OPINION

Patently Fair

THE DRUG industry is said to be at the brink of a new age of medical breakthroughs. It now hopes to strengthen its chances for solid returns on its research investments through a bill reported yesterday by the Senate Judiciary Committee. The bill would assure the drug companies and other industries subject to regulatory review that the protection afforded by patent laws is not seriously eroded by the often lengthy period of testing and review required before marketing is allowed. This is a reasonable assurance to require, and the Senate should approve the measure.

For reasons we assume have nothing to do with the locust cycle, patent law deems 17 years the appropriate period for protecting inventors from copycats. Since 1972, when requirements for more rigorous testing of drugs were added to the law, the time required for such preliminaries has stretched from seven to 10 years. As a result, by the time a drug is ready for market almost half the patent life has elapsed.

Since drugs are very expensive to develop, the industry argues that the effective curtailment of patent life discourages new research. Against the arguments of consumer advocates that longer patent lives will increase drug prices by delaying competition, the companies respond that encouraging more research will increase competition and thus lower prices; that drugs, however priced, are far and away the cheapest form of medical treatment and that longer patent protection may discourage high initial price markups now needed for quickly recouping costs.

There are merits on both sides of the price argument. The drug companies, moreover, with their enormous and durable profitability, do not make anyone's list of neediest cases. But there are stronger arguments in favor of patent life assurance. One is simple fairness. If 17 years is the right period for protecting the exclusive rights of inventors, there is no reason why those subject to federal regulation should be denied it solely by reason of that regulation.

There is also the strong desirability of reducing unwarranted pressure on the regulatory process. You don't have to be in favor of mindless bureaucratic delay to recognize the tremendous importance of thorough testing of drugs before they are widely peddled as the latest miracle cure. Some risk may be unavoidable, but no one can want to increase the chances of producing deformed infants.

Stronger regulation not only has reduced that possibility, but it may also have had other beneficial side effects. The higher cost of introducing new drugs, it is said, diverted companies from trial and error research and from the marketing of slightly better products into the basic biological research that is now promising to produce real cures for ailments ranging from asthma to heart disease and cancer.

There are probably ways that the FDA could further speed up clearance of major drug discoveries without jeopardizing the testing process. But assuring drug companies of a substantial period of patent protection is a reasonable and fair way to avoid having the desire for such protection translate into an unhealthy pressure on the review process.