b) Conflicts of Interest. Indian tribes are to assure that internal measures are in place to address conflicts of interest in the administration of programs, functions, services, or activities, (or portions thereof).

(c) Audits. The Single Agency Audit Act applies to Title V funding agreements. Indian tribes are required to apply cost principles set out in applicable OMB Circulars, as modified by section 106 of Title I or by any exemptions that may be applicable to future OMB Circulars. No other audit or accounting standards are required. Claims against Indian tribes by the Federal Government based on any audit of funds received under a Title V funding agreement are subject to the provisions of section 106(f) of Title I.

(d) Records. An Indian tribe's records are not considered federal records for purposes of the Federal Privacy Act, unless otherwise stated in the Compact or funding agreement. Indian tribes are required to maintain a record keeping system and, upon reasonable advance request, provide the Secretary with reasonable access to records to enable HHS to meet its minimum legal record keeping requirements under the Federal Records Act.

(e) Redesign and Consolidation. An Indian tribe may redesign or consolidate programs, functions, services, or activities, (or portions thereof) and reallocate or redirect funds in any way the Indian tribe considers to be in the best interest of the Indian community. Any redesign or consolidation, however, must not have the effect of unfairly denying eligibility to people otherwise eligible to be served under federal law.

(f) Retrocession. An Indian tribe may retrocede fully or partially back to the Secretary any program, function, service, or activity (or portion thereof) included in a Compact or funding agreement. A 1retrocession request becomes effective within the time frame specified in the Compact or funding agreement, one year from the date the request was made, the date the funding agreement expires, or any date mutually agreed to by the parties, whichever occurs first.

(g) Withdrawal. An Indian tribe that participates in self-governance through an inter-tribal consortium or tribal organization can withdraw from the consortium or organization. The withdrawal becomes effective within the time frame set out in the tribe's authorizing resolution. If a time frame is not specified, withdrawal becomes effective one year from the submission of the request or on the date the funding agreement expires, whichever occurs first. An alternative date can be agreed to by the parties, including the Secretary.

When an Indian tribe withdraws from an inter-tribal consortium or tribal organization and wishes to enter into a Title I contract or Title V agreement on its own, it is entitled to receive its share of funds supporting the program, function, service, or activity, (or portion thereof) that it will carry out under its new status. The funds must be removed from the funding agreement of the participating organization or inter-tribal consortium and included in the withdrawing tribe's agreement or contract. If the withdrawing tribe is to receive services directly from the Secretary, the tribe's share of funds must be removed from the funding agreement of the participating organization or inter-tribal consortium and retained by the Secretary to provide services. Finally, an Indian tribe that chooses to terminate its participation in the self-governance program may, at its option, carry out programs, functions, services, or activities, (or portions thereof) in a Title I contract of Self-Governance funding agreement and retain its mature contractor status.

(h) Nonduplication. This section provides that a tribe operating programs under a Self-Governance compact may not contract under Title I (a ''638 contract'') for the same programs.

SECTION 507. PROVISIONS RELATING TO THE SECRETARY

This section sets out mandatory and nonmandatory provisions relating to the Secretary's obligations.

(a) Mandatory Provisions.

(1) Health Status Reports. To the extent that the data is not otherwise available to the Secretary, Compacts and funding agreements must include a provision requiring the Indian tribe to report data on health status and service delivery. The Secretary is to use this data in her annual reports to Congress. The Secretary is required to provide funding to the Indian tribe to compile such data. Reporting requirements can only impose minimal burdens on the Indian tribe and may only be imposed if they are contained in regulations developed under negotiated rulemaking.

(2) Reassumption. Compacts or funding agreements must include a provision authorizing the Secretary to reassume a program, function, service, or activity, (or portion thereof) if she makes a finding of imminent endangerment of the public health caused by the Indian tribe's failure to carry out the Compact or funding agreement or gross mismanagement that causes a significant reduction in available funding. The Secretary is required to provide the Indian tribe with notice of a finding. The Indian tribe may take action to correct the problem identified in the notice. The Secretary has the burden at the hearing of demonstrating by clear and convincing evidence the validity of the grounds for reassumption. In cases where the Secretary finds imminent substantial and irreparable endangerment of the public health caused by the tribe's failure to carry out the Compact or funding agreement, the Secretary may immediately reassume the program but is required to provide the tribe with a hearing on the record within ten days after reassumption.

(b) Final Offer. If the parties cannot agree on the terms of a Compact or funding agreement, the Indian tribe may submit a final offer to the Secretary. The Secretary has 45 days to determine if the offer will be accepted or rejected. The 45 days can be extended by the Indian tribe. If the Secretary takes no action the offer is deemed accepted by the Secretary.

(c) Rejection of Final Offers. This provision describes the only circumstances under which the Secretary may reject an Indian tribe's final offer.

A rejection requires written notice to the Indian tribe within 45 days of receipt with

specific findings that clearly demonstrate or are supported by controlling legal authority that: (1) the amount of funds proposed exceeds the funding level that the Indian tribe is entitled to; (2) the program, function, service, or activity (or portion thereof) that is the subject of the offer is an inherent federal function that only can be carried out by the Secretary; (3) the applicant is not eligible to participate in self-governance; or (4) the Indian tribe cannot carry out the program, function, service or activity, (or portion thereof) without a significant danger or risk to the public health. The Committee believes the fourth provision appropriately balances the Secretary's trust responsibility to assure the delivery of health care services to Indian beneficiaries, with the equally important goal of fostering maximum tribal self-determination in the administration of health care programs transferred under Title V. The Committee has included the requirement of a ''specific finding'' is included to avoid rejections which merely state conclusory statements that offer no analysis and determination of facts supporting the rejection.

The Secretary must also offer assistance to the Indian tribe to overcome the stated objections, and must provide the Indian tribe with an opportunity to appeal the rejection and have a hearing on the record. In any hearing the Indian tribe has the right to engage in full discovery. The Indian tribe also has the option to proceed directly to federal district court under section 110 of Title I of the Act in lieu of an administrative hearing.

The Secretary may only reject those portions of a ''final offer'' which do not justify a rejection. By entering into a partial Compact or funding agreement the Indian tribe does not waive its right to appeal the Secretary's decision for the rejected portions of the offer.

(d) Burden of Proof. The Secretary has the burden of demonstrating by clear and convincing evidence the validity of a rejection of a final offer in any hearing, appeal or civil action. A decision relating to an appeal within the Department is considered a final agency action if it was made by an administrative judge or by an official of the Department whose position is at a higher level than the level of the departmental agency in which the decision that is the subject of the appeal was made.

(e) Good Faith. The Secretary is required to negotiate in good faith and carry out his discretion under Title V in a manner that maximizes the implementation of self-governance.

(f) Reduction of Secretarial Responsibilities. Any savings in the Department's administrative costs that result from the transfer of programs, functions, services, or activities, (or portions thereof) to Indian tribes in self-governance agreements that are not otherwise transferred to Indian tribes under Title V must be made available to Indian tribes for inclusion in their Compacts or funding agreements. We have consistently indicated that Self Governance should achieve reductions in federal bureaucracy and create resultant cost savings. This subsection makes clear that such savings are for the benefit of the Indian tribes. Savings are not to be utilized for other agency purposes, but rather are to be provided as additional funds or services to all tribes, intertribal consortia, and tribal organizations in a fair and equitable manner.

(g) Trust Responsibility. The Secretary is prohibited from waiving, modifying or diminishing the trust responsibilities or other responsibilities as reflected in treaties, executive orders or other laws and court decisions of the United States to Indian tribes and individual Indians. The Committee reaffirms that the protection of the federal trust responsibility to Indian tribes and individuals is a key element of Self Governance. The ultimate and legal responsibility for the management and preservation of trust resources resides with the United States as Trustee. The Committee believes that health care is a trust resource consistent with federal court decisions. This subsection continues the practice of permitting substantial tribal management of its trust resources provided that tribal activities do not replace the trustee's specific legal responsibilities. Section 507(a)(2) (reassumption) with its concept of imminent endangerment of the public health provides guidance in defining the Secretary's trust obligation in the health context.

(h) Decisionmaker. Final agency action is a decision by either an official from the Department at any higher organizational level than the initial decision maker or an administrative law judge. Subparagraph (h)(2) is included to assure that the persons deciding an administrative appeal are not the same individuals who made the initial decision to reject a tribe's ''final offer.''

SECTION 508. TRANSFER OF FUNDS

(a) In General. The Secretary is required to transfer all funds provided for in a funding agreement, pursuant to Section 509(c) below. Funds are also required to be provided for periods covered by continuing resolutions adopted by Congress, to the extent permitted by such resolutions. When a funding agreement requires that funds be transferred at the beginning of the fiscal year, the transfer are to be made within 10 days after the Office of Management and Budget apportions the funds, unless the funding agreement states otherwise.

(b) Multi-Year Funding. The Secretary is authorized to negotiate multi-year funding agreements.

(c) Amount of Funding. The Secretary is required to provide an Indian tribe the same funding for a program, function, service, or activity, (or portion thereof) under self-governance that the tribe would have received under Title I. This includes all Secretarial resources that support the transferred program, and all contract support costs (including indirect costs) that are not available from the Secretary but are reasonably necessary to operate the program. The bill requires that the transfer of funds occur along with the transfer of the program. Thus the bill states that ''the Secretary shall provide'' the funds specified, and the Secretary is not authorized to phase-in funds in any manner that is not voluntarily agreed to by Self-Governance tribe.

(d) Prohibitions. The Secretary is specifically prohibited from withholding, refusing to transfer or reducing any portion of an Indian tribe's full share of funds during a Compact or funding agreement year, or for a period of years. The Committee is aware that for the first twenty-one years of administration of the Indian Self-Determination Act, the Department had never taken the position that it has the discretion to delay funding for any program transferred under the Act absent tribal consent. However, a 1996 IHS circular purported to do just that. Since this circular was issued, several Area offices have refused to turn over substantial program funds to tribal operation. In one instance both an Area office and Headquarters refused to transfer portions of programs for several years, and with respect to several Headquarters functions the IHS refused to transfer the functions altogether. A recent Oregon Federal district court decision declared Indian Health Service's actions in these instances illegal and the Committee agrees.

Additionally, funds that an Indian tribe is entitled to receive may not be reduced to make funds available to the Secretary for monitoring or administration; may not be used to pay for federal functions (such as pay costs or retirement benefits); and, may not be used to pay costs associated with federal personnel displaced by self-governance or Title I contracting.

In subsequent years, funds may only be reduced in very limited circumstances: if Congress reduces the amount available from the prior year's appropriation; if there is a directive in the statement of managers which accompanies an appropriation; if the Indian tribe agrees; if there is a change in the amount of pass-through funds; or, if the project contained in the funding agreement has been completed.

(e) Other Resources. If an Indian tribe elects to carry out a Compact or funding agreement using federal personnel, supplies, supply sources or other resources that the Secretary has available under procurement contracts, the Secretary is required to acquire and transfer the personnel, supplies or resources to the Indian tribe.

(f) Reimbursement to Indian Health Service. The Indian Health Service is authorized on a reimbursable basis to provide goods and services to tribes. Reimbursements are to be credited to the same or subsequent appropriation account which provided the initial funding. The Secretary is authorized to receive and retain the reimbursed amounts until expended without remitting them to the Treasury.

(g) Prompt Payment Act. This subsection makes the Prompt Payment Act (31 U.S.C. Chapter 39) applicable to the transfer of all funds due to a tribe under a Compact or funding agreement. The first annual or semi-annual transfer due under a funding agreement must be made within 10 calendar days of the date the Office of Management and Budget apportions the appropriations for that fiscal year. Under this section, the Secretary is obligated to pay to a Self-Governance tribe interest, as calculated under the Prompt Payment Act, for any late payment under a funding agreement.

(h) Interest or Other Income on Transfers. An Indian tribe may retain interest earned or other income on funds transferred under a Compact or funding agreement. Interest earned must not reduce the amount of funds the tribe is entitled to receive during the year the interest was earned or in subsequent years. An Indian tribe may invest funds received in a funding agreement as it wishes, provided it follows the ''prudent investment standard'', a commonly utilized fiduciary standard, that the Committee believes is strict enough to ensure that funds are invested wisely and safely yet provide a reasonable yield on investment.

Eligible investments under the prudent investment standard may include the following: (1) cash and cash equivalents (including bank checking accounts, savings accounts, and brokerage account free cash balances that carry a quality rating A1 P1, or AA or higher) (2) money market accounts with an A rating or higher, (3) certificates of deposit where the amounts qualify for insurance ($100,000 or less) or where the issuing bank has delivered a specific assignment, (4) bank repossession certificates where the amounts qualify for insurance ($100,000 or less) or where the issuing bank has delivered a specific assignment, (5) U.S. Government or Agency Securities, (6) commercial paper rated A1 P1 at time of purchase and which cannot exceed 10% of portfolio at time of purchase with any one issuer (short term paper—under 90 days—may be treated as a cash equivalent), (7) auction rate preferred instruments that are issued by substantial issuers, are rated AA or better, and may be utilized with auction maturities of 28 to 90

days, (8) corporate bonds of U.S. Corporations that have Moody's, Standard and Poor's, or Fitch's rating of A or equivalent and where no more than 10% of portfolio at time of purchase is invested in the securities of any one issuer, (9) dollar denominated short term bonds of the G7 Nations or World Bank only if the yields exceed those of U.S. instruments of equivalent maturity and quality, and where no more than 25% of portfolio at time of purchase is invested in this asset category, (10) properly registered short term no-load government or corporate bond mutual funds with a safety rating and average fund quality of A or higher, which demonstrate low volatility, and where no more than 25% of portfolio at time of purchase is invested in any one fund.

Carryover of Funds. All funds paid to an Indian tribe under a Compact or funding agreement are ''no year'' funds and may be spent in the year they are received or in any future fiscal year. Carryover funds are not to reduce the amount of funds that the tribe may receive in subsequent years.

(j) Program Income. All program income (including Medicare/Medicaid) earned by an Indian tribe is supplemental to the funding that is included in its funding agreement. The Secretary may not reduce the amount of funds that the Indian tribe may receive under its funding agreement for future fiscal years. The Indian tribe may retain such income and spend it either in the current or future years.

(k) Limitation of Costs. An Indian tribe is not required to continue performance of a Program, function, service, or activity (or portion thereof) included in a funding agreement if doing so requires more funds than were provided under the funding agreement. If an Indian tribe believes that the amount of funds transferred is not enough to carry out a program, function, service, or activity, (or portion thereof) for the full year, the Indian tribe may so notify the Secretary. If the Secretary does not supply additional funds the tribe may suspend performance of the program, function, service, or activity (or portion thereof) until additional funds are provided.

SECTION 509. CONSTRUCTION PROJECTS

(a) In General. Indian tribes are authorized to conduct construction projects authorized under this Section. The tribes are to assume full responsibility for the projects, including responsibility for enforcement and compliance with all relevant federal laws, including the National Historic Preservation Act of 1966 and the National Environmental Policy Act of 1969. A tribe undertaking a construction project must designate a certifying officer to represent the tribe and accept federal court jurisdiction for purposes of the enforcement of federal environmental laws.

(b) Negotiations. This subsection provides that negotiation of construction projects are negotiated pursuant to Section 105(m) of the Act and construction project agreements included in the funding agreement as an addendum.

(c) Codes and Standards. The tribes and the IHS must agree to standards and codes for the construction project. The agreement will be in conformity with nationally accepted standards for comparable projects.

(d) Responsibility for Completion. This subsection provides that the Indian tribe must assume responsibility for the successful completion of the project according to the terms of the construction project agreement.

(e) Funding. This subsection provides that funding of construction projects will be through advance payments, on either an annual or semi-annual basis. Payment amounts will be determined by project schedules, work already completed, and the amount of funds already expended. Flexibility in payment schedules will be maintained by the IHS through contingency funds to take account of exigent circumstances such as weather and supply.

(f) Approval. This subsection allows the Secretary to have at least one opportunity to approve tribal project planning and design documents or significant amendments to the original scope of work before construction. The tribe is to provide at least semiannual progress and financial reports. The Secretary is allowed to conduct semiannual site visits or on another basis if agreed to by the tribe.

(g) Wages. This subsection mirrors section 7(a) of the Indian Self-Determination and Education Assistance Act which incorporates Davis-Bacon wage protections for workers.

(h) Application of Other Laws. This subsection provides that provisions of the Office of Federal Procurement Policy Act, the Federal Acquisition Regulations, and other federal procurement laws and regulations do not apply to construction projects, unless agreed to by the participating tribe.

SECTION 510. FEDERAL PROCUREMENT LAWS AND PROGRAM REGULATIONS

This section provides that unless otherwise agreed to by the parties, Compacts and funding agreements are not subject to federal contracting or cooperative agreement laws and regulations (including executive orders) unless those laws expressly apply to Indian tribes. Compacts and funding agreements are also not subject to program regulations that apply to the Secretary's operations.

SECTION 511. CIVIL ACTIONS

(a) Contract Defined. The Committee intends that Section 110 of Title I of the Act, which grants tribes access to Federal District Court to challenge a decision by the Secretary, shall apply to this Title.

(b) Applicability of Certain Laws. This subsection provides that Department of Interior approval of tribal contracts (25 U.S.C. 81) and section 16 of the Indian Reorganization Act (25 U.S.C. 476) shall not apply to attorney and other professional contracts with Self-Governance tribes.

SECTION 512. FACILITATION

(a) Secretarial Interpretation. This section requires the Secretary to interpret all executive orders, regulations and federal laws in a manner that will facilitate the inclusion of programs, functions, services, or activities, (or portions thereof) and funds associated therewith under Title V, implementation of Title V Compacts and funding agreements, and the achievement of Tribal health goals and objectives where they are not inconsistent with Federal law. This section reinforces the Secretary's obligation not merely to provide health care services to Native American tribes, but to facilitate the efforts of tribes to manage those programs for the maximum benefit of their communities.

(b) Regulation Waiver. An Indian tribe participating in Self-Governance under Title V may seek a waiver of an applicable Indian Self-Determination Act regulation by submitting a written waiver request to the Secretary. The Secretary has 90 days to respond and a failure to act within that period is deemed an approval of the request by operation of law. Action on a waiver request is final for the Department. Denials may be made upon a specific finding that the waiver is prohibited by federal law. Failure to act within the 90 day period by the Secretary is deemed an approval.

(c) Access to Federal Property. This subsection addresses tribal use of federal buildings, hospitals and other facilities, as well as the transfer to tribes of title to excess personal or real property. At the request of an Indian tribe the Secretary is required to permit the Indian tribe to use government-owned real or personal property under the Secretary's jurisdiction under such terms as the parties may agree to.

The Secretary is required to donate title to personal or real property that is excess to the needs of any agency or the General Services Administration as long as the Secretary has determined that the property is appropriate for any purpose for which a compact is authorized, irrespective of whether a tribe is in fact administering a particular program that matches that purpose. For instance, if a tribe is not administering a mental health program under its IHS compact or funding agreement, the Secretary may nonetheless acquire excess or surplus property and donate such property to the tribe so long as the Secretary determines that the tribe will be using the property to administer mental health services.

Title to property furnished by the government or purchased with funds received under a Compact or funding agreement vests in the Indian tribe if it so chooses. Such property also remains eligible for replacement, maintenance or improvement on the same terms as if the United States had title to it. Any property that is worth $5,000 or more at the time of a retrocession, withdrawal or reassumption may revert back to the United States at the option of the Secretary.

(d) Matching or Cost-Participation Requirement. Funds transferred under Compacts and funding agreements are to be considered non-federal funds for purposes of meeting matching or cost participation requirements under federal or non-federal programs.

(e) State Facilitation. This section encourages and authorizes States to enter agreements with tribes supplementing and facilitating Title V and other federal laws that benefit Indians and Indian tribes, for example, welfare reform. It is designed to provide federal authority so as to remove equal protection objections where states enter into special arrangements with tribes.

The Committee wants to foster enlightened and productive partnerships between state and local governments, on the one hand, and Indian tribes on the other; and, the Committee wants to be sure that states are authorized by the Federal Government to undertake such initiatives, as part of the Federal Government's constitutional authority to deal with Indian tribes as political entities, irrespective of any limitations which have from time to time been argued might otherwise exist with respect to state action under either state constitutional provisions or other provisions of the Constitution. Many state and tribal governments have undertaken positive initiatives both in health care issues and in natural resource management, and it is the Committee's strong desire to fully support, authorize and encourage such cooperative efforts.

(f) Rules of Construction. Provisions in this Title and in Compacts and funding agreements shall be liberally construed and ambiguities decided for the benefit of the Indian tribe participating in the program.

SECTION 513. BUDGET REQUEST

(a) The President is required to annually identify in his/her budget all funds needed to fully fund all Title V Compacts and funding agreements. These funds are to be apportioned to the Indian Health Service which will then be transferred to the Office of Tribal Self-Governance. The IHS may not thereafter reduce the funds a tribe is otherwise entitled to receive whether or not such funds have been apportioned to the Office of Tribal Self-Governance.

The Committee has been made aware that the current system for payment and approval of funding and amendments for Annual Funding Agreements for Self-Governance Demonstration tribes is inefficient and time consuming. In addition, by leaving authority and responsibility for distributions to Area Offices, there have been reported instances of excessive and unwarranted assertion of authority by Area Offices over self governance tribes. This includes Area Offices retaining shares of funds not authorized to be retained by the tribe's Annual Funding Agreement. The Committee concludes that by requiring a report on Self Governance expenditures, and by moving all Self-Governance funding onto a single line, the Congress will be able to achieve the following ends: more accurately gauge the amount of funding flowing directly to Tribes through participation in Self governance; generate savings through decreasing the bureaucratic burden on the payment and approval process in the Indian Health Service; expedite the transferal of funding to tribal operating units; and, aid in the implementation of true government to government relations and tribal self determination.

(b) The budget must identify the present level of need and any shortfalls in funding for every Indian tribe in the United States that receives services directly from the Secretary, through a Title I contract or in a Title V Compact and funding agreement.

SECTION 514. REPORTS

(a) Annual Report. The Secretary is required to submit to Congress on January 1 of every year a written report on the Self-Governance program. The report is to include the level of need presently funded or unfunded for every Indian tribe in the United States that receives services directly from the Secretary, through a Title I contract or in a Title V Compact and funding agreement. The Secretary may not impose reporting requirements on Indian tribes unless specified in Title V.

(b) Contents. The Secretary's report must identify: (1) the costs and benefits of self-governance; (2) all funds related to the Secretary's provision of services and benefits to self-governance tribes and their members; (3) all funds transferred to self-governance tribes and the corresponding reduction in the federal bureaucracy; (4) the funding formula for individual tribal shares; (5) the amount expended by the Secretary during the preceding fiscal year to carry out inherent federal functions; and (6) contain a description of the method used to determine tribal shares. The Secretary's report must be distributed to Indian tribes for comment no less than 30 days prior to its submission to Congress and include the separate views of Indian tribes.

(c) Report on IHS Funds. This section requires the Secretary to consult with Indian tribes and report, within 180 days after Title V is enacted, on funding formulae used to determine tribal shares of funds controlled by IHS. The formulae are to become a part of the annual report to Congress discussed above in Section 514(d). This provision is not intended to relieve HHS from its obligation under Title V to make all funds controlled by the central office, national, headquarters or regional offices available to Indian tribes. This provision is also not intended to require reopening funding formulae that are already being used by HHS to distribute funds to Indian tribes. Any new formulae or revision of existing formulae should be determined only after significant regional and national tribal consultation.

SECTION 515. DISCLAIMERS

(a) No Funding Reduction. This provision states that nothing in Title V shall be interpreted to limit or reduce the funding for any program, project or activity that any other Indian tribe may receive under Title I or other applicable federal laws. A tribe that alleges that a Compact or funding agreement violates this section may rely on Section 110 of the Act to seek judicial review of the allegation.

(b) Federal Trust and Treaty Responsibilities. This section clarifies that the trust responsibility of the United States to Indian tribes and individual Indians which exists under treaties, Executive Orders, laws and court decisions shall not be reduced by any provision of Title V.

(c) Tribal Employment. This provision excludes Indian tribes carrying out responsibilities under a Compact or funding agreement from falling under the definition of ''employer'' as that term is used in the National Labor Regulations Act.

(d) Obligations of the United States. The IHS is prohibited from billing, or requiring Indian tribes from billing, individual Indians who have the economic means to pay for services. For many years the Interior and Related Agencies Appropriations Bills included language that prohibited the Indian Health Service, without explicit direction from Congress, from billing or charging Indians who have the economic means to pay. In 1997 the language was removed from the Appropriation bills and it has not been included since. This section reflects the Committee's intent that the IHS is prohibited from billing Indians for services, and is further prohibited from requiring any Indian tribe to do so.

SECTION 516. APPLICATION OF OTHER SECTIONS OF THE ACT

(a) This section expressly incorporates a number of provisions from other areas of the Indian Self-Determination and Education Assistance Act into Title V. These sections include: 5(b) (access for three years to tribal records), 6 (setting our penalties that apply if an individual embezzles or otherwise misappropriates funds under Title V); 7 (Davis-Bacon wage and labor standards and Indian preference requirements); 102(c) and (d) (relating to Federal Tort Claims Act coverage); 104 (relating to the right to use federal personnel to carry out responsibilities in a Compact or funding agreement); 105(k) (access to federal supplies); 111 (clarifying that Title V shall have no impact on existing sovereign immunity and the United States' trust responsibility); and section 314 Public Law No. 101–512 (coverage under the Federal Tort Claims Act).

(b) At the request of an Indian tribe, other provisions of Title I of the Indian Self-Determination Act which do not conflict with provisions in Title V may be incorporated into a Compact or funding agreement. If incorporation is requested during negotiations it will be considered effective immediately.

SECTION 517. REGULATIONS

This section gives the Secretary limited authority to promulgate regulations implementing Title V.

(a) In general. The Secretary is required to initiate procedures to negotiate and promulgate regulations necessary to carry out Title V within 90 days of enactment of Title V. The procedures must be developed under the Federal Advisory Committee Act. The Secretary is required to publish proposed regulations no later than one year after the date of enactment of Title V. The authority to promulgate final regulations under Title V expires 21 months after enactment. The Committee is aware of the success of the Title I negotiated rulemaking and believes that one reason for its success is a similar limitation of rulemaking authority contained in section 107(a) of the Indian Self-Determination Act, which this section is modeled after.

(b) Committee. This provision requires that a negotiated rulemaking committee made up of federal and tribal government members be formed in accordance with the Negotiated Rulemaking Act. A majority of the tribal committee members must be representatives of and must have been nominated by Indian tribes with Title V Compacts and funding agreements. The committee will confer with and allow representatives of Indian tribes, inter-tribal consortiums, tribal organizations and individual tribal members to actively participate in the rulemaking process.

(c) Adaptation of Procedures. The negotiated rulemaking procedures may be modified by the Secretary to ensure that the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes is accommodated.

(d) Effect. The effect of Title V shall not be limited if regulations are not published.

(e) Effect of Circulars, Policies, Manuals, Guidances and Rules. Unless an Indian tribe agrees otherwise in a Compact or funding agreement, no agency circulars, policies, manuals, guidances or rules adopted by the IHS apply to the tribe.

SECTION 518. APPEALS

In any appeal (including civil actions) involving a decision by the Secretary under Title V, the Secretary carries the burden of proof. To satisfy this burden the Secretary must establish by clear and convincing evidence the validity of the grounds for the decision made and that the decision is fully consistent with provisions and policies of Title V.

SECTION 519. AUTHORIZATION OF APPROPRIATIONS

This section authorizes Congress to appropriate such funds as are necessary to carry out Title V.

SECTION 601. DEMONSTRATION PROJECT FEASIBILITY

This provision requires an 18 month study to determine the feasibility of creating a Tribal Self-Governance Demonstration Project for other agencies, programs and services in the Department of Health and Human Services.

(a) Study. This subsection authorizes the feasibility study.

(b) Considerations. This subsection requires the Secretary to consider (1) the effects of a Demonstration Project on specific programs and beneficiaries, (2) statutory, regulatory or other impediments, (3) strategies for implementing the Demonstration Project, (4) associated costs or savings, (5) methods to assure Demonstration Project quality and accountability, and (6) such other issues that may be raised during the consultation process.

(c) Report. This subsection provides that the Secretary is to submit a report to Congress on the results of the study, which programs and agencies are feasible to be included in a Demonstration Project, which programs would not require statutory changes or regulatory waivers, a list of legislative recommendations for programs that are feasible but would require statutory changes, and any separate views of Indian tribes or other entities involved in the consultation process.

The Committee has deferred to the Secretary's request not to provide for a demonstration or pilot project component to the Feasibility Study to determine how to best apply Self-Governance to agencies other than the Indian Health Service at HHS. The Secretary has pledged to work in a cooperative spirit with the Indian tribes to quickly identify those programs outside the IHS that are suitable for Self-Governance. The Committee believes that there are agencies and

programs outside of the IHS that should be ready to participate in the Self-Governance program at the conclusion of the study and anticipates the introduction of legislation at that time to authorize such participation.

SECTION 602. CONSULTATION

(a) Study Protocol. This Provision requires the Secretary to consult with Indian tribes to determine a protocol for conducting the study. The protocol shall require that the government-to-government relationship between the United States and the Indian tribes forms the basis for the study, that consultations are jointly conducted by the tribes and the Secretary, and that the consultation process allow for input from Indian tribes and other entities who wish to comment.

(b) Conducting Study. This provision requires that when the Secretary conducts the study, she is to consult with Indian tribes, states, counties, municipalities, program beneficiaries, and interested public interest groups.

SECTION 603. DEFINITIONS

(a) This subsection is intended to incorporate into Title VI the definitions used in Title V.

(b) This subsection defines ''agency'' to mean any agency in the Department of Health and Human Services other than the Indian Health Service.

SECTION 604. AUTHORIZATION OF APPROPRIATIONS

This section authorizes the appropriation of such sums as necessary for fiscal years 1999 and 2000 in order to carry out Title VI.

SECTION 5. AMENDMENTS CLARIFYING CIVIL PROCEEDINGS

(a) This provision amends Section 102(e)(1) of the Act to clarify that the Secretary has the burden of proof in any civil action pursuant to Section 110(a).

(b) The provision provides that the amendment to Section 102(e)(1) set out subsection (a) shall apply to any proceeding commenced after October 25, 1994.

SECTION 6. SPEEDY ACQUISITION OF GOODS AND SERVICES

This section requires the Secretary to enter into agreements for acquisition of goods and services for tribes, including pharmaceuticals at the best price and in as fast a manner as is possible, similar to those obtained buy agreement by the Veterans Administration.

SECTION 7. PATIENT RECORDS

This section provides that Indian patient records may be deemed to be federal records under the Federal Records Acts in order to allow tribes to store patient records in the Federal Records Center.

SECTION 8. REPEALS

This Section repeals Title III of the Indian Self-Determination and Education Assistance Act which authorizes the Demonstration Project replaced by this Act.

SECTION 9. SAVINGS PROVISION

This section provides that funds already appropriated for Title III of the Indian Self-Determination and Education Assistance Act shall remain available for use under the new Title V.

SECTION 10. EFFECTIVE DATE

This section provides that the Act shall take effect on the date of enactment.

LOUISE EPPERSON TO CELEBRATE HER 90TH BIRTHDAY

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1998

Mr. PAYNE. Mr. Speaker, I would like to ask my colleagues here in the U.S. House of Representatives to join me in recognizing a very special person who will be honored at her 90th birthday celebration later this month, Ms. Louise Epperson.

Friends and family will gather at Clinton Avenue Presbyterian Church in Newark, New Jersey to pay tribute to this woman who has given so much to our community. I feel fortunate to have forged a friendship with Ms. Epperson, whom I have come to know as a wonderful, caring person and tireless community activist. Her character and concern for those around her are summed up in the words she holds as her motto and her mission: ''To make my life a source of inspiration to others, and a part of tomorrow's history. Never to look down on anyone unless it is to give them a hand to lift them up.''

Among her many accomplishments, Ms. Epperson was named Auxilian of the New Year for her 25 years of service to the University of Medicine and Dentistry of New Jersey's University Hospital Auxiliary. This award honored Ms. Epperson as an individual who demonstrated outstanding leadership skills, worked to improve the health of the community and contributed to the advancement of the hospital and its auxiliary. A champion of health issues in her Central Ward neighborhood, Ms. Epperson took up the cause of patient advocacy in her role as patient ombudsman at Martland, which is now called University Hospital, over two decades ago. She became a founding member of the Martland Hospital Auxiliary, where she put innovative ideas into action. Among the programs the auxiliary sponsored were a lead poisoning awareness program in local grammar schools, a ''Careermobile'' which traveled to local high schools to educate young people about health care careers, the purchase of a van to transport patients to the hospital for outpatient services, nurse education programs, and furnishing a pediatric playroom and a bereavement room. In 1998, she was honored by the city and inducted into the Newark's Women Hall of Fame.

Ms. Epperson is an inspiration to us all as she continues to remain active in numerous organizations, including the Newark Senior Citizens Commission, the Newark Affirmative Action Committee, the Black Presbyterians United, Golden Heritage, the NAACP, and the League of Women Voters. Mr. Speaker, I know my colleagues here in Congress join me in wishing Ms. Epperson a happy birthday and continued success and happiness.

THE MEDICARE NURSING AND PARAMEDICAL EDUCATION ACT OF 1998

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1998

Mr. BENTSEN. Mr. Speaker, I rise today to introduce legislation, the Medicare Nursing and Paramedical Education Act of 1998, to ensure that our nation continues to invest in the training of nurses and allied health professionals even as our health care system makes its transition to the increased use of managed care. I am pleased that several colleagues are joining me as original co-sponsors to this initiative, including Reps. CRANE, GANSKE, CARDIN, RANGEL, STARK, and JEFFERSON.

This legislation would provide guaranteed federal funding for nursing and paramedical education and help ensure that our nation continues to train enough nurses and other health care providers during this transition to managed care. Without such a guarantee, I am concerned that the availability and quality of medical care in our country would be at risk.

Teaching hospitals have a different mission and caseload than other hospitals. These hospitals are teaching centers where reimbursements for treating patients must pay for the cost not only of patient care, but also for medical education including nursing and paramedical education. In the past, teaching hospitals were able to subsidize the cost of medical education through higher reimbursements from private and public health insurance programs. With the introduction of managed care, these subsidies are being reduced and eliminated.

Under current law, the Medicare program provides payments to teaching hospitals for nursing and paramedical education. These Medicare payments pay a portion of the costs associated with the required classroom and clinical training.

As more Medicare beneficiaries enroll in managed care plans, payments for nursing and paramedical education are reduced in two ways. First, many managed care patients no longer seek services from teaching hospitals because their plans do not allow it. Second, payments are cut because the formula for these payments is based on the number of traditional, fee-for-service Medicare patients served at these hospitals. When fewer patients visit hospitals, these pass-through payments are reduced.

In 1995, Medicare provided $253 million for a portion of the costs associated with the allied health and nursing education. This payment represents 37 percent of the total costs of operating these programs at 731 hospitals nationwide. According to a recent Lewin Group estimate, allied health and nursing education pass-through programs would be reduced by $80 million in 2002 from current levels because of fewer Medicare beneficiaries utilizing teaching institutions. This year, for example, Methodist Hospital in Houston estimates that it would lose $71,871 because Medicare managed care patients are not seeking services from them. Clearly, we need to correct this inequity.

As the representative for the Texas Medical Center, home of two medical schools, three nursing programs, and several paramedical programs, I have seen firsthand the invaluable role of medical education in our health care system and the stresses being placed on it today. For instance, Methodist Hospital provides training for 825 students in its nursing, allied health, physical and occupational therapy, respiratory therapy, laboratory technology, and pharmacy programs. I am concerned that without sufficient Medicare support that these programs would be jeopardized.

The Balanced Budget Act of 1997 included a provision, similar to legislation I introduced,