

EXECUTIVE SESSION

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THURSDAY, AUGUST 3, 1978

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United States Senate,
Committee on Finance,
Washington, D.C.

The Committee met, pursuant to notice, at 10:05 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (Chairman of the Committee) presiding.

Present: Senators Long, Talmadge, Byrd, Nelson, Bentsen, Hathaway, Moynihan, Curtis, Dole, Packwood, Roth, Laxalt and Danforth.

The Chairman. Let me call this meeting to order. While we are waiting for more Senators to arrive, I would suggest that we just discuss this budget matter briefly.

I have urged Mr. Stern to prepare a letter for me, as Chairman, to explain to the Budget Committee that we feel it is very important that the full amount in the budget for tax reductions in the First Resolution be approved in the Second Budget Resolution.

The House is not using their entire amount available to them. and I think -- I do not know the reasons, but from the point of view of this Senator, it serves a good purpose, because that leaves the Senate Finance Committee a little room to legislate with

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1 regards to this tax cut and it make an input to reflect our point
2 of view and the point of view of Senators in general.

3 I was a little bit fearful that the Budget Committee might
4 look at that House bill and proceed to recommend that they cut
5 the figure back to the same figure in the House bill, which would
6 mean that the tax cut would be \$6 billion less than suggested.
7 There was an article in the Post yesterday by Mr. Art Pine which is
8 entirely correct, that if you take inflation into account as well
9 as the Social Security tax increase that that would mean that the
10 overwhelming majority of people, when you consider those two
11 factors, have not been made whole.

12 In other words, while the tax decrease would appear to make
13 the taxpayer whole for the Social Security tax increase, it would
14 not make him whole when you take inflation into account.

15 When you look at the two of them, it would require a further
16 tax cut.

17 In addition to that, I know that most Senators -- certainly
18 I am one of them -- would like to vote for some things like a
19 jobs credit, or whatever that appeals to them the strongest. There
20 are several things that we would like to consider.

21 I would like to, for example, have the Committee vote on an
22 improvement of the Employee Stock Ownership Plan, but others
23 would probably want to vote on the Earned Income Credit or
24 various other things that help the poor or middle income, or
25 whatever, the capital gains or others.

1 Of course, some of us are not as ambitious as Mr. Roth over
2 here is. Senator Roth is not the only one who would like to cut
3 taxes. I would like to think that all of us do, and we would
4 like to send a letter -- I would hope that the Committee would
5 report that position -- urging that the figure in the First
6 Budget Resolution be the same as in the Second Budget Resolution,
7 because I am satisfied that this Committee would want to recommend
8 at least that much of a tax cut.

9 Senator Roth. Mr. Chairman, I am not entirely certain at
10 this juncture whether or not we would be able to fit in the Roth-
11 Kemp general tax reduction or not. I would intend -- as I am
12 sure you understand -- that when the Second Budget Resolution
13 comes up, offer an amendment to provide, to give the opportunity
14 to the Senate to vote on a general tax reduction along the lines
15 of the Roth-Kemp legislation. I just make that point so that it
16 is clear that I do intend to proceed along those lines.

17 The Chairman. Senator, you will not take me by surprise. I
18 am well-aware of it. Many times I anticipated that. I will be
19 willing to bet on it.

20 If there is no objection, then, before this meeting is over,
21 I can provide members with a copy of what we will send.

22 By the way, Mr. Stern, I think it would be nice to send all
23 of the members of the Budget Committee a copy of the letter, not
24 just a copy to Senator Muskie, but show them the courtesy of
25 addressing them. You have to change the language of the opening

1 paragraph a little bit, but addressing each of them a letter.
2 I think it is more polite than to send somebody a copy of the
3 letter that you send to the Chairman. Send them a letter individ-
4 ually.

5 Mr. Stern. All right.

6 The Chairman. Now, it may be that Mr. Moynihan and Mr.
7 Packwood might want to discuss the matter that they had mentioned
8 to me before we get into the other items on the agenda here.

9 Senator Moynihan. Thank you, Mr. Chairman.

10 Why do I not defer to Senator Packwood, who is the senior
11 member of this coalition? We would like to discuss some changes
12 which Senators Roth and Ribicoff and Packwood and I would like
13 to propose to the Tuition Tax Relief Act which the Committee
14 reported out some while ago, and which we expect to be on the
15 Floor next week.

16 Senator Packwood?

17 Senator Packwood. Let me explain the problme, and Bill would
18 explain the changes.

19 This Committee sent out a tuition tax credit bill, 1401
20 some months ago. In it was a provision for refundability for
21 primary and secondary schools starting in 1981 and colleges now.

22 Because of the out-year refundability, the Budget Committee
23 has jurisdiction to review it.

24 Members of the Budget Committee by and large do not like the
25 substance of the Tuition Tax Credit bill. Yesterday, they refused

1 to grant a waiver to consider the bill on the Floor, a waiver on
2 the refundability, even though there could be a motion to strike
3 it. They said do not consider the bill at all.

4 So what we are proposing today is a new bill, a bill that
5 Senator Moynihan, Senator Roth, Senator Ribicoff and I had
6 planned for several weeks, and we were going to announce it this
7 afternoon, changing our figures and taking out for the moment
8 the issue of refundability and suggesting that this Committee send
9 the bill to the Floor without the issue of refundability in it.
10 It goes directly to the Floor. There is no particular Committee
11 jurisdiction.

12 I would say, in fairness, I intend to support refundability
13 when it is on the Floor. I think I speak for all of the sponsors
14 to that extent. But for the Budget Committee to use proced-
15 ual rule technicality to refuse to consider the bill because
16 of the issue of refundability which we think is unfair.

17 Now, Bill, if you want to explain what we are going to
18 propose?

19 Senator Roth. Mr. Chairman, let me just add a footnote to
20 what Bob Packwood has said. One of the things that bothers me
21 the most about the action of the Budget Committee is that it is
22 another example of a Parliamentary tactic to delay an up and down
23 vote. I think it is about time that this Congress recognizes
24 the fact that we have talked about open government, we have
25 talked about giving the members of Congress, both in the House and

1 the Senate the opportunity to vote this legislation up or down.

2 I, for one, Mr. Chairman, am pretty angry at this action
3 because, number one, I bet if you go back and check the votes
4 last year when I raised the college tax credit and they brought
5 back refundability, which I went along with, that every person who
6 is now using that as a Parliamentary tactic voted in support of it.

7 There is absolutely no excuse of a Budget Committee trying
8 to delay -- much like the Speaker on the House side trying to
9 delay the Roth-Kemp bill by a Parliamentary tactic. That is all
10 that is involved.

11 I think what ought to be done, as Bob Packwood has pointed
12 out, is that we substitute this proposal, this amendment I am
13 going to offer to the House bill which, of course, will eliminate
14 the refundability and thus eliminate this delaying tactic on the
15 part of the Budget Committee.

16 I want to say, Mr. Chairman, I want to thank you, number one,
17 for your cooperation in this area, but I think that it should be
18 noted that Senators Ribicoff, Moynihan and Packwood, as well as
19 myself, have worked very hard in a good-faith effort to try to
20 meet some of the objections and problems that have been raised
21 by those who would oppose this approach.

22 So we are offering, today, an amendment that will substan-
23 tially reduce the overall cost of the tuition tax credit bill.

24 As a matter of fact, our amendment will both reduce the
25 total cost of the bill, when fully effective, from \$5.2 billion to

1 \$2.8 billion, a saving of more than \$2 billion a year. And I
2 think it is very important to point out that the Roth-Ribicoff-
3 Moynihan-Packwood bill this year cost substantially less than the
4 President's own proposal, so that we are being fiscally respon-
5 sible.

6 But our amendment will reduce the total cost of our bill by
7 more than 45 percent. And we are doing this in the hopes that,
8 by meeting the President's objectives of cost halfway that he will
9 reconsider his veto threat.

10 Mr. Chairman, what our amendment, what our compromise amend-
11 ment would do is the following. I will summarize it for you.

12 Number one, we are reducing the maximum credit for elementary
13 and secondary schools tuition from \$500 to \$250. That is a 50
14 percent cut. That does not go into effect until 1980.

15 Two, we are providing that graduate students will no longer
16 be eligible for the tuition tax credit.

17 Three, part-time students who study less than half-time
18 will no longer be eligible for the tuition tax credit. This makes
19 it the same as the grant program.

20 Finally, four, Senator Packwood proposed, and we all agreed,
21 that in order to prevent double dipping, a modification will be
22 made to reduce the tuition tax credit by the amount of Federal
23 aid received. Under the compromise amendment, the fiscal 1979
24 cost of the tuition tax credit, as I said, will be substantially
25 less than the Administration's whole grant and loan program.

1 According to the Joint Committee on Taxation, the fiscal 1979
2 costs of the tuition tax credit will be \$667 million, which is
3 substantially less than the \$1.2 billion less than the President's
4 program -- something like a half-billion dollars less.

5 Let me point out again -- I think it is worthwhile repeating,
6 Mr. Chairman -- that a tuition tax credit is the simplest, most
7 equitable way to enable middle-class America, middle-income
8 America relief from mounting college costs, from the costs of
9 elementary and secondary schools. The tuition tax credit will
10 allow people to keep more of their own, hard-earned money rather
11 than send it to Washington.

12 We believe working Americans are caught in the middle. They
13 do not want a government hand-out. We think that this compromise
14 that has been worked out by the four of us goes a long way in
15 meeting the objections of the Administration and others, and
16 we recommend its adoption.

17 The Chairman. I have always felt -- in fact, I know I am
18 right about this -- it was never the intention of those who
19 drafted and passed the budget law, to deny the Senate the right
20 to vote on the legislative issue. The Senate should have the right
21 to make that decision, and the budget procedure was never intended
22 to be a final impediment to a decision in a democratic fashion by
23 the Senate itself on whether it wanted to do something of the sort
24 that the Senators are suggesting in their proposal.

25 Therefore, I, of course, would support them in bringing this

1 matter to the Floor and in having a decision by the Senate itself
2 on the issue. And I would hope that even those who might have
3 some doubts about the tuition tax credit would go along with them,
4 improvising the matter so that it could go to the Senate and let
5 them make the decision.

6 All in favor?

7 Senator Bentsen. Mr. Chairman, I have no illusions about the
8 outcome of this vote, since I was the only one who voted against
9 it last time, but I want to be sure that I am registered in
10 opposition to it. If it is an oral vote, my vote will be
11 against the amendment.

12 The Chairman. Call the roll.

13 Mr. Stern. Mr. Talmadge?

14 Senator Talmadge. Aye.

15 Mr. Stern. Mr. Ribicoff?

16 (No response)

17 Mr. Stern. Mr. Byrd?

18 (No response)

19 Mr. Stern. Mr. Nelson?

20 Senator Nelson. Aye.

21 Mr. Stern. Mr. Gravel?

22 Senator Moynihan. Aye, by proxy.

23 Mr. Stern. Mr. Bentsen?

24 Senator Bentsen. No.

25 Mr. Stern. Mr. Hathaway?

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- 1 Senator Hathaway. Aye.
- 2 Mr. Stern. Mr. Haskell?
- 3 (No response)
- 4 Mr. Stern. Mr. Matsunaga?
- 5 Senator Moynihan. Aye by proxy.
- 6 Mr. Stern. Mr. Moynihan?
- 7 Senator Moynihan. Aye.
- 8 Mr. Stern. Mr. Curtis?
- 9 Senator Curtis. Aye.
- 10 Mr. Stern. Mr. Hansen?
- 11 (No response).
- 12 Mr. Stern. Mr. Dole?
- 13 (No response)
- 14 Mr. Stern. Mr. Packwood?
- 15 Senator Packwood. Aye.
- 16 Mr. Stern. Mr. Roth?
- 17 Senator Roth. Aye.
- 18 Mr. Stern. Mr. Laxalt?
- 19 (No response)
- 20 Mr. Stern. Mr. Danforth?
- 21 Senator Danforth. Aye.
- 22 Mr. Stern. Mr. Chairman?
- 23 The Chairman. Aye.
- 24 Senator Moynihan. Mr. Chairman, Senator Ribicoff requested
- 25 that he be voted aye by proxy.

1 Mr. Stern. Mr. Ribicoff, aye by proxy.

2 Senator Bentsen. Mr. Chairman, we have all been consistent
3 on the issue.

4 Senator Packwood. Thank you, Mr. Chairman.

5 The Chairman. The vote is twelve ayes and one nay.

6 Let me ask the Senate Committee to use the rule that the
7 Senate itself ought to use -- anybody who wants to record himself
8 before the day is out will be recorded, and we will add him to the
9 record, voting for or against.

10 Senator Moynihan. I would like to thank you, Mr. Chairman.

11 The Chairman. Let us turn to the matter that you have laid
12 out on this prepared agenda, Mr. Stern.

13 Mr. Constantine. Mr. Chairman, did you want us to start
14 with this?

15 The Chairman. Yes.

16 Mr. Constantine. When you previously --

17 The Chairman. What order did you have in mind? Mr. Stern,
18 you had given the Senators a copy of the agenda. Did you have this
19 at the top of the list, this bill right here?

20 Mr. Stern. That is correct.

21 The Chairman. Go ahead.

22 Mr. Constantine. Mr. Chairman, during your tentative deci-
23 sions on July 21, there are a couple of items that you asked us
24 to go back and come up with suggestions on. One was the return
25 on equity for for-profit hospitals, relating to efficient

1 performance.

2 We have looked at a variety of approaches in the draft bill.
3 In the draft bill before you, what we did was to tentatively
4 include four hospitals which, using the average of performance
5 which you used for hospitals in judging their efficiencies, for
6 hospitals which are above 115 percent of the average, the return
7 on equity would be present law -- that is, one and one-half times
8 the present average rate of return on new Social Security invest-
9 ment. That is about 11 percent.

10 If hospitals are between the average--

11 The Chairman. 11 percent before taxes?

12 Mr. Constantine. Before taxes, yes, sir.

13 If a hospital is above the average, but below the band which
14 is initially 15 percent -- not more than 115 percent of the
15 average -- they would receive two times the average rate of
16 return which, I believe, would be about 14.5 percent to 15 percent,
17 at the present before taxes.

18 If they are deemed an inefficient hospital, below the average,
19 they would receive two and a half times which would be about 18
20 percent before taxes, plus the incentive payments which they would
21 earn for their below-average -- for being below the average.

22 Conceivably, it could be a pre-tax return of as much as 30
23 percent, or more, somewhat more, if they earned the maximum incen-
24 tive payment.

25 The Chairman. You do not estimate that it is going to be in

1 that category, do you, that efficient?

2 Mr. Constantine. There will be maybe a third of them.

3 Senator Bentsen. That would earn 30 percent on equity?

4 Mr. Constantine. That would earn approximately based on this
5 30 percent or a little bit more, if they got the maximum incentive
6 payment of 5 percent on their costs, plus the return on net equity.
7 Yes, sir. 30 percent before taxes.

8 The Chairman. All right. In order to do that, they would
9 have to be charging below the average rate. They have to be
10 providing the service and they have got to be well below what the
11 average would be for what other hospitals are doing.

12 Mr. Constantine. Their costs have to be at least 10 percent
13 below the average for the other hospitals in this group in order
14 for them to get up that high.

15 The Chairman. What is the average return on manufacturing?
16 What is the average profit on manufacturing, to get it on a
17 comparative basis?

18 Mr. Constantine. 12 or 13 percent, Mr. Chairman.

19 The Chairman. Before taxes, or after?

20 Mr. Constantine. After taxes.

21 The Chairman. What is it before taxes?

22 Senator Bentsen. Let us be sure we are comparing apples to
23 apples.

24 Mr. Constantine. I am not sure that we did check on the
25 public utilities. Their after-tax return is about 11 to 14

1 percent. The Committee asked us to look at that.

2 The Chairman. That would be before taxes. Most are in the
3 40 percent tax bracket, are they not?

4 Mr. Constantine. No, sir. Their effective tax rate is much
5 lower, much lower than the maximum, because they have an enormous
6 investment tax credit, and so on.

7 Senator Bentsen. You are talking about utilities?

8 Mr. Constantine. Yes, sir -- on manufacturing, we would
9 have to get that, Mr. Chairman. But, of course, the key thing
10 that I think you wanted was in manufacturing, within a given
11 industry, you have companies which lose money, or get no return;
12 others which are more efficient and productive and get substantially
13 above the average, and that was the way we tried to structure
14 this.

15 So, within an industry, if you were more efficient than the
16 average and considerably more efficient than the balance, you earn
17 more.

18 The Chairman. You think what you have here is structured and
19 patterned after what it is for industry on the average, the aver-
20 age of manufacturing.

21 Mr. Constantine. It is better than that, Mr. Chairman.

22 Senator Bentsen. Wait a minute. Let us be sure what we are
23 talking about here, because you give us before-tax savings when
24 you start talking about hospitals and then you switch and go to
25 after-tax savings on manufacturing companies. That is not a fair

1 comparison. Let's try to see if we cannot get apples to apples
2 here and try to do what the Chairman is talking about.

3 Mr. Constantine. Senator, the tax rate -- we looked at the
4 average tax rate for the before-profit hospitals. The effective
5 tax rate is 37 percent.

6 What I described was the hospitals which are below average
7 in cost where comparable hospitals would receive approximately
8 at the present rate of return about 18 percent before taxes,
9 before taxes, plus whatever they earned in incentive payments,
10 which would add obviously to their return on investment, assuming
11 that that was 30 percent before taxes, applying a 37 percent tax
12 rate would, I guess, bring an after-tax return of 18 or 19 percent
13 for the efficient hospital.

14 Senator Bentsen. That is for the most efficient hospital.
15 Then you would have to take the most efficient manufacturing
16 company, you see? I do not see now you can really do that. Can
17 you give us the overall return on manufacturing companies after
18 tax and then what you are talking about, overall return after tax
19 for the hospitals or before it, either one?

20 Mr. Constantine. We do not have any, and we can get it for
21 you right away.

22 Senator Bentsen. That was what the Chairman was asking you
23 last time, to get it for you this time.

24 Mr. Constantine. We will get it for you in a couple of
25 minutes.

1 Senator Bentsen. You see, Mr. Chairman, throw out these
2 figures, one before-tax and the other after-tax and run that to
3 the press and everyone else. It looks like we are getting a
4 very distorted picture.

5 The request of the Chairman was to try to get something
6 which would correlate.

7 The Chairman. That is what I want. I would like to put it
8 on the basis where the incentive is competitive with manufacturing.

9 Mr. Constantine. Yes, sir. We believe this is. We will get
10 the exact numbers for you right now.

11 There was one other point which we wanted to get clarified
12 in the provision which a number of states requested to deal with
13 the transfer of assets, transfer of assets in terms of large
14 assets in order to establish eligibility for Medicaid or related
15 eligibility, the Committee put in a provision authorizing states
16 to go back 12 months to assure that large assets were not trans-
17 ferred.

18 In the draft bill, Senator Hansen had expressed concerns
19 that it must be a substantial transfer of assets and that is in
20 the draft bill.

21 Additionally, in the report, we put in language saying that,
22 as Senator Hansen indicated, we did not want to get them into
23 nit-picking on minor disputes on what fair market value is. The
24 example we used, if the state estimates that piece of property is
25 worth \$2,000, if that difference for amount transferred by a

1 couple of a hundred dollars, the state is not to do anything
2 about it.

3 We wanted to make clear, Mr. Chairman, that the provision
4 applied to the medically indigent as well as the SSI, if the
5 state has a medically indigent program, and that further it was
6 a state option. It is not a state plan requirement, but it was
7 at the option of the state if it wanted to do that.

8 The language of the document we have before you is ambiguous
9 on that point as to whether it was a state plan requirement,
10 mandatory on the states, or at their option. We would recommend
11 that it be at the state's option if it wants to undertake that.

12 We wanted to clarify that.

13 The Chairman. Without objection, we will agree to it.

14 Mr. Constantine. The other points we had dealt with effective
15 date modifications that we have before you, Mr. Chairman. I
16 do not think that we had too much trouble. It was just to make
17 sure that we complied with budget act requirements and the cost.

18 The Chairman. Without objection, agreed.

19 Senator Bentsen. Mr. Chairman, we had one other question.
20 That was, the objective of the legislation and the Committee
21 Report to try to negate, to get away from percentage contracts
22 and I think that is a good idea, but we had one exception to it
23 where a percentage contract was based on cost of operations and
24 a larger part of the percentage contract was based on being able
25 to do a job or a comparable task for less money and thereby saving

1 money and getting a percentage for that.

2 Staff was working on some language to achieve that objective,
3 Mr. Chairman. I am not yet satisfied that that has been accom-
4 plished, but we are reaching toward it, and I would like to leave
5 that open with staff for a little more work.

6 Mr. Constantine. We would be glad to.

7 Senator Bentsen. We have made some headway, but I would
8 like to have you work on that some more.

9 Senator Curtis. Mr. Chairman, I have a question or two about
10 some points.

11 In reference to short length of stays in the hospital being
12 intermingled with long stays, how does that work?

13 Mr. Constantine. You have a situation, Senator, where some
14 hospitals have consistently shorter lengths of stay than others for
15 similar diagnosis for the same mix. The trouble is, it is very
16 difficult to compare the mix in one hospital as opposed to another
17 and the patients.

18 You do have some hospitals that may very well, because they
19 organize their care service, have significantly shorter lengths
20 of stay for the same kinds of case mix, pretty much, as other
21 hospitals.

22 The bill does not quite deal specifically with that because
23 we cannot sort out the case mix; so in the report language, Sena-
24 tor, the report says, does exactly -- we put in language saying
25 under the intensity exception provision, the Secretary is expected

1 additional amounts if the hospital demonstrates that it incurs
2 additional costs as a result of shorter lengths of stay related
3 to the intensity of service is consistently for appendicitis,
4 cardiac procedures. It might have a five-day stay for a cardiac
5 procedure as opposed to seven days for the group as a whole, that
6 kind of thing, to adjust for that and recognize that, and accept
7 that cost.

8 Senator Curtis. It seems to me, if I understand it correctly,
9 it discriminates the hospital that maintains shorter stays.

10 Mr. Constantine. It may or may not, Senator. The reason I
11 say that, if you can establish that the case mixes are comparable,
12 reasonably comparable because you have hospitals, for example,
13 that have short stay cases, generally; others have long stay
14 cases. If the case mix is reasonably comparable, then you are
15 correct, Senator, that it can discriminate against the hospital
16 that has significantly shorter stays. That is what the language
17 was trying to deal with.

18 Senator Curtis. I am thinking of a regional difference in
19 general. Hospitals in the West and Middle West have shorter stays
20 than the rest of the nation.

21 Mr. Constantine. That is true, overall.

22 Mr. Swoap. I have some data on that that the Committee may
23 be interested in that compares the average length of stay in
24 nongovernment, not-for-profit hospitals as reported by the American
25 Hospital Association. It is clear that there is a fairly strong

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1 pattern in the West, that the average length of stay is less.

2 For example, in Alaska, the average stay is 4.9 days as
3 compared with the United States average of 7.9, California 6.7,
4 Hawaii 6.9, Idaho 6.2, Montana 6.2, Nebraska 7.7, Nevada 5.1,
5 New Mexico 6.0, Texas 6.9, Utah 5.4 and Washington 5.4 and
6 Wyoming 5.2.

7 Senator Curtis. How is what is proposed here put anybody at
8 a disadvantage?

9 Mr. Swoap. Well, as I understand it, what is being proposed
10 is you may wish to offer language making it more specific, that
11 an exception will be granted to hospitals where their average
12 length of stay is shorter and that they would be either provided
13 that exception or their actual costs, whichever is less.

14 Senator Curtis. We are talking about report language?

15 Mr. Constantine. No. I would agree with Dave, Mr. Chairman.
16 You can put that in the bill, provided that you establish reason-
17 ably comparable case mixes. Otherwise, you have a situation where
18 the hospital is encouraged to just take the short-stay cases or
19 its regular mix of patients may just be short-stay types of cases
20 and decline to take the long-stay complex cases. They make a
21 lot more money if you do it on an average day.

22 The bill also requires the Commission to come back to meet
23 Senator Danforth's concern to develop case mix approaches to
24 reimbursement.

25 Once you have a case mix approach, where you have comparable

1 diagnosis, then you can pay the hospital which has the shortest
2 stay for comparable types of cases on a much more equitable basis.
3 Senator Curtis. What do you recommend for meeting this
4 problem?

5 Mr. Constantine. I think, Senator, you can take the report
6 language and put it in the text of the bill, that the Secretary
7 shall grant an exception for reasonably comparable cases to the
8 hospital consistently having shorter stay than the hospitals in
9 its group, and it incurs thereby.

10 Senator Curtis. Mr. Swoap, what is your reaction to that?
11 Do you think the language is all right if they put it in a bill,
12 or do you want some other change?

13 Mr. Swoap. The language from the report would not, in my
14 judgment, meet the problem that has been raised by a number of
15 these hospitals because it still requires them, as I understand
16 it, Jay, to apply on an exception by exception basis. Their
17 experience in the past, I know Senator Packwood, I know in Oregon
18 some hospitals have had a very difficult time getting exceptions
19 from HEW so the language which has been suggested would read as
20 follows: "Provided that its average length of stay is less than
21 the average length of stay for the group which the provider is
22 classified, the provider will be reimbursed in an amount equal to,
23 but not greater than, the average reimbursement per se for the
24 group and not in excess that the providers actual cost of stay."
25 That makes it much more specific, Senator, rather than

1 requiring them to come in and apply.

2 Senator Curtis. Is that all right?

3 Mr. Constantine. That would create tremendous problems. You
4 are comparing apples and oranges. It is a little bit like the
5 pre-tax after-tax issue, because you do not know what the mix is
6 in those hospitals. The hospital patient may vary substantially
7 from one to another.

8 To make that, it would also be very costly to pay the hospital
9 whose costs are below average at the average rate. It means --

10 Senator Curtis. But not more than their actual costs.

11 Mr. Constantine. Yes, sir, but they have an incentive. They
12 can let their costs move up to the average. To make that come
13 out even, Senator, you would have to bring all of those above the
14 average down to the average, then that would wash, which would
15 penalize a lot of other states.

16 Senator Curtis. I am not enthusiastic about quarreling over
17 words, but I do not want to have a formula here that works against
18 the hospitals that turn their patients out faster.

19 Mr. Swoap. Senator Curtis, I would like to point out as well
20 there were some other states that may be of some interest to the
21 Committee. Louisiana is at 6.4 compared to the national average
22 of 7.9; Georgia 6.9 compared to the national average of 7.9; and,
23 I believe, Oregon -- I neglected to mention -- is 6.1.

24 Mr. Constantine. Senator, you can give the Commission -- we
25 can put the language in based on comparability and the Commission

1 could give it its first priority and development procedure,
2 expedited sections or procedure for . . . doing that with a minimum
3 of time and effort and red tape that a hospital could establish
4 the situation.

5 The Chairman. I found myself thinking of a situation that
6 existed in Louisiana when the state started providing the so-called
7 Free Ambulance Service, and doctors who were running those state
8 hospitals told me that that was the biggest economy we ever put
9 into effect -- providing additional service, but it saved a
10 fortune, because you get a case in there where they have done all
11 they can do for a person -- let us say a cancer case.

12 You recall Hubert Humphrey came back. The doctors said they
13 had done all they could do for him, and he might as well go back
14 to the Senate. His days were numbered, but he might as well come
15 back here. All that could be done had been done. And he performed
16 admirably during his last days here in the Senate.

17 In cases where persons have a terminal case where a doctor
18 has done all he can do, many times the relatives would not want the
19 person brought home because there is nobody around the home to stay
20 with him, so they say, you have to keep him in the hospital. They
21 put him in the ambulance and take him home and say we have done
22 all we can do, and you have to take him and do the best you can.
23 That is all we can do. This is a terminal case, and bring him
24 back, you know, when they get near the end of the road.

25 To have those people sitting in the hospital occupying all

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1 those beds can cost a fortune. Just to provide an ambulance to
2 take him home is an enormous economy when the doctors have done
3 all they could do for the time being.

4 I am pleased to hear that Louisiana is one of those who is
5 managing to come below the average. They can save a fortune if
6 they would not keep people in the hospital when they could just as
7 well be in a nursing home or be home.

8 If there is a way that we can encourage it, if it will not be
9 too much of an administrative monstrosity, I would like to do it.
10 Mr. Constantine. It would be impossible to work it out
11 equitably unless you have a means of classifying them essentially
12 by case mix to show they are taking comparable cases.

13 The Chairman. I understand you want to do that.
14 Mr. Constantine. Yes, sir, give it the priority. The Adminis-

15 tration is working on that right now, and you can extend the
16 Commission that responsibility of coming back with a recommenda-
17 tion on that immediately.

18 The Chairman. That is one of the big places where you would
19 save money.

20 Senator Danforth. If I could ask a question, prior to when
21 the Commission comes back with whatever recommendations, those,
22 I would take it, would be recommendations that are made to the
23 Congress.

24 Mr. Constantine. Yes.

25 Senator Danforth. Prior to any action's being taken, my

1 understanding of the Talmadge bill is that the average that is
2 taken there is per day in the hospital, is that right?

3 Mr. Constantine. Yes, sir.

4 Senator Danforth. What a PSRO is supposed to do, is to make
5 sure that the stay in the hospital is not extended beyond the
6 outer reaches of what the stay should be. I wonder if we have not
7 created an incentive for the hospitals to keep people in the
8 hospital up to a PSRO would allow.

9 It is my understanding, as a matter of fact, the cost per
10 day in the hospital tends to decline the longer you are there, that
11 the first day in the hospital is the most expensive day in the
12 hospital because of the tests that are taken and all of the cost
13 of getting the person in.

14 What I am concerned about is that prior to any subsequent
15 Congressional action to implement whatever the Commission does,
16 we may be creating in this bill an incentive to keep people longer
17 in the hospital longer than the hospital would want to if it were
18 really trying to be competitive in keeping the costs down.

19 Mr. Constantine. You are right, Senator. But the amendment,
20 as it now operates, deals only with the adjusted routine per diem
21 cost. It takes out a fair number of variables, as you know --
22 malpractice, energy credit, medical staff costs, the intensity
23 factors. In the main, the greater tests, the more x-rays, more
24 lab work, more pharmacy, operating room, are other costs, Senator.
25 They are not included in routine. Those will continue to be

1 reimbursed as they are under present law, depending on what
2 the hospitals experience. This deals only with adjusted routine
3 so that the intensity factor is considerably less in this area
4 than when you get into full case mix, when you get the ancillaries
5 brought in as well, because the differences between hospitals will
6 be substantial.

7 The Chairman. If I understand it, all you are talking about
8 is taking something that would be in the Committee Report and
9 putting it into the bill, is that right?

10 Mr. Constantine. That is right.

11 The Chairman. They are going to bring it back to us anyway.
12 It does not automatically take effect.

13 Mr. Constantine. Yes.

14 The Chairman. Let's do that. All in favor, say aye.

15 (A chorus of ayes.)

16 The Chairman. All opposed, no.

17 (No response)

18 Senator Curtis. I want you to know, Mr. Chairman, that I
19 have another thing to raise. This bill excludes from the Federal
20 Rules, if the state has a ratemaking agency. Now the bill as
21 we have it written now only pertains to the government program,
22 Medicaid and Medicare.

23 Mr. Constantine. Yes, sir.

24 Senator Curtis. The way you have it for the state agency,
25 are they limited to the same programs, or are you requiring them

1 to have a rate-making agency that applies to all payers?

2 Mr. Constantine. All payers.

3 Senator Curtis. In other words, you are putting a different
4 requirement on the state than we have written here in the bill for
5 the Federal government?

6 Mr. Constantine. Yes, sir. Among other things, that
7 significantly helps prevent shifting of costs, the concern that
8 the other insurers held and it is a little awkward to ask the
9 state to set up a rate-making agency solely for the Federal
10 programs. It is primarily Federal money in that.

11 A fair number of states have set up rate-making bodies for
12 all hospitals and all payers and they come up with -- it creates
13 more equal treatment and it eliminates a lot of the friction, and
14 they look at the total budgets of the hospitals and they deal
15 with it on a full basis, as Maryland does now, and New York does.

16 Senator Curtis. Because they elect to do it. Here we are
17 requiring it.

18 Mr. Constantine. No, sir. It is a state option. If you
19 mean by election whether to cover all payers, you are right.

20 Senator Curtis. Yes.

21 Mr. Swoap. I may point out to the Committee that this is a
22 departure from the staff memorandum that was before you when this
23 was decided upon at the last mark-up session on page 3 of that
24 document. It indicates that hospitals would be exempted from the
25 proposed cost limits if the hospital is located in a state which

1 has a cost control program which applies at least to the same
2 hospitals and costs as the Federal program, so that the bill, as
3 now drafted, is an expansion of what was presented to you at the
4 time you made the earlier decision.

5 The reason we are raising it is of course you made the
6 decision last time to restrict it to Medicare and Medicaid and not
7 extent it to all payers. It is possible you may want to apply
8 that same restriction to the state rate-making agency which
9 qualifies for the exception.

10 Senator Curtis. I think, as a matter of principle, we should
11 let the states decide if they want a rate-making thing to apply
12 to all payers, but that we should not require it in order to be
13 exempt from the Federal Act to go beyond what the Federal Act is.

14 Mr. Constantine. Senator, in the presentation of the Committee,
15 I went over the transcript again, and the description on July 21st
16 said all payers in a state and all hospitals participating. This
17 is an exception provision to what exists today.

18 In other words, in most cases today it requires a contract
19 with Medicare on a demonstration basis.

20 Bill, do you want to explain where we are today?

21 Mr. Fullerton. I might explain it this way. Today, Medicare
22 is a Federally-run program. We use contractors, Blue Cross plans
23 and commercial insurance companies to pay hospitals. There are
24 specific rules that the Federal government uses. That is Medicare.

25 Medicaid is required by the state agencies who operate these

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1 programs to follow the same rules that Medicare uses.

2 What the Committee is proposing here is just some new rules,
3 basically that Medicare will follow and that Medicaid agencies
4 will have to follow. The exception in this bill, it says, "However,
5 if the state has a plan where it happens to be covering all
6 hospital costs, its regulated hospital charges in the economy of
7 that state, under those circumstances, the Federal government will
8 demur and permit the state to set the rates for Medicare and
9 Medicaid."

10 Senator Curtis. Is it not true that in order for a state to
11 be exempt from the Federal Act, their plan must cover all payors?

12 Mr. Fullerton. Yes, sir, that is correct. As far as the
13 Administration is concerned, we would have no state exception at
14 all.

15 Mr. Constantine. No exception.

16 Senator Curtis. I am sure that is true.

17 Senator Bentsen. That is a sneaky approach. What, in effect,
18 they are saying is if you have to be more inclusive at the state
19 level in monitoring and having these containment costs than you do
20 at the Federal, to have an exception? Is that what you are saying?

21 Senator Curtis. I think so. I think that the states may
22 consider the principle, to go along. As far as uniformity, that
23 is a state responsibility.

24 Mr. Chairman, I move that we limit the requirement on the
25 state to what the Federal is.

1 Senator Talmadge. Is there any discussion?
 2 All in favor of the Curtis amendment, hold up your hand.
 3 (A show of hands.)

4 Senator Talmadge. Contrary?
 5 (A show of hands.)

6 Senator Talmadge. The Curtis amendment is agreed to.
 7 Senator Curtis. Now I have one other thing on the cost. Do
 8 I understand from the sheet that this bill will cost more in 1980

9 and 1981 than the present?
 10 Mr. Constantine. Let me see. On the cash basis, yes, sir.
 11 I should explain, Senator, on an incurred basis, I believe -- where

12 did we wind up on it on an incurred basis? I think it is about
 13 even on an incurred basis.
 14 Plus there was some cost area, Senator, where the Administra-

15 tion and CBO found it very difficult to estimate the savings
 16 amount. For example, on the ambulatory surgical benefit that is
 17 to cover the procedure in the doctor's office where it could be
 18 covered in either hospital. They did not put a number on it.
 19 They put a savings of \$41 million but we agreed with them that as
 20 long as you cannot estimate it reasonably accurate, do not put
 21 any number in.

22 The difference between the cash and the incurred basis is
 23 the lag in paying our bills, the lag in settling with hospitals,
 24 and that creates, the savings, for example, in Section 2
 25 incurred basis are substantially greater +

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1 shown here. Plus the figures that we netted out, Senator, are
2 somewhat different between CBO -- significantly different in the
3 later years between CBO and the Administration as to the savings.

4 Senator Curtis. How do you account for that? Who has the
5 greater savings?

6 Mr. Constantine. CBO.

7 Senator Curtis. Is there any particular reason?

8 Mr. Constantine. Their actuaries are talking to CBO to
9 discuss any differences, but I suppose, in part, that this is the
10 Administration's bill.

11 Senator Curtis. On this idea that the bills being paid at a
12 given time were incurred at an earlier time, this does show a
13 savings for fiscal '79. The sheet I have got here says so.

14 Mr. Constantine. Yes, sir. There is a nominal error in that.
15 We talked to the actuaries again. Apparently there was a misunder-
16 standing in Section 5. They should not show costs plus \$5 million,
17 so that would leave a plus \$1 million net cost in fiscal '79.

18 Senator Curtis. A net cost of \$92 million in '80 and \$26
19 million, then it starts to save.

20 Mr. Constantine. Mr. Fullerton says their actuaries are
21 making a fuller change.

22 Mr. Fullerton. Senator Curtis, one of the things that are
23 giving us trouble on the estimating is changing the effective
24 dates. The effective dates were changed.

25 Senator Curtis. What agency had worked on a different date

1 than the other?

2 Mr. Fullerton. The dates that you now have in the bill before
3 you are different in several respects than the effective dates
4 in the bill as introduced. For example, on the provision to which
5 Jay refers dealing with paying the dollar for each assigned bill
6 they submit, the effective date in the bill as introduced is
7 July 1st of '78. The bill before you now, that was changed to
8 July 1st, '79.

9 When we netted this out with the actuarial office, we came
10 out with a total bill, as it was furnished to you this morning
11 before any changes you may make today, of savings of \$40 million
12 in fiscal '79, a cost of \$45 million in 1980 and a gradual savings
13 built up after that. We are looking at the next two years, the
14 bill's net on cost of savings.

15 Senator Curtis. One other related item. A question arose
16 when some states had a provision that recipients could not transfer
17 their assets for the purpose of qualifying for Medicaid. Did a
18 court or somebody rule against that?

19 Mr. Constantine. No, sir.

20 The Committee has modified that further. Michigan, parti-
21 cularly, was interested in that. A number of states have been
22 going back and holding substantial assets within twelve months,
23 I believe, of determination of eligibility. Someone may transfer
24 \$100,000 of property or a substantial amount of property in order
25 to get into a nursing home, or who is in a nursing home and then

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1 transfers the property. They have been holding them ineligible
2 where that occurs. They have had indication in a number of states
3 that DEW is going to hold them out of compliance as a result of
4 that.

5 Senator Curtis. Hold the state out of compliance?

6 Mr. Constantine. Hold the state out of compliance.

7 Senator Curtis. Because they went after somebody who trans-
8 ferred their assets?

9 Mr. Constantine. Yes, sir.

10 This provision, which you approved, in other words, makes
11 sure that the state at its option -- I described that earlier,
12 Senator -- that the state at its option may do exactly what they
13 have been doing.

14 Senator Curtis. Did we decide at their option, or did we
15 make it mandatory?

16 Mr. Constantine. Senator, as I described earlier, there
17 was some ambiguity as to whether it was mandatory or optional
18 with the states. We recommended that it be optional with the
19 states instead of mandatory.

20 Senator Curtis. Is that your recommendation today?

21 Mr. Constantine. Yes, sir, this morning, in as much as it
22 was the states who raised it and simply wanted to validate what
23 they were doing. If other states do not want to do that, we thought
24 that that was appropriate for the state to decide.

25 Senator Curtis. The way it stands, we are saying to states

1 that they not pay any attention to a fraudulent conveyance of
2 assets. We will not disturb them.

3 Mr. Constantine. Really, to protect those states who do want
4 to pay attention to what they regard as an improper transfer of
5 assets in order to establish eligibility, to deal with their con-
6 cern that HEW is going to come down on them. Two, Michigan and
7 New Jersey, I believe, raised this with us, particularly Michigan.
8 This is simply to protect those states which want to deal with
9 that.

10 Other states, for example, may find that the transfer of
11 assets problem is not severe in their state, it is not a concern,
12 and they do not want to go through the red tape, the paperwork and
13 so on.

14 Senator Curtis. The Federal government pays most of the bill,
15 do they not?

16 Mr. Constantine. It pays at least half the bill in every
17 state, yes, sir.

18 Mr. Swoap. Senator Curtis, it should be noted for the record
19 that again the June 15th staff memorandum, Jay indicated some
20 ambiguity, but it does read further that the provision be a require-
21 ment of a state plan rather than a compliance question.

22 Mr. Constantine. Yes, sir. Then, when I explained it, we
23 skipped over that and said there were some problems with that.
24 That is why I said we would recommend that it not be a mandatory
25 state plan.

1 Senator Curtis. What is wrong with making it mandatory?

2 Mr. Constantine. We did a lot of work with that with Joe
3 Humphreys here.

4 Mr. Humphreys. The big problem with making it mandatory at
5 this point is this is an isolated abuse that mainly applies to
6 people who wind up in nursing homes and you want to give the
7 states the flexibility to do it on a basis of aiming at that part
8 of the caseload where the abuse is. Otherwise, if you are just
9 putting a mandatory requirement, they will have to do it for
10 everybody. They may spend more money administering the process
11 of finding out whether people have transferred assets in cases
12 where there is very little return on their money than they make
13 in catching people.

14 Senator Curtis. If you made it mandatory, they would have
15 to go through that process for everybody?

16 Mr. Humphreys. That would probably be the case. It might
17 be that after we get some experience with what the states want to
18 do and have done that we will find there is a big enough return
19 that it might be worthwhile doing it for everybody.

20 At the time the estimated savings on this are fairly small,
21 and this is not a targeted thing, and the administrative costs
22 might be quite high. Also, you get into the type of problem when
23 this was brought up before when Senator Hansen raised it in cases
24 where there is little probability of their having transferred assets,
25 asking people without need to look as to if everything they sold

1 was just for those purposes.

2 Senator Curtis. Who pays the cost?

3 Mr. Humphreys. The administering?

4 Senator Curtis. Yes.

5 Mr. Humphreys. A shared cost. 50 percent state, 50 percent
6 Federal.

7 Mr. Fullerton. Mr. Chairman, I would like to make a quick
8 statement about this. The problem arises out of the coordination
9 between SSI benefits and Medicaid. In most states, when you are
10 eligible for SSI, you are automatically eligible for Medicaid.
11 In SSI, the problem does not arise so much with the assets, and
12 the real question, as was pointed out that the economic cost-
13 benefit to get that into that thing in the SSI program, where
14 it clearly is in Medicaid.

15 The Department has been reviewing this very carefully over
16 the past few weeks and we arrived at this conclusion at this
17 point. We really think it should be mandatory on the states for
18 Medicaid and we think it probably ought to be mandatory in SSI and
19 AFDC. At the same time, we recognize the kind of problems that
20 Mr. Humphreys is talking about and there would be some question
21 whether, in the cash benefits act, this would really be matching
22 up administrative costs against benefit savings, whether it would
23 really be worthwhile. We cannot say we know the answer to that.
24 for sure. Nonetheless, we have some problems with the situation
25 where states in some cases give different types of treatment to

1 people under Medicaid than they do in some other states. In
2 balance, we come in at the moment as favoring a mandatory progra.

3 Senator Curtis. In favor of a mandatory program.

4 Mr. Fullerton. Yes.

5 Senator Curtis. To that extent, you disagree with Mr. Con-
6 stantine?

7 Mr. Fullerton. Yes, sir. I do that several times.

8 Senator Curtis. I am not tryint to referee it. I just would
9 like the record clear. I do not know how much of a problem this
10 is, but I do not like to be on record saying to a state that unless
11 you particularly want to, we do not need to pay any attention to
12 somebody who fraudulently transfers assets. I would be inclined
13 to follow the Department's recommendation.

14 Senator Hathaway. May I ask a question?

15 The Chairman. Why do we not vote on it?

16 Senator Talmadge. That is all right with me.

17 The Chairman. All in favor, say aye.

18 (A chorus of ayes.)

19 Senator Hathaway. Mr. Chairman, I would like to offer an
20 amendament.

21 I do not think thatthe bill says that they have to show that
22 the transfer is for the purpose of qualifying for this assistance,
23 does it? It is just ipso facto, if they transfer assets for less
24 than a fair market value, then as a result of that do qualify they
25 could be suspended?

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1 Mr. Fullerton. Yes, sir.

2 Senator Hathaway. I would insert therein an amendment to
3 Senator Curtis's amendment that they have to show that this is for
4 the purpose of qualifying for medical assistance. There may be
5 some legitimate transfers, gifts to a son or daughter.

6 The Chairman. Mr. Constantine?

7 Mr. Constantine. Joe and I have gone into this in some fair
8 detail. You are going to run into a lot of legal hassle of prov-
9 ing intent. For example, someone in a nursing home who has been
10 on their own paying, and she has some property and she may be senile
11 and the kids bring in something, a piece of paper, asking her to
12 sign over all her property. How do you establish her intent?

13 Those are the kinds of things you run into.

14 What we had hoped you might want to do is just protect the
15 states who want to do this, or make it mandatory for Medicaid only
16 then ask for a report back. It is going to involve -- it may
17 involve a great deal of hardship on families and people.

18 The Chairman. Why do you not say if the states want to pro-
19 tect themselves against transfers to impoverish themselves the
20 states may do so. They can do it, if they want to do it.

21 Let them struggle with the problem. It is their option, is
22 that not right?

23 Mr. Constantine. That is what we are recommending, that it
24 be at the states' option, which some of the states are exercising
25 and are fearful they cannot.

1 Senator Curtis is suggesting that it be mandatory.

2 Senator Bentsen. I thought that is what we were voting on.
3 I did not vote because I do not agree, frankly. I think Jay has
4 a very legitimate point, that you ought to see that good faith
5 is exercised by the state and a reasonable effort made, but to
6 make it aware it is all inclusive, I think you may have some
7 serious administrative problems.

8 We ought to try to structure some language where the state
9 has made a good faith effort in these cases, but leave some
10 discretion in there for them to achieve the objective.

11 The Chairman. You might as well just forget about it if you
12 go into the intent of the donor. You might as well forget about
13 the thing.

14 Senator Danforth. Mr. Chairman, why not achieve the same
15 objective that Senator Hathaway suggests by limiting it to trans-
16 fer of members of the family of the recipient. Would that not
17 accomplish that same objective?

18 Senator Hathaway. The transfer to the members of the family,
19 they would have to prove intent.

20 Senator Danforth. It would seem to me a transfer to a
21 family member below cost would establish a prima facie case of
22 fraud.

23 Senator Hathaway. I would just as soon shift the burden to
24 the donor. He has to go back to make a prima facie case. If his
25 transfer is at less than fair value, then the donor can come back

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1 and rebut that, by qualifying for Medicaid, saying I gave it to
2 my son for this or that reason -- perfectly legitimate to do so.
3 Put the burden on the donor to sustain.

4 Mr. Constantine. Joe indicates the states are saying a lot
5 of transfers take place to people other than members of the
6 family, Senator Danforth. Joe has been working with the states
7 on this.

8 Senator Danforth. A lot of the transfers are made --

9 Mr. Constantine. To people other than members of the family.

10 Senator Danforth. Below cost?

11 Mr. Constantine. We do not know whether it is below cost,
12 but the transfers are taking place.

13 Mr. Fullerton. It might help if I pointed out that we are
14 talking about this kind of a situation. The Iowa Medicaid Director
15 talked to me about this a few months ago. He has situations where
16 people wind up with very little cash income coming in so they
17 can meet the Medicaid eligibility on that point, but they may have
18 several hundred thousand dollars put away. And the question is --
19 even more, in some cases we are talking about -- the question is,
20 should that person then go into a nursing home that is usually the
21 kind of case we are talking about, should Medicaid then pay right
22 away the combination of state and Federal funds for that nursing
23 home care and not have the Federal government, or the State govern-
24 ment, get ahold of any or part of those assets?

25 What people are doing are transferring those assets to relatives

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1 or to others in order to avoid that situation and have a combina-
2 tion of the state and Federal governments pick up these costs
3 right away.

4 That is essentially the kind of situation there is.

5 Senator Bentsen. Mr. Chairman, I do not think we can possibly
6 anticipate all of the various schemes, the way people will try to
7 get around this, and that is why I think you have to give some
8 discussion to the state agencies to take the appropriate steps and
9 make a good faith effort to try to track this down.

10 The Chairman. What you ought to do in something like that,
11 really, in those situations, to simply let it be taxed at death
12 at about 50 percent for estate tax purposes and do not allow the
13 usual deductions. If you pay the money to pay all of these bene-
14 fits, when the people pass away you collect a substantial inheri-
15 tance tax in percentage terms on the estate. So you get some
16 money out of that, and the old people can keep their assets until
17 the Good Lord calls them home.

18 That makes a lot better sense then it does to have some
19 fiasco where they have it transferred away from their estate and
20 give it to their children and the same kind of people come along
21 looking for what old Grandpa has. If he has to turn to them, he
22 cannot find them. They have gone out to other endeavors, they
23 have interest in other things when he needs them.

24 I saw a situation up there in Harry Byrd's state of Virginia,
25 which would be typical in Louisiana, I know, where some dear old

1 person -- I picked him up on the highway. He had been to see the
2 doctor and he was all by himself. The only company he had was
3 his mule. Nobody around to see him, nobody taking any interest
4 or anything of that sort.

5 One day the Good Lord called him home and I bet by then there
6 was a whole host of automobiles. Every relative for God's creation
7 has showed up to see what they are going to get now that the poor
8 old thing has died.

9 It turns out he wanted to leave everything he had to his
10 cousin down the road who was the only person who showed any inter-
11 est in him. That dear old man said, do not leave me nothing,
12 because I do not want to fight all that bunch of relatives when
13 they show up, so he would not have anything the poor old soul had
14 left. All the rest of them showed up to claim something.

15 In that situation, let the government collect a little tax
16 and let the poor old man keep what he had. We would all be better
17 off and so would he and that would be a better answer to it than
18 to get involved in all of this thing about who he gives it to and
19 who he does not give it to. Just collect the tax when he dies.

20 Senator Curtis. Mr. Chairman, I am perfectly willing -- in
21 fact, I think it is right -- to grant rather wide discretion to
22 the state on how they administer this, so we are not laying down
23 a requirement that they spend \$10 to go after \$1. But, at the same
24 time, I do not favor where we, in effect, say to some states, if
25 you want to disregard this business of transferring assets, we have

1 no objection. That is what it amounts to, when you leave it
2 entirely to the states.

3 Mr. Swoap. What it would be possible to do, Senator Curtis,
4 is to make it mandatory but to apply the amendment that Senator
5 Hathaway has suggested, which would make it a rebuttal presumption
6 that they did so transfer in order to qualify.

7 Senator Hathaway. It is all right with me.

8 Senator Curtis. It is all right with me.

9 The Chairman. I swear, you would be better off just to put a
10 tax on the assets that he has left and let him go ahead and get
11 the benefit of it, not even argue about it. I will try to work
12 that out for you later on.

13 If you think you have an answer, go ahead, do it your way.

14 Senator Curtis. As modified by Senator Hathaway.

15 The Chairman. All right. We will take the Curtis-Hathaway
16 amendment. All in favor, say aye?

17 (A chorus of ayes.)

18 The Chairman. Those opposed?

19 (No response)

20 The Chairman. The ayes have it.

21 The next item?

22 Senator Hathaway. I have a few here which I think are not
23 controversial.

24 The Chairman. Senator Nelson had his hand up first.

25 Senator Nelson. That is all right. Hathaway is running this

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1 year.

2 Senator Hathaway. One amendment with respect to conforming
3 Section 1122 of the Social Security Act on the state certificate
4 of need requirement, to conform it with what the Health Planning
5 amendments which we just passed a week or so ago to raise it from
6 the certificate of need on equipment from \$100,000 to \$150,000.

7 That is what the Health Planning Agency amendments just passed
8 did and, of course, the reason for that is because of the increased
9 cost of a lot of equipment. If you leave it at the \$100,000 level,
10 you are just going to have a lot of equipment. Actually, the
11 \$150,000 reflects what kind of equipment we are talking about.

12 Senator Talmadge. I see no objection.

13 The Chairman. Without objection, agreed.

14 Senator Hathaway. Another amendment would eliminate the 100
15 day home health care provision which we now have in the law, 100
16 visits. The testimony indicated pretty clearly that this would
17 not add very much cost at all and that it is an unnecessary and
18 unreasonable limitation. That is really the basis of it. This
19 would just leave it open-ended, so that you can have more than
20 100 home visits, an unlimited number, actually.

21 The Chairman. Does that create a problem?

22 Mr. Constantine. No. It would be unlimited for both Part A,
23 where we have 100 visits today, and unlimited for Part B of
24 Medicare, because we have home health on both. The number of
25 people who use more than that are relatively few, but for those

1 who need it, it is a lot.

2 I believe the cost is \$5 million, the additional cost to the
3 program of eliminating the numerical limitation on home health
4 visits.

5 The Chairman. Without objection, agreed.

6 Senator Hathaway. The third one, I also believe is not
7 controversial, is with respect to the audit requirement. I think
8 now under the law we have, the Federal government pays for the
9 audit of Medicare only and shares on a 50-50 basis with the states
10 with respect to Medicaid. And what it is, child and family health
11 services.

12 I would just eliminate the 50-50 cost sharing basis and have
13 the Federal government pay for the entire audit.

14 Mr. Constantine. I believe in discussion with you earlier,
15 this is a provision identical to that approved by the Ways and
16 Means Committee and Interstate and Foreign Commerce to provide for
17 a common audit today, but again, in Medicaid audits, they have a
18 lot of duplication. They may go in two weeks later on the same cost
19 report.

20 The proposal simply provides that Medicare does the basic
21 audit and under the House provision, they share proportionately
22 in the cost; if Medicaid uses 50 percent of the hospitals, they
23 usually pays half and Medicare 50 percent, they pay half.

24 Your amendment also says that as long as Medicare has to do
25 it anyway that the states' liability would only be for any

1 additional audit costs that it may require.

2 Senator Talmadge. That would save money, would it not?

3 Mr. Constantine. Yes, sir. It would save something like
4 \$30 million is what we have worked out with the Administration a
5 year in Medicaid.

6 Senator Talmadge. Is there any objection to the amendment?

7 Without objection, it is agreed to.

8 Senator Hathaway. Mr. Chairman, I have another one with
9 respect to the three-day requirement before you can get the home
10 visit. It seems to me that that is an unnecessary condition and
11 also it seems to me it proves unnecessarily costly because you
12 get physicians who are going to refer the patient to a hospital
13 for three days just so they can qualify for the home visits.

14 The hospital stay is going to cost them considerably.
15 Presumably, if they really need the three days in the hospital,
16 the physician will send them there.

17 It seems to me sufficient that the physician merely certify
18 that they need home health care without this additional requirement
19 of staying three days in the hospital which is, in many cases,
20 just a gimmick, a costly gimmick.

21 Mr. Constantine. It is taken care of in the unlimited visits
22 now because we do not have any deductible or co-insurance on the
23 home health visits. As long as you take the limit off that, it
24 is kind of academic as to whether there is a prior hospital stay.

25 Mr. Fullerton. Let me precise about that, Senator. Essentially

1 what Jay is saying, when you take off the home visit limitation
2 of Part B, practically everybody over 65 is eligible for Part B
3 and then you will have no limit, so that a hospital stay would not
4 be an impediment for getting unlimited.

5 There are, however, some people who are eligible for Part A
6 who have not taken Part B. It would still be under a 100-visit
7 limitation.

8 I want to point out as far as the Administration is concerned
9 the net effect of these amendments is to increase the cost of the
10 program.

11 Senator Talmadge. Are you opposed to the amendment?

12 Mr. Fullerton. Yes.

13 Mr. Constantine. Senator, the cost for that Part A is 5
14 percent of the elderly population who do not have that would be
15 relatively nominal compared to the other. As long as you are doing
16 it, you might as well just clean it.

17 Senator Hathaway. Do it in both parts.

18 Senator Talmadge. Any objection?

19 Without objection, it is agreed to.

20 Senator Hathaway. This may be a little more controversial.
21 I would like to eliminate the three-day requirement with respect
22 to the nursing home care, also for the same reasons, because many
23 times physicians simply send their patients to the hospital so
24 that they can send them out to the nursing home. It just adds hospital
25 care costs that are unnecessary.

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1 I presume that if the physician really thought he needed
2 the hospital care, he would send him there.

3 Mr. Constantine. That one costs.

4 Senator Hathaway. I understand it does, but I do not under-
5 stand why.

6 Mr. Constantine. Basically, the skilled nursing benefit in
7 Medicare as it is in the statute would be for someone who would
8 require institutional care. A substitute for that-- and that was
9 the original intent. If you knock out the three-day stay was
10 an attempt to establish that the patient had a condition severe
11 enough to require hospitalization. It was an acute care program,
12 essentially.

13 Pulling that out -- and there are a lot of reasons for doing
14 it at this point in time, because when Medicare started, we are
15 talking about Medicare costs of \$44 a day, not quite the same
16 thing as today.

17 It makes it a lot easier to make it into a straight long-term
18 care benefit, moving people in rather than post-acute care.

19 I do not know what the cost estimate on that is.

20 Mr. Fullerton. Let me describe the proposal. In the present
21 situation, you have to be in the hospital three days to be eligible
22 for the skilled nursing benefit. There was a lot of concern at the
23 beginning of the program whether people could actually be put into
24 a hospital solely for the purpose of becoming eligible for the
25 benefit. That was a legitimate concern.

1 All the data we found over the 12 years of the program now
2 indicate that that has not happened. That is, we will not save
3 any money from hospitalization costs by removing the three-day
4 requirement because we find very, very few cases that would be in
5 the category of going in the hospital solely for that purpose.

6 As Jay points out then, what happens if you remove the
7 limitation on those people whose condition is serious enough to
8 require skilled nursing care, but not serious enough to go to a
9 hospital for instance means that additional persons will be
10 eligible for the benefit -- not great numbers, but significant
11 enough that our cost estimate is something in excess of \$100
12 million a year. If you remove that three-day requirement, there
13 would be some offsets in the Medicaid program, but probably not
14 significant -- on the order of \$100 million-plus.

15 Senator Hathaway. These people do need the skilled nursing
16 care, so we are depriving a certain segment of the population.

17 Mr. Fullerton. Yes, you can point to many areas.

18 Senator Hathaway. You are not saying it is inequitable,
19 just costly?

20 Mr. Fullerton. There are many areas of Medicare where
21 benefits are inequitable. You could make a very good case for
22 coverage. It is always a question of balancing the costs associ-
23 ated.

24 Senator Talmadge. You are opposed to the amendment?

25 Mr. Fullerton. Yes, sir.

1 Senator Hathaway. Mr. Chairman, just to see how the
2 Committee feels, I would ask for a vote.

3 Senator Talmadge. All in favor of the amendment, hold up
4 your hands.

5 (A show of hands.)

6 Senator Talmadge. All opposed?

7 (A show of hands.)

8 Senator Talmadge. The amendment fails.

9 Senator Hathaway. Let me propose this one so I could have
10 your thoughts on this. The definition of home health care requires
11 I think, that the person who is providing the home health care
12 just provide nealth services. I think we recognize many people
13 just getting home from the hospital do not need services, but they
14 need somebody to make the bed, a few things like that. That is not
15 covered.

16 I understand this would be extremely costly. I was going
17 to propose this amendment, but in view of the vote I just got,
18 I just wanted to ask you what you thought what the cost of that
19 additional care would be?

20 Mr. Constantine. We do not know, Senator. The Finance
21 Committee added an amendment in 1972 to H.R. 1 authorizing demon-
22 strations with homemaker services up to three weeks following
23 discharge from the hospital, to see if that facilitated timely
24 discharge. You can have an 80-year old woman who has been in the
25 hospital. She is weak. She has an 85-year old husband at home

1 who really cannot do the cooking and so on and so forth. It
2 puts a lot of pressure on the doctor, understandably, to keep
3 her in there longer because there is no one to take care of her.

4 I do not know what has happened with those demonstrations.

5 The Committee wanted to test exactly what you are talking
6 about, that that was in 1972. I assume that the Department is
7 getting around to that right about now.

8 Mr. Fullerton. Yes, we have some studies. The demonstration
9 studies to which Jay referred to were very broad in scope. The
10 problem with demonstrations -- you do not always find someone
11 who would like to do it. We cannot go out and do it ourselves.
12 We have to get someone who is interested in doing these things.

13 I would be glad to furnish you all the information we have
14 on this particular point.

15 Senator Hathaway. How soon would we get that? I may offer
16 this on the Floor.

17 Mr. Fullerton. I will have this up to you within a day or
18 so.

19 Senator Hathaway. Will that include costs?

20 Mr. Fullerton. Yes. We will work with you and your staff.

21 Senator Talmadge. Mr. Constantine, what else do you have?

22 Mr. Constantine. I think Mr. Hathaway has another amendment.

23 Senator Hathaway. One last amendment. I am offering this
24 on behalf of Senator Dole; I am cosponsoring it with him.

25 Section 4 of S. 1470 provides Medicare and Medicaid

1 reimbursement to small, rural hospitals of 50 beds and under for
2 long-term hospital care if the occupancy is 60 percent or less.

3 Senator Dole and myself would like to eliminate that 60 per-
4 cent requirement. It seems totally unnecessary. If you have open
5 beds, why not use them for long-term care? The long-term care has
6 to be certified.

7 Senator Talmadge. That was the intended provision in our
8 bill, Senator Hathaway. I see no objection to it.

9 Any objection?

10 Without objection, it is agreed to.

11 Senator Hathaway. Thank you, sir.

12 Senator Talmadge. Senator Nelson?

13 Senator Nelson. Thank you, Mr. Chairman.

14 I raised this question, or proposed an amendment to Section 2
15 a couple of weeks ago, and I will propose it again and ask for
16 a roll call because there are about 6 or 7 members of the Finance
17 Committee who favored the amendment, and because I will be
18 proposing it on the Floor of the Senate.

19 I would simply like to say, and will say, that we should not
20 kid ourselves that we are really undertaking in this pending
21 measure to significantly affect the cost, the hospital cost.
22 The amendment I propose would extend the whole Talmadge concept
23 with some modifications to all third-party payers. The Medicaid
24 and Medicare covers about 30 or 40 percent of the total hospital
25 cost.

1 It would adopt -- it would conform to the principle of the
2 Talmadge bill which allows the hospitals to make their voluntary
3 effort to contain costs and if they fail, then the same provisions
4 that apply, basically the same provisions that apply in the Talmadge
5 bill for Medicare and Medicaid will apply to all third-party payers
6 and private payers.

7 Now, there is a chart before you, the estimates on the savings
8 of S. 1470 under Section 2 are \$589 million in five years.

9 The Human Resources Committee, of which I am a member,
10 reported a bill with only two or three dissenting votes that would
11 achieve \$559 billion of savings in five years.

12 This proposal, which is more modest, would save an estimated
13 \$35 billion. I would point out that the savings would involve
14 \$11 to \$13 billion for the Federal government and \$20 to \$24 bil-
15 lion for the state governments and private payers.

16 It does seem to me that if the principle of containing the
17 cost of hospitals is valid to apply to Medicare and Medicaid,
18 it is valid to apply to all of them. If, in fact, we want to
19 reduce the Federal budget, we ought to take this opportunity to
20 make a bigger reduction than any other program that I know of.
21 \$11 to \$13 billion, \$30 to \$40 billion overall including the
22 Federal budget and private payers and state governments.

23 Now, the system is not going to work. The one test case that
24 we have got that I know of is up in New York where they applied
25 cost containment to Blue Cross. I mentioned this once before; I

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1 will repeat it -- the Knox Hill Hospital in Manhattan with Blue
2 Cross Control, the daily rate is \$241 for the private individual
3 and commercial insurance -- not \$241, but \$442. \$201 a day more.

4 What do they do? When they controlled Blue Cross, the
5 hospitals just made it up by just adding onto the private and
6 commercial payers.

7 I have a list of eight hospitals here in New York all demon-
8 strating the same thing. Huntington in Long Island, \$150 under
9 the controlled price of Blue Cross, \$227 for the private.

10 Albert E. Medical Center, \$131 under Blue Cross, \$242
11 for the private and third-party payers. And so it goes through
12 all of these with differences as high as \$201 a day, so that we
13 are kidding ourselves, if we really think that this is going to
14 work.

15 Secondly, if the principle is sound for hospitals, and all
16 of them do have Medicare and Medicaid, if that is sound, it ought
17 to apply to all of them. So I think that it is a tragedy that
18 the Congress is not really facing up to the issue.

19 This morning, Tip O'Neill sent over something that came into
20 his hands from his state -- two days of hospital by a young man
21 in the New England Medical Center cost, two days, \$2,330.99.

22 So if we are going to do something meaningful, it seems to
23 me -- I know the votes are not there -- I will ask for a roll call.
24 I have the proxies of Senators Ribicoff, Senator Kaskell, Senator
25 Matsunaga and then I would ask that those who are not here be

1 polled before the end of the day so that they can be recorded,
2 because I think that there are seven who, at one time or another,
3 including myself, six, who at one time or another wanted to be
4 recorded on this issue.

5 Senator Talmadge. I think that is a fair request, Senator
6 Nelson. I do want to point out on page 18 of the bill, line
7 18(E), "not to increase amounts due from any individual,
8 organization, or agency in order to offset reductions made
9 under section 1861(bb) in the amount paid, or expected to be
10 paid, under this title."

11 We are attempting to approach it in that way.

12 Senator Danforth?

13 Senator Danforth. Let me say, as Senator Nelson has explained
14 his amendment, it differs somewhat from what I thought Senator
15 Nelson's amendment would be. Just to reiterate what I understand
16 you are saying, you are saying, with respect to third-party
17 payers other than Medicaid and Medicare, you want to do nothing
18 immediately until you find out whether or not the voluntary pro-
19 gram is going to work?

20 Senator Nelson. We do spell out in the bill what the
21 American Hospital Association says -- the first year, a 2 percent
22 reduction. Then, the next three years, 4 percent per year or
23 until a rate of increase not to exceed 1.5 times the cost of
24 the increase. The compulsory rate would trigger if they did not
25 meet that standard on the same date that Senator Talmadge's

1 would be -- July 1, 1979.

2 Senator Danforth. If they did not meet that standard, what
3 that would trigger, as I understand it, is the application of
4 the Talmadge method from other third-party payers. That is, the
5 same average incomes that Senator Talmadge proposes rather than
6 a cap of some kind, but the same averaging concept.

7 Further, under your amendment, that would apply only to
8 routine costs, and not to the so-called ancillary costs.

9 Senator Nelson. No. The amendment I propose would apply to
10 ancillary costs as well.

11 Senator Danforth. Would it apply to ancillary costs under
12 Medicare and Medicaid also?

13 Senator Nelson. All of them, Medicare, Medicaid, all third
14 party and private parties, we would cover ancillary costs.

15 Senator Danforth. You propose two things. You propose to
16 extend it to all ancillary costs and to extend it to all third
17 party payers.

18 Senator Nelson. Correct.

19 Senator Talmadge. Are you ready for the vote? Do you want a
20 record vote?

21 Senator Nelson. Yes.

22 As I said, there are others who wanted to be recorded.

23 Senator Talmadge. The Clerk will call the roll.

24 Mr. Stern. Mr. Talmadge?

25 Senator Talmadge. No.

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1 Mr. Stern. Mr. Ribicoff?
2 Senator Nelson. Aye, by proxy.
3 Mr. Stern. Mr. Byrd?
4 Senator Byrd. No.
5 Mr. Stern. Mr. Nelson?
6 Senator Nelson. Aye.
7 Mr. Stern. Mr. Gravel?
8 (No response)
9 Mr. Stern. Mr. Bentsen?
10 Senator Bentsen. No.
11 Mr. Stern. Mr. Hathaway?
12 Senator Hathaway. Aye.
13 Mr. Stern. Mr. Haskell?
14 Senator Nelson. Aye, by proxy.
15 Mr. Stern. Mr. Matsunaga?
16 Senator Nelson. Aye, by proxy.
17 Mr. Stern. Mr. Moynihan?
18 Senator Moynihan. Aye.
19 Mr. Stern. Mr. Curtis?
20 Senator Curtis. No.
21 Mr. Stern. Mr. Hansen?
22 (No response).
23 Mr. Stern. Mr. Dole?
24 (No response)
25 Mr. Stern. Mr. Packwood?

1 (No response)

2 Mr. Stern. Mr. Roth?

3 (No response)

4 Mr. Stern. Mr. Laxalt?

5 (No response)

6 Mr. Stern. Mr. Danforth?

7 Senator Danforth. No.

8 Mr. Stern. Mr. Chairman?

9 Senator Talmadge. The Chairman is not here.

10 The ayes are six, the nays are five. The absentees will be

11 polled.

12 Senator Nelson. Mr. Chairman, I have two amendments that I

13 would like to raise. I think one of them is noncontroversial --

14 maybe both.

15 An amendment -- I guess the staff has it, and the staff is

16 aware of these two amendments, one of them is to require uniform

17 require HEW to develop uniform claim forms within the next two

18 years.

19 Senator Talmadge. Any objection?

20 Senator Nelson. HEW does approve of it.

21 Senator Talmadge. Without objection, agreed to.

22 Senator Nelson. The second one, I have a letter from Mr.

23 Califano who does support this and raises some questions. This is

24 the question there is a disparity nationwide between participating

25 Medicare and Medicaid nursing facilities and it varies from state

1 to state. Some states many homes would be eligible for Medicare
2 and participation, but they only participate in Medicaid. Some
3 states, including my own and Wisconsin, they have begun enacting
4 laws to require nursing homes to participate in Medicare as a
5 condition of participating in the state-Federal Medicaid program.

6 This amendment would require that participation in one program
7 as a condition of participation in the other.

8 In my state, there are 42 of 72 counties that have no Medicare
9 participating nursing homes. This would require that if you
10 participate in one, you participate in the other.

11 Secretary Califano wrote a letter to me on this one in which
12 he says, while we recognize that there are dangers implicit
13 in requiring participation in both programs, on balance we would
14 support the proposed change.

15 Senator Talmadge. Mr. Constantine?

16 Mr. Constantine. The only thing we would suggest is that
17 the Committee include in report language its concern that the
18 operation of this not serve to drive facilities which now take
19 Medicaid patients, have a mix of private and Medicaid --

20 Senator Talmadge. Speak a little louder.

21 Mr. Constantine. Facilities which have a mix of Medicaid
22 and private patients but choose not to participate in Medicare
23 because, for a couple of patients, they have to go through a lot
24 more paperwork, and so on. The effect of this might drive some
25 of those out of Medicaid as well, so that they just go to private.

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We would suggest that you ask the Department to monitor this very carefully and report back to you with anything of that nature that seems to be occurring so that you could review the matter again.

In other words, the Nelson amendment -- Senator Nelson's amendment makes sense except with that one caveat and concern we would have that it might push some of the facilities out of Medicaid as well.

Senator Talmadge. Mr. Fullerton?

Mr. Fullerton. Mr. Chairman, as Senator Nelson has indicated, the Department has no objection. There are some states now which on their own under Medicaid programs have required nursing homes that participate in Medicaid to also participate in Medicare. So far, our monitoring of the situation has not indicated that we would have the kind of problem Jay refers to. Of course, we would be glad to monitor it at the direction of the Committee.

Senator Talmadge. Any objection?

Without objection, the Nelson amendment is agreed to.

Mr. Curtis?

Senator Curtis. Mr. Chairman, this is a matter that we discussed before, but I had the draft language here. It relates to the feature of Social Security, Mr. Chairman, and here is what it is.

We changed the method of reporting or account for self-employment and there were farmers who retired, quit farming, let

1 somebody else have the farm and so on, but they were disqualified
2 for Social Security because they sold some grain that had been
3 raised the year before.

4 Senator Talmadge. I thought we had already agreed to that.
5 Senator Curtis. Yes, but I wanted to improve the language.

6 And also, insurance agents retired, did not sell any more
7 insurance but they got some renewal premiums. And the way the
8 law was changed a year or so ago, that made him ineligible for
9 the Social Security retirement.

10 Senator Nelson. Previously they were not ineligible?
11 Senator Curtis. That is correct.

12 What this does -- I am reading from the memo from HEW -- they
13 did not clear this all the way up with management, with Budget
14 or the Secretary, but they did cooperate in the drafting, and it
15 limits the exclusion on farming to grain held over one year and
16 it limits the exclusion of renewal premiums to insurance sold
17 before the retirement, and it also takes care that it does not
18 apply if they have other earnings.

19 Senator Talmadge. You proposed that be attached to some
20 House-passed revenue bill?

21 Senator Curtis. Either that one or this one.

22 Senator Talmadge. Which one do you want to attach it to?
23 This is basically a cost-control bill. I would suggest that
24 we pick a bill passed by the House.

25 Senator Curtis. We will leave it that way, with instructions

1 to staff.

2 Senator Talmadge. Any objection to the Curtis amendment?

3 Without objection, agreed.

4 Mr. Danforth?

5 Senator Danforth. Intend to supporting, when all the
6 votes are counted, the Nelson amendment will not carry, I would
7 like to make a suggestion with respect to report language.

8 I am very sympathetic with one of the concerns that has been
9 expressed on this bill and that is that the possibility that
10 the costs will simply be shifted from Medicaid and Medicare to
11 other insurers.

12 It would seem to me that if that were to occur, it would
13 really be a negative result, but it would be contrary to what
14 we are trying to accomplish. So I wonder if we could include
15 in the report language, in the report language which could be
16 worked out with the staff which would take the position that the
17 Committee intends that this bill be a genuine reform and not
18 simply a matter, not simply a way, of passing on costs that would
19 otherwise be incurred by Medicaid.

20 Senator Talmadge. If the Senator would yield, we have that
21 exact language in the bill, page 18, line 18. Certainly there
22 would be no objection to tightening it up in the Conference
23 Report.

24 Without objection, that language would be made very clear
25 and very tight in the conference report.

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1 Senator Danforth. And furthermore, Mr. Chairman, that the
2 Commission that will be established under this bill, that it is
3 hoped that it will assume the obligation of analyzing what is done
4 by way of transfers to other insurers and reporting back to the
5 Committee its findings so that we can reopen the question again,
6 if this kind of transfer takes place.

7 Senator Talmadge. Without objection; Mr. Fullerton?

8 Mr. Fullerton. I would just like to make one point, Mr.
9 Chairman, if I may. The concern Senator Danforth expresses is a
10 real one. It accounts, in large part, for the Administration's
11 taking the position 18 months ago to recommend to the Congress to
12 control all hospital costs.

13 The provision in the bill -- I will be very honest with you,
14 no matter how tightly you draft it or what you write in the
15 report, it will be very difficult to administer.

16 Jay indicated that at an earlier meeting. It would be a real
17 question of whether we would be able to control that. We are
18 out in the private sector now saying to the hospitals in their
19 dealings with insurance companies and Blue Cross plans, we have
20 to monitor and somehow control that.

21 That is going to be very difficult for us, and I would not
22 want to have the Committee think that it will not be difficult.
23 It will be very difficult.

24 Senator Talmadge. Without objection, the Danforth tightening
25 up language will be agreed to. Does staff have further amendments?

1 Mr. Constantine. One clarification.

2 In response to the earlier request, we checked -- let's see.
3 The average return, according to the Fortune 500 industry was
4 12.3 percent return on equity after taxes, net equity after
5 taxes in the last ten years; for proprietary hospitals, we do
6 not have the average. We just have a range of 5.8 percent to 31
7 percent. And, as I said earlier, for public utilities, 11 to
8 14 percent return on equity after taxes.

9 We believe that the proposal we made is within that range,
10 has that effect -- that is, one and a half times for the inef-
11 ficient, the two times for those in the band, and two and a half
12 times for those that are below average in cost and also earn
13 incentive payments.

14 Senator Talmadge. Is there objection?

15 Without objection, it is agreed.

16 Senator Danforth?

17 Senator Danforth. Senator Dole has asked me to bring up
18 some six amendments that he proposes.

19 Senator Talmadge. Could we clear up these staff amendments
20 and then get to that?

21 Senator Danforth. Certainly.

22 Mr. Constantine. We have a provision in the bill, Section
23 31 of Medicaid performance standards for the states, most of
24 which are being dealt with either administratively or in other
25 legislation. What we did in the draft bill was to distill that

1 down where we left it, a provision that now simply requires that
2 in the event of any audit deficiency of the state, all things
3 wrong with the state plan -- and meaning any of the Social
4 Security Act programs that the Chairman of the state legislature
5 committees, the authorizing and appropriating committees as well
6 as the Governor, be notified by HEW. That was in response to
7 members of the legislatures coming in here and saying they did
8 not know what was going on.

9 Senator Talmadge. Any objection?

10 Without objection, agreed to.

11 What else?

12 Mr. Constantine. We had another one which was a minor
13 technical defect. In 1972, the Committee approved the provision
14 designed to improve the handling of independent laboratory bills
15 by waiving the co-insurance where the laboratory contracted
16 directly with the Secretary because the cost of billing for those
17 small bills of co-insurance and deductibles was too great and it
18 would waive them for the beneficiaries.

19 Inadvertently, we left out the deductibles. The provision
20 has never worked. We waived the co-insurance, but forgot to
21 waive the deductible amount.

22 Senator Talmadge. Is there any objection?

23 Without objection, it is agreed to.

24 Mr. Constantine. The only other suggestion is -- other than
25 effective dates -- we would recommend the Committee include the

1 freedom of choice, modify the freedom of choice provision in
2 Medicaid to permit states to contract or to negotiate on a bid
3 basis, or other basis, with independent laboratories as they
4 choose.

5 The Finance Committee, in '67, put a Freedom of Choice
6 provision in, primarily to deal with free choice of a drug store,
7 or a hospital, or a doctor, but ordinarily, the patient does not
8 choose the laboratory.

9 The Comptroller General, in a recent report on July 1,
10 finally recommended that states be permitted to do this. It would
11 save them a great deal of money.
12 Senator Talmadge. The Department recommends it, as I under-
13 stand it.

14 Without objection, it is agreed to.
15 Anything else? Does that take care of these little amend-
16 ments?

17 Mr. Constantine. Just effective dates, Senator.
18 Bob, what were those effective dates?

19 Mr. Hoyer. There are a series of effective dates to conform
20 to the requirements of the Budget Act.
21 Senator Talmadge. Any objection to agreeing with them en
22 bloc?

23 Without objection, they are agreed to.

24 What about this little thing where these people furnish
25 wheelchairs?

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1 Mr. Constantine. At Senator Talmadge's request, we drafted
2 two provisions. One is a nominal one to clarify that in the
3 review of health care facilities under Section 1122 that it was
4 not intended that the approval process extend to the sale or trans-
5 fer of a facility for the same use of the same beds in an ongoing
6 operation.

7 HEW is trying to interpret that if someone has a hospital and
8 wants to sell the hospital for the same use without changing the
9 beds that that requires new planning agency approval.

10 The legislative history clearly indicates that was not
11 considered and not intended and the amendment would clarify that.

12 Senator Talmadge. Is there objection?

13 Without objection, approved.

14 Mr. Constantine. The second is for reimbursing durable
15 medical equipment. There is an enormous lag and inequity in
16 the Medicare basis of reimbursement.

17 Mr. Hoyer worked out a provision which we believe has nominal
18 cost and is considerably more equitable to both the government
19 and the medical equipment people, as well as the beneficiaries.

20 Senator Talmadge. Is there any objection?

21 Without objection, is it agreed to.

22 Does that cover it all, now?

23 Mr. Constantine. That covers everything.

24 Senator Talmadge. Senator Danforth?

25 Senator Danforth. Mr. Chairman, Senator Dole asked me to

1 raise six, to offer six, amendments on his behalf. The staff, I
2 think, is familiar with all of them.

3 One concerns dental care. One ambulance service. One
4 reimbursement for services of optometrists. One is Federal share
5 for the start-up cost of state rate programs. And one is to
6 encourage major philanthropic support for health care. The final
7 one is a study of spell of illness criteria defined for Medicare
8 reimbursement programs.

9 Senator Talmadge. I want to compliment Senator Dole. He has
10 worked very closely for several years. He is the Ranking Minority
11 Member of the Subcommittee.

12 Would these amendments cost additional monies, or a savings?

13 Mr. Constantine. The ambulance service one probably will
14 cost a very nominal amount. \$1 million, but you would save that
15 in your laboratory amendments, more than that.

16 The optometrist amendment we would suggest be moderated.

17 The other amendments --

18 Senator Talmadge. How would you moderate it?

19 Mr. Constantine. Modify it to exactly what was recommended
20 by the Department in the report required by the Committee under
21 the previous Dole amendment in, I believe, 1972.

22 How would you modify this?

23 Senator Danforth. Here is Senator Dole?

24 Senator Curtis. This is using optometrists and not optiamalo-
25 gists?

1 Mr. Fullerton. In the case of a situation of a patient who
2 needs attention, yes, sir.

3 Senator Curtis. In other words, if the special service to be
4 performed falls within the purview of their competence, they are
5 covered as other doctors?

6 Mr. Fullerton. Yes, sir.

7 Mr. Constantine. We suggest it be modified.

8 Senator Talmadge. We have suggested a modification of the
9 amendment.

10 Mr. Kern. The amendment we would recommend, Senator, is
11 basically a recommendation made by the Department based on the
12 studies that Senator Dole asked for. It would provide for reim-
13 bursement of service where services are performed, the natural
14 lens is removed and those services which are not reimbursed now
15 by optometrists would be reimbursed under the Department's recomen-
16 dation.

17 The cost for that is about \$7 million.

18 Senator Talmadge. Any objection to modifying it accordingly?

19 Mr. Kern. With respect to the broader recommendation for
20 coverage, the Department was unclear as to extending coverage
21 beyond --

22 Senator Talmadge. We would have order, please.

23 Mr. Kern. Staff would recommend there that the Department
24 study that further and have a definite recommendation for further
25 coverage.

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1 Senator Dole. Based on that -- and I understood that it was
2 a provision of the Department, I am willing to accept the
3 limited reimbursement for services to optometrists.

4 Senator Talmadge. Without objection, it will be so modified.
5 What are the other two?

6 Mr. Constantine. The other amendments, the dental service
7 amendment to clarify that the services which a dentist is
8 licensed to provide which may be performed by a doctor of medicine
9 are covered under the program. Was there any cost to that?

10 Mr. Fullerton. I want to make a point on the other one you
11 just adopted. It is not \$7 million for the more limited; it is
12 only \$1 million.

13 Mr. Constantine. The dental amendment clear up an inequity.

14 Mr. Fullerton. It is really a situation, Mr. Chairman, where
15 the procedure can be performed in the mouth by a physician and
16 dental surgeon. The question is if we will cover it.

17 Senator Talmadge. Do you favor the amendment?

18 Mr. Fullerton. Yes.

19 Senator Talmadge. What is next?

20 Mr. Constantine. We have gone through the ambulance service
21 where patients require transportation for certain conditions
22 such as a severely ill patient who may only be transported by
23 ambulance to receive therapeutic radiology to the clinic.
24 It is a meritorious amendment Ways and Means is considering
25 now.

1 Senator Talmadge. Without objection, agreed to.

2 What else?

3 Mr. Constantine. There is another provision to provide, in
4 the start-up costs, for any state ratemaking program under
5 Section 2 that the Federal government would bear the same
6 proportionate costs as they would of administrative costs.

7 Senator Talmadge. Is there any objection?

8 Without objection, agreed to.

9 Mr. Constantine. There is another amendment adding a
10 provision, taking the provision of the Long-Ribicoff-Talmadge-
11 Dole bill, exempting certain philanthropic support, which is
12 Administration policy, and making it statutory.

13 Senator Talmadge. Any objection?

14 Without objection, it is agreed to.

15 Does that cover them all?

16 Mr. Constantine. The second part would be a Committee
17 Report language encouraging states who do have rate making give
18 support to philanthropic giving and not discouraging it.

19 Then Senator Dole's last amendment was a study of spell of
20 illness criteria under Medicare reimbursement. We have a great
21 deal of difficulty. A lot of people have been working with
22 Senator Dole to try to make the spell of illness requirement
23 equitable. This would direct a specific study.

24 Senator Talmadge. Do you recommend this study, Bill?

25 Mr. Fullerton. Yes.

1 Senator Talmadge. Any objection?

2 Without objection, agreed to.

3 Does that conclude all the Dole amendments?

4 Mr. Constantine. Yes.

5 Senator Talmadge. Without objection, they are accepted en
6 bloc.

7 Are there any further amendments?

8 Senator Dole?

9 Senator Dole. Not for myself, but you are familiar with the
10 amendment of Senator Schweiker. He has introduced language
11 to exempt PSROs from the FOIA, if we would be willing to accept
12 this as an amendment to S. 1470.

13 There is some controversy. The Wader organization is on the
14 other side. Those who argue that they ought to be exempt feel
15 that the program may be emasculated by professional fears of
16 surveillance and all of this.

17 That is on one side. Then there is the other side. I do not
18 know.

19 Senator Talmadge. What about it, Jay?

20 Mr. Constantine. We believe that the Schweiker amendment is
21 meritorious. It preserves the confidentiality of the review
22 process. There is no candor when everything comes out in the
23 open.

24 Senator Talmadge. Do you have any objection?

25 Mr. Fullerton. No, sir. The Administration supports it.

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1 Senator Talmadge. Without objection, agreed to.

2 Are there any further amendments?

3 There being no further amendments, then, the Clerk will call
4 the roll on reporting the bill.

5 The absentees will have the opportunity to cast their ballot.

6 Mr. Stern. Mr. Chairman, with reference to that question,
7 since you will want a House bill, there is one remaining bill in
8 Committee whose substance has already become law -- tariff bill
9 H.R. 5285, which relates to the tariff treatment of filmstrips,
10 sheets and plates of certain plastic and rubber.

11 Senator Talmadge. Would that be agreeable to the Chair?

12 The Chairman. Fine.

13 Senator Talmadge. Then I suggest that we attach the bill to
14 that.

15 The Clerk will call the roll on reporting the bill.

16 Mr. Stern. Mr. Talmadge?

17 Senator Talmadge. Aye.

18 Mr. Stern. Mr. Ribicoff?

19 Senator Talmadge. Aye, by proxy.

20 Mr. Stern. Mr. Byrd?

21 Senator Byrd. Aye.

22 Mr. Stern. Mr. Nelson?

23 (No response)

24 Mr. Stern. Mr. Gravel?

25 (No r-sponse)

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Mr. Stern. Mr. Benson?

Senator Talmadge. Aye, by proxy.

Mr. Stern. Mr. Hathaway?

Senator Hathaway. Aye.

Mr. Stern. Mr. Haskell?

(No response)

Mr. Stern. Mr. Matsunaga?

Senator Talmadge. Aye, by proxy.

Mr. Stern. Mr. Moynihan?

Senator Moynihan. Aye.

Mr. Stern. Mr. Curtis?

Senator Curtis. Aye, and then I will make a statement.

Mr. Stern. Mr. Hansen?

(No response)

Mr. Stern. Mr. Dole?

Senator Dole. Aye.

Mr. Stern. Mr. Packwood?

(No response)

Mr. Stern. Mr. Roth?

(No response)

Mr. Stern. Mr. Laxalt?

(No response)

Mr. Stern. Mr. Danforth?

Senator Danforth. Aye.

Mr. Stern. Mr. Chairman?

1 Senator Curtis. Mr. Chairman, we have to vote on reporting
2 out before we know the outcome of the Nelson amendment. I do not
3 favor the Nelson amendment, and I want to be recorded the other
4 way if that carries, and I think there are others too. I did not
5 want to delay getting the matter to the Floor.

6 The Chairman. I would hope, if the Senator wants to insist on
7 offering an amendment, he can offer it on the Floor.

8 Mr. Stern. At the moment, the vote on the Nelson amendment
9 is seven to seven. For the moment, if it fails --

10 The Chairman. I want to vote no at this point. I would like
11 to reserve my right to vote differently on the Floor, but I
12 thought at one point that we had an understanding that the Nelson
13 amendment was not going to be raised in the Committee.

14 I am not saying that there was any agreement, I just thought
15 that we had an understanding, at some point.

16 Senator Curtis. I have to change my vote to no on reporting
17 out the bill.

18 The Chairman. Then the vote would be ten to one for report-
19 ing.

20 I would like to ask that the staff call these absent Senators
21 and ask them to answer their names for the record here.

22 Senator Dole. May I be recorded as voting no on the Nelson
23 amendment?

24 Mr. Stern. The vote is now seven to eight.

25 The Chairman. I want it understood that I will reconsider

1 my position when the matter is on the Floor. I just thought
2 that it should not be raised in the Committee, because it would
3 make it more difficult to get the bill out of here.

4 Senator Hathaway. I want to make a request of the House
5 Committee on Revenue Sharing.

6 The Chairman. I think we will just leave this open.

7 Senator Talmadge. Is the staff seeking to get some more
8 absent Senators?

9 Mr. Stern. Yes, sir.

10 Senator Hathaway. Mr. Chairman, I want to make a request.
11 Despite the fact that the House Subcommittee has voted down the
12 countercyclical revenue sharing bill for this year, my Subcommittee
13 has held hearings. I think we are ready to discuss this at the full
14 Committee level. I would hope that the Chairman would proceed,
15 despite the House vote.

16 I personally am in favor of simply continuing the present
17 countercyclical revenue sharing formula and I think that we could
18 pass that in the Senate. If it went over in the House in that
19 form, then we would have a good chance of passing it that way.

20 The Chairman. The House has never been very sympathetic.

21 Senator Hathaway. They could not find any compromises
22 with the Administration's recommendations, and that was the
23 reason for the adverse vote.

24 The Chairman. The House Committee was never very enthusiastic
25 about revenue sharing, and this Committee has been much more

1 favorable for revenue sharing.

2 I would be pleased to call the Committee together when the
3 appropriate time comes, Senator, and offer the Committee a chance
4 to vote on it and report a bill.

5 Senator Moynihan. I would like to encourage this. This is an
6 essential element of the President's urban policy. If we want
7 to stick with the formula which originally was Senator Hathaway's,
8 fine, but I hope that we will move that. I am very encouraged
9 by what you have said, sir.

10 The Chairman. I want to make it clear that I personally
11 favor the countercyclical revenue-sharing program. I think it
12 would be premature to terminate it at this point. It is going
13 what it was supposed to do. It is helping us to bring about an
14 orderly recovery and should not be discontinued until the
15 recovery is complete, so I will support it, and I will hope that
16 all those people at all levels of government who have at least
17 supported revenue sharing will continue to do so.

18 Senator Moynihan. I have one other matter.

19 Mr. Chairman, I would just like to report for the record that
20 the provisions in the tuition tax credit bill which were
21 discussed this morning all show a shift from August 1, 1980 to
22 October 1, 1980, the effective date of the increase in the maximum
23 credit which is for college students, from \$250 to \$500.

24 This is something we wish to have on the record.

25 Senator Talmadge. Are there any Senators on the way?

1 Mr. Stern. Mr. Chairman, I have just been told that
2 Senator Hansen votes against the Nelson proposal, which results
3 in nine votes against it, so that would be the determining
4 vote. At least as reported, the bill would not include the
5 Nelson amendment.

6 The Chairman. Have you sent word to ask the other Senators?

7 Mr. Stern. We have.

8 The Chairman. I would like to ask that they come. I would
9 like for at least two more, or three, Senators to appear in the
10 room and answer their names to vote. I will keep the roll open
11 until they do.

12 (A brief recess was taken.)

13 The Chairman. Thank you, gentlemen.

14 (Thereupon, at 12:15 p.m., the Committee recessed, to
15 reconvene at the call of the Chair.)

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