I believe that it is fair and just for the community of Flint that Heartland Manor be treated as a new provider. Providing Heartland Manor with the ability to apply as a new provider will allow the nursing home to receive a fair shot at Medicare certification which is all I am asking for.●

THE DUNGENESS CRAB CONSERVATION AND MANAGEMENT ACT

● Mr. WYDEN. Mr. President, today Congress passed a version of the Dungeness Crab Conservation and Management Act, a bipartisan bill which I cosponsored along with Senators MURRAY, GORTON, and SMITH. I would like to particularly commend Senator MURRAY for her strong leadership on this issue. She introduced the bill earlier this year and worked hard to secure its passage in this Congress.

Dungeness crab is integral to the economies of Oregon's coastal communities. The fishery is successfully managed, from both an environmental and an economic standpoint, by the States of Oregon, Washington, and California. Under existing law, the Federal government would have taken control of the management of Dungeness crab next year, costing taxpayers hundreds of thousands of dollars. Our legislation prevents this from happening. This is a common sense approach: it extends the existing authority for the States to manage Dungeness crab in Federal waters and eliminates the need to develop a costly Federal fishery managment plan.

The Magnuson-Stevens Fishery Conservation and Management Act, enacted in 1976, established regional Fishery Management Councils to develop Federal management plans for fisheries in need of conservation and management in Federal waters. However, in order to meet regional needs, the interpretation of this provision has traditionally been flexible, allowing states to manage some fisheries in Federal waters. An example of this flexibility is state management of the West Coast Dungeness crab fishery.

Since the 1960's, the States of Oregon, Washington and California have managed the Dungeness crab fishery in Federal waters. The three states and the concerned Indian tribes have worked together to make sure fishermen from each state are treated fairly and the fishery remains biologically sound. West Coast fishermen, scientists, fishery managers, and conservation groups all agree that state management has been a success story.

From a conservation standpoint, state management of Dungeness crab is effective. The crabs are harvested in a way that ensures healthy populations for the future. In addition, the problem of bycatch, or incidental catch of other fish species, is almost non-existent in the crab fishery.

Under the Magnuson Act, the authority for state management of Dungeness crab expires next year. The expiration of state authority would have required the Pacific Fishery Management Council to develop a Federal fishery management plan in 1999. Developing this plan would have consumed scant Council resources and staff time.

As many folks in Oregon know, management of West Coast groundfish and salmon species presents huge challenges to fishery managers. The Council shouldn't be forced to divert critical resources from groundfish and salmon in order to manage a species like crab, which is doing fine under the existing states' plan. With the passage of this legislation today, the Council can continue to focus its resources on the fisheries that need special attention.

This bill makes common sense by taking advantage of the unique situation presented by the Dungeness crab fishery. Essentially, Congress is agreeing with what many folks have said of this fishery: ''if it's not broken, don't fix it.'' I am glad Congress could work together in a bipartisan fashion to pass this common-sense legislation.●

THE SALTON SEA RECLAMATION ACT OF 1998

● Mrs. BOXER. Mr. President, I am so pleased that the 105th Congress has approved H.R. 3267, the Salton Sea Reclamation Act of 1998. This legislation is an important step toward an efficient and responsible restoration of the unique Salton Sea ecosystem.

Earlier this year, I introduced S. 1716, the Senate version of the Salton Sea restoration legislation. H.R. 3267 includes portions of my legislation. Although it does not authorize all of the steps necessary to complete the recovery of the Salton Sea as my bill would have done, it is a necessary step toward that goal.

Over the years, scientists, communities and politicians alike have been trying to draw national attention to the decline of the Salton Sea. Our late friend and colleague, Representative Sonny Bono, who died in a tragic skiing accident in January, worked tirelessly to make this issue an environmental priority for this Congress.

The Salton Sea is a unique natural resource in Southern California. Created in 1905 by a breach in a levee along the Colorado River, the Salton Sea is California's largest inland body of water. It is one of the most important habitats for migratory birds along the Pacific Flyway.

For 16 months after the breach, the Colorado River flowed into a dry lakebed, filling it to a depth of 80 feet. For a time following the closure of the levee, the water levels declined rapidly as evaporation greatly exceeded inflow. A minimum level was reached in the 1920s, after which the sea once again began to rise, due largely to the importation of water into the basin for agricultural purposes from the New and Alamo Rivers.

Since there is no natural outlet for the sea at its current level, evaporation is the only way water leaves the basin. All the salts carried with water that flows into the sea have remained there, along with salts re-suspended from prehistoric/historic times by the new inundation. Salinity is currently more than 25 percent higher than ocean water, and rising.

This extreme salinity, along with agricultural and wastewater in the sea, are rapidly deteriorating the entire ecosystem. The existing Salton Sea ecosystem is under severe stress and nearing collapse, with millions of fish and thousands of bird die-offs in recent years. Birds and fish that once thrived here are now threatened with death and disease as the tons of salts and toxic contaminants that are constantly dumped into the Salton Sea become more and more concentrated and deadly over time. The local economy is also being affected by the disaster at the Salton Sea by the loss of recreational opportunities, decrease in tourism, and the impact on agriculture.

We all now agree that we must take the necessary long-term and short-term steps to stabilize salinity and contaminant levels to protect the dwindling fishery resources and to reduce the threats to migratory birds. However, there is no consensus on how that should be done.

The Salton Sea Reclamation Act should answer those questions. It requires the Interior Department to report to Congress within two years on the options for restoring the Salton Sea, including a recommendation for a preferred option. Interior will review ways to reduce and stabilize salinity, stabilize surface elevation, restore the health of fish and wildlife resources and their habitats, enhance recreational use and economic development, and continue the use the Salton Sea for irrigation drainage.

When this report is submitted to Congress, we will then have the information necessary to act swiftly to authorize construction of a restoration project.

It has taken the hard work and dedication of many individuals to make this legislation a success. I would like to thank members of the Salton Sea Authority, including the Imperial County Board of Supervisors, the Riverside County Board of Supervisors, the Imperial Irrigation District, and the Coachella Valley Water District, the National Audubon Society, the Department of the Interior, Congresswoman MARY BONO, Congressman GEORGE BROWN, Congressman HUNTER, and the entire Salton Sea Task Force, Senator KYL and Senator CHAFEE.

Scientists have warned that the Salton Sea will be a dead sea within fifteen years. This legislation is an integral step to ensure that we avoid such a disaster.

I am pleased that my House and Senate colleagues have agreed to this necessary and important legislation that will not only benefit Californians and our natural heritage, but will also

carry on the legacy of Representative Bono.●

THE SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

● Mr. REED. Mr. President, I speak today about passage of the conference report on the Securities Litigation Uniform Standards Act of 1998, S. 1260. Recently, the report was agreed to by both chambers of Congress and sent to the President for his signature.

I supported the Private Securities Litigation Reform Act of 1995 as well as S. 1260. I did so because I recognize the national nature of our markets as well as the need to encourage capital investment. I am pleased that we have been able to further these goals through this legislation. However, I am concerned by the attempt of a few to lessen the obligations owed investors.

Particularly troubling has been the incorrect use of legislative history to imply that a defrauded investor, now barred from discovery prior to the adjudication of a motion to dismiss, must include, in a pleading, evidence of conscious attempts to defraud by the defendant. First, no such implication was made by the 1995 bill. Second, no bill would have passed if such implications were included in the 1998 legislation. Thus, allegations of motive, opportunity, and recklessness, as well as conscious fraud, continue to satisfy the requirements of a 10b(5) pleading. This is the rigorous, but time-tested standard for pleading which has been applied in the Second Circuit. This is the standard that we adopted in 1995, and the national standard created by S. 1260.

The legislative history most frequently cited incorrectly is the Presidential veto message which accompanied his rejection of the 1995 bill; a veto which was overridden. I cannot understand why any weight would be given to the President's interpretation of a bill he vetoed. The purpose of any veto message is to portray the bill as negatively as possible, to avoid a veto override. Accusations the President made about the pleading standard were not only overblown, they were specifically rejected during debate after the veto and prior to the veto override.

Mr. President, as the Senate considered partially preempting state law, many Senators, including the primary sponsors of the bill, made clear that preemption would only occur if the federal standard insured investors protections from fraud. Most importantly this means a proper pleading standard and scienter requirement. This view was shared by Chairman Levitt of the Securities Exchange Commission. This is reflected in Chairman Levitt's testimony before Congress, in correspondence between the SEC and the Senate sponsors of the bill, as well as in statements by Banking, Housing and Urban Affairs Committee Chairman D'AMATO and the Ranking Member of the Securities Subcommittee, Senator DODD.

Recent events in foreign markets have made all too clear the havoc that results when investors are not fully apprized of substantial risks and rewards associated with investments. The Senate made clear that, in enacting partial preemption, it would not tolerate implementation of untested standards concerning the obligations owed investors. Nor, might I add, did industry proponents of the bill ask for a lessening of these standards.

In order to better illustrate this point, Mr. President, I ask that a letter I sent to Members of the Conference Committee on S. 1260 be printed in the RECORD.

The letter follows:

U.S. SENATE,
Washington, DC, October 2, 1998.

Chairman ALFONSE M. D'AMATO,
Committee on Banking, Housing, and Urban Affairs, Washington, DC.

DEAR MR. CHAIRMAN: I write to you as a conferee on the Securities Litigation Uniform Standards Act of 1998, S. 1260. As you know, I supported passage of this legislation, and voted to override the President's veto of the Private Securities Litigation Reform Act of 1995. While class action suits are frequently the only financially feasible means for small investors to recover damages, such lawsuits have been subject to abuse. By creating national standards, such as those in S. 1260, we recognize the national nature of our markets and encourage capital formation.

However, it is essential to recognize that preemption marks a significant change concerning the obligations of Congress. When federal legislation was enacted to combat securities fraud in 1933 and 1934, federal law augmented existing state statutes. States were free to provide greater protections, and many have. Many of our colleagues voted for the 1995 legislation knowing that if federal standards failed to provide adequate investor protections, state law would provide a necessary backup.

With passage of this legislation, Congress accepts full and sole responsibility to ensure that fraud standards allow truly victimized investors to recoup lost funds. Only a meaningful right of action against those who defraud can guarantee investor confidence in our national markets. Recently, on the international stage, we have seen all too clearly the problem of markets which fail to ensure that consumers receive truthful, complete information.

Therefore, my support for this bill rests on the presumption that the recklessness standard was not altered by either the 1995 Act or this legislation. I strongly endorsed the Senate Report which accompanies this legislation because it stated clearly that nothing in the 1995 legislation changed either the scienter standard or the most stringent pleading standard, that of the Second Circuit. This language was central to the legislation receiving the support of Chairman Levitt of the Securities and Exchange Committee. It was also central to my support.

As the Senate Banking Committee recognized at his second confirmation hearing, Chairman Levitt has a lifetime of experience as both an investor and regulator of markets. That experience has led him to be the most articulate advocate of the need for a recklessness standard concerning the scienter requirement. In October 21, 1997 testimony before a Subcommittee in the House of Representatives, Chairman Levitt said, ''[E]liminating recklessness . . . would be tantamount to eliminating manslaughter from the criminal laws. It would be like saying you have to prove intentional murder or the defendant gets off scot free. . . . If we were to lose the reckless standard we would leave substantial numbers of the investing public naked to attacks by . . . schemers.''

In testimony before a Senate Banking Subcommittee, on October 29, 1997, Chairman Levitt further articulated his position regarding the impact of a loss of the recklessness standard. He said, ''A higher scienter standard (than recklessness) would lessen the incentives for corporations to conduct a full inquiry into potentially troublesome or embarrassing areas, and thus would threaten the disclosure process that has made our markets a model for nations around the world.''

The danger posed by a loss of recklessness to our citizens and markets is clear. We should not overrule the judgement of the SEC Chair, not to mention every single Circuit Court of Appeals that has adjudicated the issue. I would assume that the motives which led to SEC and the Administration to insist on the Senate Report language concerning recklessness would also apply to their views of the Conference Report.

With regard to the pleading standard, some Members of Congress, and, unfortunately, a minority of federal district courts, have made much of the President's veto measure of the 1995 legislation. Specifically, some have pointed out that the President vetoed the 1995 bill due to concerns that the Conference Report adopted a pleading standard higher than that of the Second Circuit, the most stringent standard at that time. As I, and indeed a bipartisan group of Senators and Representatives, made clear in the veto override vote, the President overreached on this point. The pleading standard was raised to the highest bar available, that of the Second Circuit, but no further. In spite of the Administration's 1995 veto, this preemption gained the support of Chairman Levitt. It is, therefore, difficult to understand how some can argue that the 1995 legislation changed the pleading standard of the Second Circuit.

The reason for allowing a plaintiff to establish scienter through a pleading of motive and opportunity or recklessness is clear. As one New York Federal District Court has stated, ''a plaintiff realistically cannot be expected to plead a defendant's actual state of mind.'' Since the 1995 Act allows for a stay of discovery pending a defendant's motion to dismiss, requiring a plaintiff to establish actual knowledge of fraud or an intent to defraud in a complaint raises the bar far higher than most legitimately defrauded investors can meet.

Firms which advocate for S. 1260 do so based on the need to eliminate the circumvention of federal standards and federal stays of discovery through state court filings. They do not argue for a lessening of the obligations owed investors. I am concerned that should the conference committee include language which could be interpreted to eviscerate the ability of plaintiffs to satisfy the scienter standard by proof of recklessness or to require plaintiffs, barred from discovery, to adhere to a pleading standard requiring conscious behavior, the bill will lose the support of Chairman Levitt and many Members of Congress. I urge the Conference to support language included in the Senate Report and move forward with a bill that a bipartisan group in Congress can support and the President can sign.

Sincerely,

JACK REED,
U.S. Senator.

Mr. REED. Mr. President, I respectfully point out that the letter was sent during the Conference Committee negotiations on the bill and illustrates