

1 EXECUTIVE COMMITTEE MEETING

2 FRIDAY, SEPTEMBER 29, 1995

3 U.S. Senate

4 Committee on Finance

5 Washington, DC.

6 The meeting was convened, pursuant to recess, at
7 11:30 a.m., in room SH-216, Hart Senate Office Building,
8 Hon. William V. Roth, Jr., Chairman of the Committee,
9 presiding.

10 Also present: Senators Dole, Chafee, Grassley,
11 Hatch, Simpson, Pressler, D'Amato, Murkowski, Nickles,
12 Moynihan, Baucus, Bradley, Pryor, Rockefeller, Breaux,
13 Conrad, Graham, and Moseley-Braun.

14 Also present: Lindy L. Paull, Staff Director and
15 Chief Counsel; Joseph H. Gale, Minority Staff Director
16 and Chief Counsel; Leslie B. Samuels, Assistant Secretary
17 for Tax Policy, U.S. Treasury; Ken Kies, Chief of Staff,
18 Joint Committee on Taxation; Roy Ramthun and Susan
19 Nestor, health analysts; and Kathy Tobin, Welfare and
20 Income Security Analyst.

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1 The Chairman. The committee will please be in
2 order. As you know, we have a great deal of work to do
3 today. In fact, I hope everybody ate a healthy breakfast
4 because I do intend to proceed through the lunch. I
5 would also like to advise the members that we will be
6 working late into the evening again tonight.

7 Our staff met last night after we completed our
8 hearing around 10:30. That is beyond the call of duty, I
9 think.

10 Senator Moynihan. They were here till 1:30, I
11 believe.

12 The Chairman. They were here till 1:30, that is
13 correct, to try to discuss amendments and prepare a list
14 of amendments that both sides can agree to. That list
15 should be on all the members' desks, and I would like to
16 have them approved en bloc.

17 Senator Moynihan. I so move, Mr. Chairman.

18 The Chairman. If there is no objection, the
19 amendments on this list are agreed to.

20 I would also point out that our staff is working on
21 another list of amendments that hopefully will be
22 agreeable, and I encourage, Pat, our mutual staffs, to
23 continue these discussions throughout the day. A master
24 list of amendments is also at your desk for your
25 reference.

1 We want to try to proceed in an orderly manner.
2 Senator Moynihan and I agreed what we would have a list
3 of amendments that members want to offer this morning.

4 The first amendment will be Senator Pryor, Nursing
5 Home Quality of Care. Again, we will abide by the 10-
6 minute rule.

7 Senator Pryor?

8 Senator Pryor. Thank you, Mr. Chairman. If I could
9 just wait a moment while our visitors are seated.

10 (Pause)

11 Senator Pryor. Would you like me to proceed now,
12 Mr. Chairman?

13 The Chairman. Yes, if you would, Senator Pryor.

14 Senator Pryor. Mr. Chairman and colleagues, thank
15 you very much. On behalf of Senator Rockefeller and
16 myself, I offer an amendment to the Chairman's mark which
17 would restore the federal, I do not even like to call
18 them regulations, I call them federal standards, for
19 nursing homes across America.

20 In 1970, Mr. Chairman and colleagues--I found this
21 the other day cleaning out an old box; I just showed it
22 to Senator Moynihan--this was how the New Republic
23 Magazine looked. That was 25 years ago. It has changed
24 quite a bit since then.

25 I contributed an article to the magazine, "Where We

1 Put the Aged," by David H. Pryor. And at that time,
2 colleagues, we had one million people in our country in
3 nursing homes, 25 years ago.

4 Today we have two million people in nursing homes, we
5 have four million people who will be in nursing homes
6 about 20 years from now. We are going to double the
7 nursing home population. We have 80 percent of today's
8 residents in nursing homes, colleagues, who depend upon
9 Medicaid.

10 We have 77 percent who need help with their dressing,
11 we have 63 percent who need help with their toileting, we
12 have 91 percent who need help with their bathing, we have
13 66 percent who have a mental disorder of one form or
14 another, one-half of all of the residents have no living
15 relatives as their advocate, and one-half of our
16 population in this country who reach 65 years of age are
17 going to some day live in a nursing home in one of our 50
18 States.

19 If we subscribe to and pass the legislation before
20 us, the Chairman's mark, without this amendment offered
21 by myself and Senator Rockefeller, we are going to be
22 passing into law legislation that totally removes all
23 federal standards for these people that I have just
24 described.

25 Let me, if I might, Mr. Chairman, just mention a few

1 of the standards that are now covered in present law as a
2 result of a bipartisan effort in 1987 when we had
3 supporters like Dave Durenberger, John Heinz, Jack
4 Danforth, and others on that side of the aisle, along
5 with many on this side of the aisle, who passed into law
6 the nursing home standards that became the law of the
7 land.

8 The choice of a physician, care, and treatment. I do
9 not think we want to remove that choice. Freedom from
10 chemical and physical restraints. I do not think that we
11 want to remove that freedom. Privacy in receiving mail
12 and other communications. I do not think that we want to
13 annihilate that freedom. The confidentiality of medical
14 records. I say, I do not think that we want to remove
15 that confidentiality. The protection of unwarranted
16 transfer or discharges.

17 Mr. Chairman and colleagues, basically what we are
18 talking about is removing a bill of rights that these two
19 million individuals today have that we are about to take
20 away. At this time, Mr. Chairman, I would like to yield
21 to my colleague and co-sponsor, Senator Rockefeller.

22 Senator Rockefeller. I thank Senator Pryor. Mr.
23 Chairman, back in 1987, as Senator Pryor indicated, we
24 did, on an extremely bipartisan basis, passed the Nursing
25 Home Reform Law of 1987, OBRA 1987. We did that, in

1 part, because the year before the Institute of Medicine
2 had done a study on nursing home care at that time,
3 entirely done by the States, and they had found shocking
4 results.

5 One of the sentences from that report by the
6 Institute of Medicine said, "In the past 15 years, many
7 studies of nursing home care have identified both grossly
8 inadequate care and abuse of residents."

9 I have passed out to every Senator a list, just a
10 simple list. It is just one of the things in front of
11 you that shows some of the abuses that came from
12 different States when they were under State control only,
13 with no federal standards whatsoever.

14 One of the things which to me is most shocking was
15 something which was done before and which was stopped
16 under our bipartisan agreement in 1987. It was done by
17 the States, it was stopped by the feds.

18 That is, nursing homes would tie down, tether, the
19 sick and old in their beds, or they would drug them
20 chemically into sedation. That was legal, and it was
21 done fairly routinely. It was allowed by the States, I
22 guess. It certainly was not stopped. Well, it stopped
23 in 1987. Tethering, or tying down of patients in beds,
24 which sounds like something that comes out of the 12th
25 century, went down 50 percent.

1 And the drugging of patients so they would be sedate,
2 i.e., therefore, you would not have as many people taking
3 care of them and thus save money, that was allowed to be
4 done under the States. That went down up to 59 percent
5 after the feds came in with standards. We cannot have
6 that kind of thing come back in just doing a free-market
7 experiment or whatever.

8 We have to think about the consequences on human
9 beings in these nursing homes. If we repealed this
10 standard, there are not going to be any basic
11 requirements for fire safety, for infection control,
12 patient dumping. I just have to say, also, in some
13 amazement, the nursing home people are not asking for
14 this.

15 The American Health Care Association, for example,
16 has not asked for this change. They have not asked to be
17 removed from federal standards. Yet we are doing it and
18 allowing, therefore, the potential of turning back to
19 tethering and drugging. I find it appalling.

20 Senator Breaux. Would my colleague yield on that
21 point?

22 Senator Rockefeller. Of course.

23 Senator Breaux. I think the Senator is making a
24 good point. The associations that run these facilities
25 are not asking for this. I just want to read one

1 sentence from my own State of Louisiana. "If we say we
2 are doing this so that the States can do what they want
3 and we should not encumber how they operate the nursing
4 homes," my State of Louisiana says, "by abandoning the
5 federal protections contained in the Nursing Home Reform
6 amendments we will return to a time when States took
7 inadequate measures to ensure the health and well-being
8 of the very vulnerable elderly individuals who reside in
9 nursing homes.

10 Furthermore," and this is a key point, "we will leave
11 States open to pressure from the nursing home industry to
12 deregulate in the name of cost savings." Here is a State
13 saying that, do not relieve us from the responsibility of
14 following some national guidelines, because we are not
15 going to be able to handle the pressure. Thank you.

16 The Chairman. The time of the Democrats has
17 expired. Just let me say that what this amendment would
18 do is contrary to the kind of reform we are trying to
19 bring about, and that is to provide flexibility to the
20 States in conducting its Medicaid program.

21 I would like to ask Roy to comment, if he would.

22 Mr. Ramthun. I just want to basically point out
23 that the federal standards in the Medicare law regarding
24 nursing homes would still remain in effect. We are not
25 touching the Medicare standards for nursing homes.

1 Currently, 70 percent of the nursing homes in this
2 country participate in both programs. What we are saying
3 is that ----

4 Senator Rockefeller. Roy, would you yield for a
5 moment? What percentage of the cost of nursing homes
6 from the Federal Government comes from Medicare as
7 opposed to Medicaid? The answer is, virtually nothing.

8 Mr. Ramthun. For Medicare it is about 11 percent,
9 nationally.

10 Senator Pryor. And is it not true, Roy, if you
11 would yield, that 80 percent of the present nursing home
12 patients--80 percent--are Medicaid patients and Medicaid
13 residents. Is this not a correct figure?

14 Mr. Ramthun. I am sorry, Senator Pryor. I do not
15 have that number.

16 Senator Pryor. I think the answer is yes.

17 Senator Rockefeller. The answer is yes. I am
18 sorry, but you are wrong on the percentage that Medicare
19 pays. It is 5.1 percent, Roy. I apologize for saying
20 that so bluntly, but it is important.

21 The Chairman. Roy, please proceed.

22 Mr. Ramthun. I am sorry, Senator Rockefeller, but
23 the number I was given by PROPAC was 11 percent. That is
24 why I used that figure.

25 The Chairman. Would you state who PROPAC is, so

1 everybody knows?

2 Mr. Ramthun. PROPAC is the Prospective Payment
3 Assessment Commission, which advises Congress on Medicare
4 payment policies.

5 I just wanted to point out that the standards that
6 the States would be required to develop mirror very
7 closely the standards that are in the current federal
8 law, and States would have to go through a public
9 decision-making process in developing those standards and
10 would have to make that information available to the
11 public.

12 We do require States to observe and protect
13 residents' rights. They are the same rights that are
14 under current law; there is no change. States would
15 still be required to operate a certification program for
16 nursing homes in the State, and allow individuals in the
17 State public access to the results of those surveys.

18 When States find deficiencies with nursing homes,
19 they are required to sanction them and to terminate
20 participation in the program of any nursing homes that
21 immediately jeopardize the health and safety of
22 residents.

23 The Chairman. All time has expired.

24 Senator Graham. Mr. Chairman?

25 The Chairman. Well, the time has expired, but I

1 would be happy to ----

2 Senator Graham. What is the enforcement provision
3 relative to States' fulfillment of those commitments?

4 Mr. Ramthun. If the States do not fulfill these
5 requirements their plan is out of compliance and their
6 entire federal funding is in jeopardy.

7 The Chairman. Does the Senator want a roll call
8 vote?

9 Senator Pryor. Yes, we would like a roll call vote
10 on this matter.

11 The Chairman. The Clerk will please call the roll.

12 The Clerk. Mr. Dole.

13 Senator Dole. No.

14 The Clerk. Mr. Packwood.

15 The Chairman. No, by proxy.

16 The Clerk. Mr. Chafee.

17 Senator Chafee. Aye.

18 The Clerk. Mr. Grassley.

19 Senator Grassley. No.

20 The Clerk. Mr. Hatch.

21 Senator Hatch. No.

22 The Clerk. Mr. Simpson.

23 The Chairman. No, by proxy.

24 The Clerk. Mr. Pressler.

25 The Chairman. No, by proxy.

1 The Clerk. Mr. D'Amato.
2 The Chairman. No, by proxy.
3 The Clerk. Mr. Murkowski.
4 The Chairman. No, by proxy.
5 The Clerk. Mr. Nickles.
6 Senator Nickles. No.
7 The Clerk. Mr. Moynihan.
8 Senator Moynihan. Aye.
9 The Clerk. Mr. Baucus.
10 Senator Moynihan. Aye, by proxy.
11 The Clerk. Mr. Bradley.
12 Senator Bradley. Aye.
13 The Clerk. Mr. Pryor.
14 Senator Pryor. Aye.
15 The Clerk. Mr. Rockefeller.
16 Senator Rockefeller. Aye.
17 The Clerk. Mr. Breaux.
18 Senator Breaux. Aye.
19 The Clerk. Mr. Conrad.
20 Senator Conrad. Aye.
21 The Clerk. Mr. Graham.
22 Senator Graham. Aye.
23 The Clerk. Ms. Moseley-Braun.
24 Senator Moseley-Braun. Aye.
25 The Clerk. Mr. Chairman.

1 The Chairman. No.

2 The Clerk. The ayes are 10, the nays are 10.

3 The Chairman. The amendment is not agreed to.

4 We will again call on Senator Pryor.

5 Senator Pryor. Mr. Chairman, if I could temporarily
6 pass on this. If we could go to another amendment, then
7 perhaps in a little bit I could come back to this
8 amendment. It is on the same subject matter.

9 The Chairman. Senator Nickles, please.

10 Senator Nickles. Mr. Chairman, I have an amendment
11 that we have been working on with several colleagues on
12 both sides of the aisle dealing with increasing options
13 for providers and other people to be in play; usually it
14 is called provider-sponsored networks. But this would
15 allow a series of options for Medicare beneficiaries, so
16 they would be HMOs, but they also could have provider-
17 sponsored networks as well.

18 The House has a provision like this, except for it
19 basically sets up federal standards that would apply for
20 four years. This does not do this. This says we would
21 have a federal law, but we would go to the States and the
22 States would have basically 90 days to take action to
23 grant the application.

24 If they denied that, then the applicant could go to
25 federal standards, and if they meet those standards they

1 could operate under this provision for 36 months. We
2 sunset the provision as well, by the year 2000. Their
3 certificate, under the federal procedure, could only last
4 till the year 2001.

5 Senator Grassley. Mr. Chairman?

6 The Chairman. Yes, Senator Grassley.

7 Senator Grassley. I would hope that my colleagues
8 would consider this amendment favorably. This is an
9 amendment on the provider network. I co-sponsored the
10 amendment that Senator Rockefeller was going to offer,
11 and for several reasons.

12 First, I think it is very important to our Medicare
13 reform to have as much competition as possible in the
14 Medicare market. The main thing that we are trying to
15 achieve with Medicare reform, I believe, is more choice
16 for beneficiaries and more competition among providers
17 and insurers who organize their health plans in different
18 ways.

19 Second, it seems to me that, especially in small
20 States, provider networks increase the possibility of
21 bringing choice to our local communities, particularly in
22 rural parts of the country. Such networks are very
23 likely to be locally developed and locally controlled
24 networks.

25 Finally, it seems to me that in the provider-

1 sponsored networks it will be providers who work out the
2 tension between cost concerns and the treatment concerns.

3 So, Mr. Chairman, we have made an effort to modify
4 the original amendment that Senator Rockefeller and I
5 offered to address some of the legitimate concerns that
6 were raised about our original proposal.

7 So I hope that the modifications of our original
8 amendment that Senator Rockefeller and I offered indicate
9 that we take very seriously those original concerns, and
10 I hope and think that the modifications that are being
11 offered by the Senator from Oklahoma now does justice to
12 those concerns that were originally raised.

13 The Chairman. Senator Dole.

14 Senator Dole. There has been a lot of time spent on
15 this amendment. We have had a letter from the governors,
16 and they are concerned, generally, about preempting State
17 law. But this amendment does not preempt State law, it
18 specifically requires that the State has 90 days to take
19 action. If they do not, then you go to temporary federal
20 certification.

21 So, I do not think this would violate the concern
22 that the governors in both parties have expressed, and I
23 think it pretty much tracks the result of a rather
24 lengthy meeting with a number of people involved a couple
25 of days ago. So, I congratulate the Senator from

1 Oklahoma and I share the view expressed by the Senator
2 from Iowa.

3 For those of us who live in rural areas--Western
4 Kansas, for example, being a good example--we think this
5 may provide an opportunity for better service to people
6 in States like mine, and there are a number of rural
7 States represented on this committee. I think it is a
8 positive step in the right direction.

9 The Chairman. I would say that I would agree with
10 the distinguished Leader. It not only helps to provide
11 better service in the rural areas, I believe it does
12 provide more competition, which is a goal I think we all
13 seek to assure. So, I hope that this amendment is
14 adopted.

15 Senator Rockefeller. Mr. Chairman?

16 The Chairman. Senator Rockefeller.

17 Senator Rockefeller. Mr. Chairman, I want to
18 congratulate Senator Nickles, Senator Grassley, Senator
19 Graham, and others, and obviously Senator Dole, on this
20 amendment. I think it is one of the most important
21 amendments that will come out of this hearing, the most
22 constructive one. It is enormously important for rural
23 States. There is just a peculiar kind of an alchemy in
24 rural States and rural areas, where doctors know their
25 patients, hospitals know their patients, in particularly

1 intimate ways.

2 I always have this vision that comes to my mind of a
3 two-doctor operation that I visited once in West
4 Virginia, where there were 18 people working, nine of
5 them on health care, nine of them on bureaucracy, and
6 four of the nine working on bureaucracy spent all day
7 long calling insurance companies to find out if they
8 could get permission from the insurance companies to do
9 what the doctor already knew had to be done.

10 This would tend to move away from that, put more
11 responsibility in the hands of the doctors and the
12 hospitals, and I think it is an enlightened,
13 extraordinarily important development.

14 The Chairman. Is there any further comment?

15 [No response.]

16 The Chairman. If not, those in favor of the
17 amendment, please signify by saying aye.

18 [A chorus of ayes.]

19 The Chairman. Nay, signify by nay.

20 [No response.]

21 The Chairman. No nays. The amendment is carried.

22 Senator Pryor, I think, is next.

23 Senator Pryor. Thank you, Mr. Chairman. Thank you
24 for allowing me to get a few minutes of time to collect
25 my thoughts on this amendment.

1 Mr. Chairman, on behalf of myself, Senator
2 Rockefeller, and Senator Breaux, I am offering another
3 amendment. This amendment is basically simpler. It
4 states that HCFA will have to approve all State standards
5 for nursing home quality of care under this proposal,
6 under the Chairman's mark's proposal.

7 This amendment would at least give some guarantee
8 that the Federal Government has some oversight role in
9 the diverse sets of standards that would undoubtedly be
10 developed out there in the 50 States. This is some
11 protection for the two million nursing home residents out
12 there, Mr. Chairman and colleagues.

13 I would just like to say this. I think if the two
14 million nursing home residents could be polled or
15 surveyed, they would support this amendment. They are
16 the ones who are going to be impacted and affected by it,
17 and I hope very earnestly that our colleagues will adopt
18 this amendment and allow HCFA to approve the standards
19 set by the States.

20 The Chairman. Well, this amendment, of course,
21 contains the same inherent problems of the earlier Pryor
22 amendment. Again, it would add complexity,
23 inflexibility, to the States in administering Medicaid.
24 For that reason, I have to, once again, respectfully
25 oppose it.

1 Senator Moynihan. Mr. Chairman, if I could respond.

2 The Chairman. Senator Moynihan.

3 Senator Moynihan. We are talking about the
4 expenditure of federal funds, federal monies, to ask that
5 there be some minimum federal standards about how the
6 monies are used in an area which we have learned with
7 great graphic detail what harm can be done, what cruelty
8 can be imposed. We have lived through a quarter century
9 of that, and Senator Pryor has been one of the leaders in
10 establishing that fact.

11 There were horrors out there and they have receded.
12 To invite them back under the system in which they
13 originally appeared, it seems to me, a very poor choice
14 of public policy and a very poor use of public funds.

15 Senator Chafee. Mr. Chairman?

16 The Chairman. Yes, Senator Chafee.

17 Senator Chafee. Mr. Chairman, it seems to me that
18 if we pay the piper, we have some right to call the tune.
19 These are federal funds, very substantial amounts of
20 federal funds, that are going into these nursing homes
21 from the Federal Government under Medicaid. I think we
22 have a right to require some standards.

23 Now, Mr. Chairman, the complaint I get in the nursing
24 homes I visit at home is that there are too many
25 inspections, that the State inspects, that the Federal

1 Government inspects.

2 If this amendment is adopted, which I hope it will
3 be, then I hope later on we can work on some coordination
4 possibilities between the States and the Federal
5 Government so each nursing home will not have a pile of
6 inspectors coming through; indeed, some come through from
7 the Veterans Administration, so they have not one, not
8 two, but sometimes three separate inspections, and there
9 ought to be a way of coordinating that.

10 But the first step, I think, is to keep some federal
11 standards in effect. We are paying the price, and a very
12 expensive one, and I think we have the right to require
13 that the services be decent.

14 Senator Graham. Mr. Chairman.

15 The Chairman. The Senator from Florida.

16 Senator Graham. Mr. Chairman, I support the
17 comments that have been made. I would also say that the
18 structure of this amendment and its relationship between
19 HCFA and the States is not dissimilar to many other
20 relationships.

21 For instance, typically in higher education there is
22 some national entity which has responsibility for
23 assuring that standards are set, whether it be in the
24 architecture school, or the law school, or other
25 professional schools. Frankly, States, which run big

1 higher education institutions, have been the most
2 supportive of those kinds of national standards because
3 they help the States accomplish their educational quality
4 objectives.

5 I would suggest that I think this is a very
6 appropriate relationship to be established and it is one
7 which I think the States would, on the main, find to be
8 constructive in terms of their goal to have quality
9 nursing home standards and, therefore, quality treatment
10 for their citizens who are in those nursing homes.

11 Senator Breaux. Mr. Chairman?

12 Senator Bradley. Mr. Chairman?

13 The Chairman. Senator Breaux.

14 Senator Breaux. I will just be very brief. I
15 cannot think of a philosophical reason anywhere why we
16 should not adopt this amendment. This is not saying the
17 Federal Government makes the standards for the nursing
18 homes, it stays that the States will come up with their
19 own standards that they think fit the needs of the
20 nursing homes in their State, and we are going to ask
21 HCFA to approve those standards.

22 This is not the Federal Government writing the
23 standards, this is the State writing the standards and
24 having at least the Federal Government take a look at
25 them. If we are going to give them \$90 billion, do we

1 not have the responsibility to at least ensure that they
2 write standards themselves? I mean, we might as well
3 just throw the money up in the air and hope it falls down
4 and does good.

5 Senator Bradley. Mr. Chairman?

6 The Chairman. Senator Bradley.

7 Senator Bradley. If I could. Where we are headed
8 with this block grant on Medicaid is to essentially
9 medical revenue sharing. I mean, basically we are asking
10 American taxpayers to pay federal taxes that come to
11 Washington, and then we are going to send it back to the
12 States in a pot of money, saying, we hope you take care
13 of poor people's health care. This is the kind of
14 minimum standard that we are talking about here.

15 The reason we did Medicaid in the first place is that
16 States were not taking care of poor people's health.
17 That is why the Federal Government had to act. It is
18 very clear to me that where we are headed here as we turn
19 this into a block grant, we send it back to the States
20 with no standards, we get out a couple of years and we
21 have more budget problems, then we have to cut the budget
22 more, and we simply cut the budget of this medical
23 revenue sharing because it is simply a grant from one
24 group of politicians to another group of politicians, and
25 we have detached the federal money from the individual

1 recipient. In my view, it is kind of clear as morning
2 following night, that that is what is going to happen.
3 And if we reject this particular amendment, I think the
4 handwriting is clearly on the wall.

5 The Chairman. The time of the Democrats has
6 expired.

7 Again, let me say, the problem with this proposal is
8 that it ends up again with duplication and complexity.
9 As the distinguished Senator from Rhode Island pointed
10 out, one of the complaints of the nursing homes have been
11 the duplication of inspections and requirements. We do
12 not think this is desirable. We have more confidence in
13 the governors and the States. The same people are
14 electing them that are electing us.

15 Senator Pryor. Mr. Chairman, may I ask you a
16 question on that point?

17 The Chairman. Yes.

18 Senator Pryor. Mr. Chairman, have you heard any
19 complaint from any nursing home resident in the State of
20 Delaware that there are too many inspections?

21 The Chairman. Well, we have, indeed, had complaints
22 from the nursing homes about the duplications.

23 Senator Pryor. I am talking about patients and
24 residents.

25 The Chairman. I would have to check. I could not

1 answer that.

2 Senator Pryor. Thank you, sir.

3 The Chairman. Do you want a roll call vote?

4 Senator Pryor. Yes, sir. Please.

5 Senator Chafee. Mr. Chairman, you were kind enough
6 to quote me on my concern about the duplication of
7 inspections, but I would reiterate that I said that is
8 something that we should work out as we proceed here. I
9 am for this amendment.

10 I think that if the amendment is adopted, which I
11 hope it will be, I hope it can be refined to have some
12 language in there to encourage the States, the VA, and
13 the Federal Government to coordinate their inspections so
14 that there will be only one inspection per year, maximum,
15 in each facility instead of constantly, or whatever the
16 normal term for inspection is.

17 The Chairman. I only intended to refer to your
18 statement that there is a problem with duplication.

19 The question is on the Pryor amendment. The Clerk
20 will call the roll.

21 The Clerk. Mr. Dole.

22 The Chairman. No, by proxy.

23 The Clerk. Mr. Packwood.

24 The Chairman. No, by proxy.

25 The Clerk. Mr. Chafee.

1 Senator Chafee. Aye.
2 The Clerk. Mr. Grassley.
3 Senator Grassley. No.
4 The Clerk. Mr. Hatch.
5 The Chairman. No, by proxy.
6 The Clerk. Mr. Simpson.
7 The Chairman. No, by proxy.
8 The Clerk. Mr. Pressler.
9 The Chairman. No, by proxy.
10 The Clerk. Mr. D'Amato.
11 The Chairman. No, by proxy.
12 The Clerk. Mr. Murkowski.
13 The Chairman. No, by proxy.
14 The Clerk. Mr. Nickles.
15 Senator Nickles. No.
16 The Clerk. Mr. Moynihan.
17 Senator Moynihan. Aye.
18 The Clerk. Mr. Baucus.
19 Senator Moynihan. Aye, by proxy.
20 The Clerk. Mr. Bradley.
21 Senator Bradley. Aye.
22 The Clerk. Mr. Pryor.
23 Senator Pryor. Aye.
24 The Clerk. Mr. Rockefeller.
25 Senator Rockefeller. Aye.

1 The Clerk. Mr. Breaux.
2 Senator Breaux. Aye.
3 The Clerk. Mr. Conrad.
4 Senator Conrad. Aye.
5 The Clerk. Mr. Graham.
6 Senator Graham. Aye.
7 The Clerk. Ms. Moseley-Braun.
8 Senator Moseley-Braun. Aye.
9 The Clerk. Mr. Chairman.
10 The Chairman. No.
11 The Clerk. The ayes are 10, the nays 10.
12 The Chairman. The amendment is not agreed to.
13 The next amendment will be proposed by Senator
14 Conrad.
15 Senator Conrad. Thank you, Mr. Chairman.
16 My amendment would provide a meaningful maintenance
17 of effort rather than the fig leaf of coverage contained
18 in the Chairman's mark.
19 The so called maintenance of effort in the Chairman's
20 mark offers little or no protection for children, the
21 disabled, and the elderly. The majority makes it sound
22 like States would have to spend a minimum of 85 percent
23 of what they are spending now on the elderly, disabled,
24 and low-income families.
25 But that is just not true. This so called set-aside

1 or maintenance of effort at 85 percent is really a hoax.
2 The Chairman's mark only requires that States spend money
3 on those populations covered by the so called mandatory
4 services under the current Medicaid law. That leaves out
5 58 percent of Medicaid spending, including services for
6 the mentally retarded and home and community-based
7 services for the elderly and disabled.

8 So, at its very best, the Republican proposal would
9 cover 85 percent of 42 percent of current spending. The
10 Republicans say States must maintain 85 percent of their
11 effort, but that is just not the reality of what is in
12 the Chairman's mark.

13 Again, at best, it is 85 percent of 42 percent of
14 what States are currently spending for those populations.
15 But, even worse, colleagues, they do not even require a
16 State to spend 85 percent of 42 percent of what they are
17 currently spending. A State could spend 30 percent of
18 its current funding, or 20 percent, or 10 percent of
19 their current spending, under the Chairman's mark.

20 The only requirement is that if the State spends \$1,
21 that 85 percent of the 42 percent will go for elderly and
22 disabled individuals in low-income families. The bill
23 does not require States to spend any money on the most
24 vulnerable people in our society.

25 My colleagues on the other side of the aisle argue

1 that the Medicaid cut is only a reduction in the increase
2 in spending. If that is so, then why not, at a minimum,
3 require States to spend 85 percent of what they are
4 spending today?

5 If the message is, we are going to have an 85 percent
6 maintenance of effort, why do we not have an 85 percent
7 maintenance of effort? Why have this fig leaf that
8 suggests we are going to require them to keep on spending
9 85 percent of what they are currently doing when, in
10 fact, if you pierce the veil, it is 85 percent of 42
11 percent, and if States decide they are going to reduce
12 their spending dramatically, they are completely free to
13 do so.

14 Mr. Chairman, the whole debate on the Medicaid growth
15 rate, I think, is misleading. Since Medicaid enrollment
16 growth is high, it distorts the overall Medicaid spending
17 growth. Currently, Medicaid spending per beneficiary,
18 which is what we should keep in mind, is projected to
19 grow at about seven percent between 1996 and 2002.

20 This is the same as the projection of private health
21 insurance spending per insured person. The Republicans
22 plan that cuts \$182 billion over seven years out of
23 Medicaid imposes a 4.5 percent annual growth rate on
24 aggregate spending.

25 But, if you take enrollment growth into account, the

1 Republicans' plan limits growth in Medicaid spending, per
2 person, to 1.4 percent a year. That is 85 percent less
3 than the private health spending increase of 7.1 percent
4 per person, per year.

5 So do not believe the arguments that this is just a
6 cut in the increase. When you hear that they protect 85
7 percent of what Medicaid does now, that is flat out
8 wrong; they do not. They do not include a whole host of
9 Medicaid services and they do not require any spending at
10 all on the most vulnerable populations.

11 Let me just conclude by pointing out that one of
12 Senator Rockefeller's constituents sent a memo to each
13 member of this committee about the implications of this
14 bill for the mentally retarded.

15 The person said, "if you are a person with mental
16 retardation," and remember, that is a lifelong condition
17 which cannot be cured like substance abuse or
18 unemployment, and also remember it is not self-inflicted,
19 this is something that people are born with, "these
20 optional services for those people are not optional at
21 all.

22 They mean having a roof over your head, healthy meals
23 to eat, and the support needed to meet the daily routines
24 of life. Without these programs, many of the people with
25 disabilities would have to either return to more costly

1 State institutions, or be on the street."

2 Mr. Chairman, these services are not protected in the
3 so called set-aside in the Chairman's mark at all. Not
4 at all. If we are not going to require States to spend a
5 level of funds that will enable them to provide basic
6 services to populations like these, then I have to ask,
7 what is the moral test of government that is being
8 applied to this bill?

9 I thank the Chair, and ask my colleagues to support
10 the amendment.

11 Senator Moynihan. Mr. Chairman, could I just add to
12 that point, there is such a thing as truth in
13 legislating. We are not legislating an 85 percent
14 standard of effort. When you read the small print, it
15 turns out to be 38 percent.

16 That is not up to the standards of this committee
17 which you would feel about as strongly as any of us do,
18 that you have upheld for longer than any others, I
19 believe, on the committee. I hope we can accept this,
20 just as a matter of the integrity of this legislation.

21 The Chairman. Well, there will be an amendment
22 offered to correct the language of the Chairman's mark.
23 As I indicated earlier, it was the intent, and is the
24 intent, that there be a mandatory requirement that in
25 each of the three areas--poor pregnant women and

1 children, the disabled, and the elderly poor--that 85
2 percent of the mandatory spending of the average of the
3 last three years be spent.

4 So it is my understanding that the language does not
5 carry out that intent, and immediately after this
6 amendment there will be an amendment proposing to do so.

7 In the meantime, we do object to the proposal of the
8 distinguished Senator from North Dakota. It would cover
9 not only the mandatory items, but the voluntary ones as
10 well. We are objecting to that.

11 Do you want a roll call vote?

12 Senator Rockefeller. Has all time on the Democratic
13 time expired?

14 The Chairman. Yes, it has.

15 The Clerk will call the roll.

16 The Clerk. Mr. Dole.

17 The Chairman. No, by proxy.

18 The Clerk. Mr. Packwood.

19 The Chairman. No, by proxy.

20 The Clerk. Mr. Chafee.

21 Senator Chafee. Aye.

22 The Clerk. Mr. Grassley.

23 Senator Grassley. No.

24 The Clerk. Mr. Hatch.

25 The Chairman. No, by proxy.

1 The Clerk. Mr. Simpson.
2 The Chairman. No, by proxy.
3 The Clerk. Mr. Pressler.
4 Senator Pressler. No.
5 The Clerk. Mr. D'Amato.
6 Senator D'Amato. No.
7 The Clerk. Mr. Murkowski.
8 The Chairman. No, by proxy.
9 The Clerk. Mr. Nickles.
10 Senator Nickles. No.
11 The Clerk. Mr. Moynihan.
12 Senator Moynihan. Aye.
13 The Clerk. Mr. Baucus.
14 Senator Moynihan. Aye, by proxy.
15 The Clerk. Mr. Bradley.
16 Senator Bradley. Aye.
17 The Clerk. Mr. Pryor.
18 Senator Pryor. Aye.
19 The Clerk. Mr. Rockefeller.
20 Senator Rockefeller. Aye.
21 The Clerk. Mr. Breaux.
22 Senator Breaux. Aye.
23 The Clerk. Mr. Conrad.
24 Senator Conrad. Aye.
25 The Clerk. Mr. Graham.

1 Senator Graham. Aye.

2 The Clerk. Ms. Moseley-Braun.

3 Senator Moseley-Braun. Aye.

4 The Clerk. Mr. Chairman.

5 The Chairman. No.

6 The Clerk. The ayes are 10, the nays are 10.

7 The Chairman. The amendment does not carry.

8 Senator Chafee?

9 Senator Chafee. Mr. Chairman, I have an amendment
10 to correct a mistake that I believe inadvertently
11 occurred--it was inadvertent, I am sure--in the drawing
12 up of the underlying Chairman's mark. If I might just
13 step up here to the easel.

14 Mr. Chairman, this is the way the language in the
15 Chairman's mark works, which I am proposing that we
16 correct. Let us assume that a State is spending \$100 on
17 Medicaid and let us further assume that \$10 of that is
18 for family services, low-income, and \$10 for the elderly,
19 and \$10 for the disabled, and the balance is for optional
20 services.

21 Now, what the language says in the Chairman's mark is
22 that you compute what percentage the expenditures are of
23 the total. Let us just stick to families, now. Of that
24 \$10 is 10 percent of the \$100. Then the Chairman's mark
25 says, you will take 85 percent of that and then apply 85

1 percent of the percentage. So that comes now down to 8.5
2 percent.

3 Then you use that 8.5 percent in perpetuity that must
4 be covered from the amount that is spent for children's
5 services, which is the entity I am dealing with. So if
6 the State continued to spend \$100, the State would have
7 to spend 8.5 percent, or \$8.50, on children's services.

8 But that is the only constant, the 8.5 percent. If
9 the States chooses to drop its expenditures to \$50 total
10 for Medicaid, then again the 8.5 percent applies and all
11 they have to spend is \$4.25.

12 So the Chairman and the rest of us were confused
13 about this when we said, oh, there is a mandatory
14 requirement of 85 percent from the base mark of \$10, so
15 you must continue, in perpetuity, spending \$8.50. Not at
16 all.

17 So my amendment corrects that and says that the State
18 must spend, as we originally thought the language
19 provided, 85 percent of what they were spending in each
20 of these categories during the base year, which is 1995.

21 We are not talking optional services; those are
22 excluded. We are just talking of the mandated services
23 currently and they must spend, on this chart, we are
24 saying it is 10 percent, so 85 percent of that is 8.5
25 percent. So they must continue to spend 85 percent of

1 this \$8.5 in perpetuity.

2 Any questions?

3 Senator Conrad. Mr. Chairman?

4 The Chairman. Yes, Senator Conrad.

5 Senator Conrad. Mr. Chairman, first of all, I want
6 to thank Senator Chafee for his amendment because it gets
7 at one of the two criticisms I tried to focus on in my
8 amendment.

9 Number one, what is in the Chairman's mark is not
10 only not 85 percent of any fixed base. It is, in the
11 Chairman's mark, 85 percent of a percentage, it is not 85
12 percent of the dollar amount. Therefore, you get,
13 potentially, the kind of perverted result that Senator
14 Chafee has so ably described.

15 So I think it is important to understand that Senator
16 Chafee is attacking effectively one of the two defects of
17 the Chairman's mark. I would just ask Senator Chafee, is
18 it not true that we are still then left with, even if we
19 adopt Senator Chafee's amendment, which I had urged my
20 colleagues to do, we are still left with the second
21 problem. That is, the 85 percent only applies to, on
22 average, the 42 percent of mandatory services that go to
23 those most vulnerable populations.

24 Senator Chafee. Yes, that is correct, although the
25 answer to that is that currently the States could get rid

1 of those services. In other words, they are labeled, as
2 you said, optional services.

3 So, I can understand the Chairman's approach here as
4 he originally, I am sure, tried to design it, in
5 restricting it to mandatory services, because if you
6 included the optional services you are making it more
7 strict than the current law is.

8 Senator Conrad. Well, I would just say that, in
9 terms of an 85 percent maintenance of effort, 85 percent
10 maintenance of effort, even if we adopt the Chafee
11 amendment, which I urge my colleagues to do because
12 otherwise we have got 85 percent of another percentage,
13 and you have 85 percent, potentially, of nothing.

14 It is critically important we adopt the Chafee
15 amendment. But, even if we do, I think it is important
16 for colleagues to understand, and for the public to
17 understand, we are going to have an 85 percent
18 maintenance of effort of 42 percent of what is currently
19 being done for Medicaid.

20 The Chairman. Senator Grassley.

21 Senator Grassley. Mr. Chairman, we have had pretty
22 uniform voting on this side over the last 24 hours. This
23 is an amendment, though, that I feel we ought to go with.
24 In fact, I want to confess that last weekend I met with a
25 lot of people interested in how this block grant would

1 work and how this sub-block grant within the block grant
2 would work.

3 I explained to them, as Senator Chafee is explaining
4 what we originally thought it was, from my understanding
5 of our discussions last week. I would feel obliged,
6 based upon what I told them, our plan was going to work,
7 to vote with Senator Chafee, because, quite frankly, I
8 thought that is the way it was going to work. I just
9 thought I ought to explain that I would like to be a co-
10 sponsor of this amendment.

11 Senator Chafee. Well, that is wonderful. I hope
12 you make a habit of it.

13 [Laughter]

14 Senator Graham. Mr. Chairman?

15 The Chairman. Yes, Senator Graham.

16 Senator Graham. Mr. Chairman, I intend to support
17 Senator Chafee's thoughtful amendment, but I would like
18 to ask a couple of questions. Does your amendment have
19 any effect on medical inflation if, in fact, the actual
20 cost of delivering Medicaid services to these three
21 populations grows at the projected national rate of 7.1
22 percent? Will there be any adjustment for that in terms
23 of what States will be required to contribute?

24 Senator Chafee. The answer to the question is, no,
25 it does not help with the inflation, it stays at a flat

1 dollar amount.

2 Senator Graham. Second, is demographics. If there
3 are more elderly or disabled who come into these
4 categories, will there be any adjustment in terms of
5 State share or State-required effort in order to meet an
6 expanded population?

7 Senator Chafee. No, it does not do that either. It
8 is just a flat dollar amount on the effort that was made
9 in the base year of 1995.

10 Senator Graham. As I say, I support your amendment
11 because it is better than status quo, but we would still
12 anticipate a dilution of services financed by that State
13 portion of the State/federal partnership as a result of
14 the failure to accommodate for medical inflation and the
15 failure to accommodate for demographic growth in those
16 categories.

17 The Chairman. The time has expired. Does anyone
18 desire a roll call vote?

19 [No response.]

20 The Chairman. If not, those in favor signify by
21 saying aye.

22 [A chorus of ayes.]

23 The Chairman. Opposed, no.

24 [No response.]

25 The Chairman. The ayes have it. The amendment is

1 agreed to.

2 Our next amendment will be one of Senator
3 Rockefeller's.

4 Senator Rockefeller. Thank you, Mr. Chairman. This
5 relates to Medicaid and it is to, in a sense, make sure
6 that the Boren amendment applies. The Boren amendment
7 has been controversial, which is, I think, ironic.

8 One of the reasons it has been controversial is, it
9 asks that health care facilities be "reasonably and
10 adequately compensated to meet the costs which must be
11 incurred by efficiently operating facilities in order to
12 provide health care services, et cetera."

13 It is a reasonable amendment. Now, the reason that
14 it becomes controversial is actually one of the
15 underlying problems that the Majority is handing us here
16 today, and that is, States do not have enough money, nor
17 do they want to spend enough money, to make sure that a
18 national commitment to health care for pregnant women and
19 children, and nursing homes, and the disabled, and others
20 were covered by Medicare and the poor, that they get good
21 medical quality, that there should not be a double
22 standard; rich people get one kind and poor people get
23 another kind.

24 So the Boren amendment, interestingly enough, was, in
25 fact, instituted by the governors themselves. The

1 National Governors Association originally developed and
2 advocated the Boren amendment. It is now, however, its
3 largest detractor and is influencing the Congress. The
4 governors claim that this Boren amendment is too
5 prescriptive and lacks flexibility.

6 That is because they do not want to spend the money,
7 or they do not have the money, or if they are like West
8 Virginia they cannot come up with the money, and so "a
9 reasonable reimbursement to providers of health care" is
10 something which they do not want to do.

11 The Boren amendment has literally no prescribed
12 statutory or regulatory standards, none whatsoever. So,
13 I do not want that argument used. It simply says that
14 the payments must be reasonable. What is wrong with
15 that? What is wrong with that? I mean, Medicaid does
16 not pay very much anyway.

17 This is an effort just to try to at least keep it up
18 at a reasonable level so that different health care
19 facilities can operate. The governors claim that the
20 courts have misinterpreted the Boren amendment. In fact,
21 in most cases the courts have ruled in favor of the Boren
22 amendment and ruled in favor of the providers.

23 We have made a national commitment, through public
24 policy called Medicaid, on which this is an amendment,
25 saying that the people that Medicaid serves must get

1 reasonable and good health care quality.

2 One of my greatest fears about what is happening on
3 the Majority side in all of this Medicare and Medicaid
4 health legislation is that the block grants to the
5 States, with \$182 billion cut out in the case of
6 Medicare, are not going to be pinpointed effectively by
7 the States.

8 I simply have to remind my colleagues that, back in
9 the days of revenue sharing, I can remember that all of a
10 sudden around West Virginia all kinds of courthouses
11 began to radically improve and get dramatic new windows
12 and cupolas. That is because the States had full
13 discretion over how that money is spent.

14 So, I am suggesting that in many States this money
15 will be spent exactly as it should be, but in a number--
16 and I talked about one of them last night, symbolically--
17 governors and legislatures will decide not to do adequate
18 reimbursement.

19 Reimbursement decides whether or not Medicaid
20 recipients are going to get adequate health care, whether
21 they are going to get any health care, much less good
22 health care.

23 So, the Boren amendment is, in fact, good. I move
24 the adoption of the amendment.

25 The Chairman. All time of the Democratic side has

1 expired.

2 I will be very brief. This amendment would, again,
3 restrict the freedom, the flexibility, of the governors
4 in administering Medicaid. This is exactly the wrong way
5 we want to go.

6 The governors have told us that they need relief from
7 the many burdensome federal mandates. President Clinton
8 himself, when he was governor of Arkansas, signed a
9 resolution by the Nation's governors calling for an end
10 to federal Medicaid mandates. So, we urge the rejection
11 of this amendment.

12 The Clerk will call the roll.

13 Senator Rockefeller. Mr. Chairman? I was just
14 interested if anybody else had any views at all, other
15 than the mandate from the Chairman.

16 Senator Chafee. Well, Mr. Chairman, I am
17 sympathetic to the amendment, but previously I submitted
18 an amendment that repealed the Boren amendment in its
19 entirety, and this, in a way, is reinstatement of the
20 Boren amendment, so I, regretfully, will vote no.

21 The Chairman. The Clerk will call the roll.

22 The Clerk. Mr. Dole.

23 The Chairman. No, by proxy.

24 The Clerk. Mr. Packwood.

25 The Chairman. No, by proxy.

1 The Clerk. Mr. Chafee.
2 Senator Chafee. No.
3 The Clerk. Mr. Grassley.
4 The Chairman. No, by proxy.
5 The Clerk. Mr. Hatch.
6 The Chairman. No, by proxy.
7 The Clerk. Mr. Simpson.
8 The Chairman. No, by proxy.
9 The Clerk. Mr. Pressler.
10 Senator Pressler. No.
11 The Clerk. Mr. D'Amato.
12 Senator D'Amato. No.
13 The Clerk. Mr. Murkowski.
14 The Chairman. No, by proxy.
15 The Clerk. Mr. Nickles.
16 Senator Nickles. No.
17 The Clerk. Mr. Moynihan.
18 Senator Moynihan. Aye.
19 The Clerk. Mr. Baucus.
20 Senator Moynihan. No, by proxy.
21 The Clerk. Mr. Bradley.
22 Senator Bradley. Aye.
23 The Clerk. Mr. Pryor.
24 Senator Moynihan. Yes, by proxy.
25 The Clerk. Mr. Rockefeller.

1 Senator Rockefeller. Aye.

2 The Clerk. Mr. Breaux.

3 Senator Breaux. [No response.]

4 The Clerk. Mr. Conrad.

5 Senator Conrad. Aye.

6 The Clerk. Mr. Graham.

7 Senator Graham. No.

8 The Clerk. Ms. Moseley-Braun.

9 Senator Moseley-Braun. Aye.

10 The Clerk. Mr. Chairman.

11 The Chairman. No.

12 Senator Moynihan. Mr. Chairman, may I ask that

13 Senator Breaux's vote be recorded in our minutes? He is

14 necessarily absent at the moment.

15 The Chairman. Without objection.

16 The Clerk. The ayes are 6, the nays 13.

17 The Chairman. The amendment does not carry.

18 Senator Conrad.

19 Senator Conrad. Thank you, Mr. Chairman.

20 I call this the Medicare Integrity Amendment. On

21 pages 52-54 of the Chairman's mark it strikes the budget

22 expenditure limit tool. The Chairman's mark allows

23 seniors to choose coverage options other than traditional

24 Medicare fee-for-service. The Congressional Budget

25 Office scores the savings of this provision at \$47.5

1 billion.

2 However, if these savings are not realized, the so
3 called "BELT" provision will cut fee-for-service Medicare
4 spending. Repeated additional cuts in Medicare fee-for-
5 service could erode the integrity of the program and
6 force seniors into health care plans that they do not
7 wish to join.

8 Mr. Chairman and members of the committee, the other
9 day Senator Baucus referred to the BELT as something more
10 like a noose. I agree with Senator Baucus' assessment
11 and believe that the BELT provision has no place in this
12 bill.

13 The Chairman's mark, as I have indicated, allows
14 seniors to choose coverage options other than traditional
15 Medicare fee-for-service. For those who are listening
16 who do not know what fee-for-service is, that allows
17 seniors to go to their own doctor, choose whatever doctor
18 they want, and get the appropriate Medicare coverage for
19 that treatment, and I support that approach.

20 But if the members of this committee learned anything
21 during last year's health reform debate, they learned
22 about the risk selection dangers that such choices
23 composed.

24 Something we also learned was that if health plans
25 have insufficient resources, their quality deteriorates

1 and their members suffer. That is precisely the risk
2 that the BELT, or what Senator Baucus calls the noose,
3 provision poses for Medicare beneficiaries. It is a
4 ticking time bomb.

5 The Congressional Budget Office scores the savings at
6 \$47.5 billion, but this is completely uncharted
7 territory. If that does not happen, if they do not
8 achieve those savings, then this BELT provision, or noose
9 provision, will come into effect, choking off fee-for-
10 service in the Medicare services that go to senior
11 citizens.

12 As the noose cuts traditional Medicare fee-for
13 service, the Medicare program will become less and less
14 able to provide quality care to older Americans. The
15 BELT will pile even more cuts onto those already being
16 proposed under the Chairman's mark.

17 It will cut rural hospitals, it will cut urban
18 hospitals, it will cut medical equipment, it will cut
19 physicians, nurses, physician's assistants. It has the
20 potential to be an absolute disaster for fee-for-service
21 Medicare.

22 Again, the choice that seniors have to go to their
23 own doctor, that is what we are talking about putting at
24 risk here. It will leave seniors with little choice but
25 to join managed care arrangements that they might not

1 prefer to join.

2 The BELT makes the so called Medicare choices in this
3 bill an illusion. There will be more choices for awhile,
4 but after several years seniors will feel the noose
5 tighten and they will have no real choices left at all.
6 At least, that is a clear possibility.

7 Mr. Chairman, I hope that this amendment will be
8 adopted. Last year we heard ads on television about
9 government cost controls. Harry and Louise told us that
10 arbitrary cost controls could bankrupt our health
11 insurance plans and leave millions of Americans without
12 adequate insurance coverage. They would be forced into
13 low-quality plans that offer poor coverage.

14 Now, Mr. Chairman and members of the committee, the
15 BELT provision does the same for Medicare. It inflicts
16 arbitrary cost controls at a moment's notice and without
17 Congressional oversight, and it could force seniors into
18 health care plans that do not meet their needs.

19 The BELT has no place in this bill. It could erode
20 and eventually destroy the integrity of fee-for-service
21 Medicare, the very plans that allow seniors to choose
22 their own doctors and the kind of service they want to
23 have.

24 I hope my colleagues will vote to strike this
25 pernicious part of the bill.

1 The Chairman. Does anyone else care to comment?

2 Senator Conrad. Could we just take it then, Mr.
3 Chairman?

4 The Chairman. No. I am afraid I must oppose this
5 proposal because the BELT is intended to be a backstop
6 against unforeseen spending. The Chairman's mark does
7 not attribute any outlay savings from the bill because I
8 do not anticipate that compliance orders will need to be
9 issued.

10 However, I have been on the committee long enough to
11 realize that spending can grow at a rate greater than
12 government estimates, but it is important to understand,
13 and I remind you, that BELT only impacts spending if
14 Congress does not act.

15 I cannot believe that some future Congress is going
16 to let the dire picture take place that has been painted
17 by our distinguished Senator from North Dakota. I
18 cannot, again, emphasize enough that the BELT only comes
19 into play if Congress does not act. The BELT is intended
20 to be a back stop.

21 I oppose this amendment because I believe that, based
22 upon past history of spending in the Medicare program,
23 BELT will impose the necessary discipline to ensure that
24 spending does not increase due to unforeseen events or
25 actions. I urge the defeat of the amendment.

1 Senator Graham. Mr. Chairman.

2 The Chairman. Senator Graham.

3 Senator Graham. Mr. Chairman, what seems to me to
4 be particularly unfair and really unnecessary about this
5 BELT provision is the fact that it only applies to fee-
6 for-service medicine. Frankly, that fact was not
7 illuminated in the original Chairman's mark. You had to
8 probe in order to find out that that was what was the
9 intention.

10 What is the area that is going to be the exposure to
11 the greatest likelihood that the BELT will have to be
12 utilized? It is the non-fee-for-service aspect of
13 medicine. We have had already a projection that the
14 medical savings account will cost the program \$2.3
15 billion over seven years. We have had another report by
16 a respected health economist that those losses could
17 range up to \$15 billion over the next seven years.

18 Of course, we have not had the chance to question any
19 of those economists about their assumptions because we
20 have not had any hearings on this idea, but now we are
21 going to say, if the worst case scenario comes to pass,
22 it will not be that it will be the medical savings
23 accounts that have to be adjusted in order to come into
24 compliance, rather it is going to be that doctor, that
25 hospital out there providing critical services, that is

1 going to see their reimbursement levels slashed.

2 That seems to me to be fundamentally unfair,
3 irrational, and unnecessary to accomplish the Chairman's
4 objective. So, unless that issue can be addressed and
5 resolved, I think, clearly, we should take the course of
6 action recommended by our colleague from North Dakota.

7 The Chairman. The time of the Democrats has
8 expired.

9 Again, we opposed this amendment. We think there
10 needs to be some discipline. We believe this BELT will
11 provide this discipline. Again, before it takes place,
12 Congress has the opportunity to act.

13 The Clerk will call the roll on this amendment.

14 The Clerk. Mr. Dole.

15 The Chairman. No, by proxy.

16 The Clerk. Mr. Packwood.

17 The Chairman. No, by proxy.

18 The Clerk. Mr. Chafee.

19 Senator Chafee. No.

20 The Clerk. Mr. Grassley.

21 The Chairman. No, by proxy.

22 The Clerk. Mr. Hatch.

23 The Chairman. No, by proxy.

24 The Clerk. Mr. Simpson.

25 The Chairman. No, by proxy.

1 The Clerk. Mr. Pressler.
2 Senator Pressler. No.
3 The Clerk. Mr. D'Amato.
4 Senator D'Amato. No.
5 The Clerk. Mr. Murkowski.
6 The Chairman. No, by proxy.
7 The Clerk. Mr. Nickles.
8 Senator Nickles. No.
9 The Clerk. Mr. Moynihan.
10 Senator Moynihan. Aye.
11 The Clerk. Mr. Baucus.
12 Senator Moynihan. Aye, by proxy.
13 The Clerk. Mr. Bradley.
14 Senator Bradley. Aye.
15 The Clerk. Mr. Pryor.
16 Senator Moynihan. Aye, by proxy.
17 The Clerk. Mr. Rockefeller.
18 Senator Rockefeller. Aye.
19 The Clerk. Mr. Breaux.
20 Senator Moynihan. Aye, by proxy.
21 The Clerk. Mr. Conrad.
22 Senator Conrad. Aye.
23 The Clerk. Mr. Graham.
24 Senator Graham. Aye.
25 The Clerk. Ms. Moseley-Braun.

1 Senator Moseley-Braun. Aye.

2 The Clerk. Mr. Chairman.

3 The Chairman. No.

4 The Clerk. The ayes are 9, the nays 11.

5 The Chairman. The amendment is not agreed to.

6 Senator Moynihan. Mr. Chairman, Senator Breau
7 would wish to be recorded as aye on the previous roll
8 call.

9 The Chairman. Under the unanimous consent, he will
10 be so marked.

11 Senator Moynihan. Thank you, sir.

12 The Chairman. Senator Nickles?

13 Senator Nickles. Mr. Chairman, thank you very much.

14 This amendment is what I would call the Medicare
15 Lockbox Amendment. I offer it on behalf of myself and
16 Senator Dole.

17 The purpose of this amendment is to take all the
18 increased costs to beneficiaries that are directed
19 towards Part B and directed at those savings, the
20 government savings, go directly into Part A. It is
21 estimated that we are talking about maybe \$71 billion.

22 So, let me just clarify this for my colleagues' sake
23 and mention that this is somewhat comparable to what I
24 think Senator Moynihan was trying to do in his substitute
25 with part of his savings, which was to direct that into

1 Part A.

2 We are saying that if beneficiaries now will continue
3 paying 31 percent instead of 25, that has some savings to
4 the government as far as Part B because the government
5 subsidizes Part B significantly.

6 We are also saying that for higher income
7 beneficiaries we are going to eliminate the subsidy, and
8 that will save the government some money, too. Again,
9 government is subsidizing about 69 percent of Part B, so
10 government has some savings from a couple of our actions.
11 We also have an increase in the deductible, and that
12 saves the government and reduces the government subsidy.

13 We are saying, we take that amount--it is, frankly,
14 very easy to ascertain--and take those dollars directly
15 and put those and invest those in Part A. This will
16 extend the solvency of Part A probably two or three
17 years. It does not totally solve the problem, but it
18 certainly would help the problem. So, I would urge my
19 colleagues to support the amendment.

20 Senator Moynihan. Mr. Chairman?

21 The Chairman. Senator Moynihan.

22 Senator Moynihan. There is a saying among some
23 economists that persons who pierce the veil of money
24 rarely return with their faculties altogether intact.
25 So, I put everybody on warning that this is about to

1 happen.

2 There is no money in the Social Security trust funds,
3 there are government bonds. There are two ways you could
4 save the money. You could build huge warehouses and fill
5 them up with Campbell's soup, which can be eaten in 30 or
6 40 years, or you could reduce the actual federal debt
7 such that the private savings increases, but, otherwise,
8 you spend the money as general revenue.

9 The fact about Medicare is, next year, for the first
10 time, the revenue from the payroll tax is less than the
11 outlays. We will make up the difference by "cashing in
12 bonds in the trust fund." But that simply means using
13 general revenues to pay the difference. Those general
14 revenues, because of our deficit, will come by borrowing
15 more money.

16 Money is fungible. You can say you put it in this
17 trust fund. Well, that means you have to just borrow
18 more money for the defense program, or the agriculture
19 program, or whatever, until you have a balanced budget,
20 which we all agree you need.

21 There is no such thing as saving any presumed
22 reductions in outlays. The fact is, we are paying for
23 the differences now; just for the first time ever next
24 year we will be paying from general revenues for Medicare
25 Part A. I think Senator Bradley has followed this matter

1 and you would agree.

2 Senator Nickles. Mr. Chairman?

3 Senator Bradley. Absolutely. I want to hear what
4 he says, and then I want to come back.

5 The Chairman. Senator Nickles.

6 Senator Nickles. Mr. Chairman, I would just note, I
7 do not really disagree with much of what my colleague
8 said. But I noticed in his amendment he said, savings
9 from these proposals--he is talking about making savings
10 in Part A and B in his substitute amendment--would be to
11 deposit it in the Part A trust fund.

12 Senator Moynihan. But may I say to my dear friend,
13 I did not expect that amendment to pass.

14 [Laughter]

15 Senator Nickles. Well, let me highlight another
16 bill that did pass. This is a 1993 tax increase on
17 Social Security tax increases. The bill that passed the
18 Senate and eventually became law said that "the income
19 taxation of Social Security and Railroad Retirement tier-
20 one benefits attributable to the increased portion of
21 benefits included in gross income will be transferred to
22 the Medicare Hospital Insurance HI trust fund." The
23 hospital trust fund now has \$125 billion.

24 I agree with my colleague from New York; next year
25 there is more going out than coming in. I also agree,

1 the way we are going to make up the difference is to cash
2 in those bonds, and the way that we are going to do that
3 is borrow more money.

4 I do not disagree with the total statement of my
5 colleague from New York, but we do have a trust fund.
6 The Medicare trust fund cannot borrow from other trust
7 funds; when it is broke, it is broke.

8 So, I think this is a good amendment. We are
9 reducing subsidies on Part B and we are saying we are
10 going to take those savings and put those savings into
11 Part A to increase the solvency of the Part A trust fund.

12 Senator Bradley. If I could ask the Senator, so
13 that I am clear on the amendment, in your hypothetical
14 circumstance, what is it that goes into the Part A trust
15 fund?

16 Senator Nickles. What we will do, Senator Bradley,
17 is this. Since we are having beneficiaries contribute
18 more into Part B, that reduces the government subsidy for
19 Part B. Government has some savings.

20 We will take those government savings and purchase
21 bonds, identical amount, so that every dime that a
22 beneficiary pays, if they are paying more into Part B,
23 every dime that they pay will directly go into Part A.
24 So, it will stay in the Medicare trust fund.

25 Senator Bradley. So you mean all 31 percent?

1 Senator Nickles. That is correct. You have three
2 different components. No, just the increase. You have
3 three different components. Right now, the Medicare Part
4 B premium is at 31 percent. We would keep it at 31
5 percent, and the law would go to 25, so there is a
6 difference of six percent. That saves the government
7 some money. You have an increase in deductible that is
8 \$100, but goes to \$150.

9 Senator Bradley. So could you tell me, how would
10 this happen? I am a senior citizen. I go to the doctor.
11 I now pay 31 percent to the doctor as opposed to 20
12 percent. How does this get into the Part A trust fund?

13 Senator Nickles. What the trustee would do is, he
14 would estimate the savings to government and he would
15 take that identical amount and purchase bonds for Part A,
16 increasing the trust fund.

17 Senator Bradley. And he purchases those bonds with
18 what?

19 Senator Nickles. The savings to government because
20 we have reduced the government subsidy.

21 Senator Bradley. No, no. The money. The money is
22 in the doctor's pocket.

23 Senator Moynihan. He has to borrow the money.

24 Senator Nickles. That is correct.

25 Senator Bradley. Right. So he borrows the money.

1 The money is in the doctor's pocket, it is not there to
2 be used to buy a bond.

3 Senator Nickles. No. I would just take issue with
4 that. We are doing exactly the same thing that was
5 offered by Senator Moynihan and his amendment earlier
6 today, and we are doing exactly the same thing that our
7 colleagues did on Social Security tax increase. You said
8 there was Social Security tax increase ----

9 Senator Bradley. I might vote for your amendment.
10 I just want to know what it is, how it works.

11 Senator Nickles. Well, I just told you. "Such an
12 appropriated amount shall be transferred from time to
13 time by the managing trustee in the form of public debt
14 obligations issued exclusively to the hospital insurance
15 trust fund on the basis of estimates of such savings made
16 by the managing trustee."

17 Senator Graham. Mr. Chairman?

18 The Chairman. Senator Graham.

19 Senator Graham. I would like to ask a question
20 about another aspect of this. The description states,
21 under the Nickles Medicare Lockbox Amendment bullet, it
22 would be illegal for the Medicare savings to be used for
23 anything other than future Medicare benefits. Now, those
24 are savings as distinct from additional beneficiary
25 contributions; is that correct?

1 Senator Nickles. The reason why it would be illegal
2 is, it is illegal to use Medicare funds for anything
3 else. The Medicare trust fund has more restrictions than
4 most trust funds. You have to spend it on Medicare, and
5 that Medicare trust fund cannot borrow. So, again, it is
6 more definitive, more prescriptive, than most trust
7 funds.

8 Senator Graham. But, for instance, in Part B,
9 currently there is an assumption as to what the level of
10 physician reimbursement will be. If that assumption is
11 lowered as a result of this legislation and, therefore,
12 savings to the government accrue, those savings would
13 then be required to be used for future Medicare benefits?

14 Senator Nickles. No. We are talking about the
15 increased contributions from beneficiaries.

16 Senator Graham. Well, I am just directing to this
17 Senator, is this what you mean when you say it would be
18 illegal for Medicare savings to be used for anything
19 other than future Medicare benefits?

20 Senator Nickles. Senator, when we are talking about
21 savings, again, we are talking about the increased
22 deductibles, we are talking about increased contributions
23 of Part B premiums.

24 Senator Graham. So you are talking about the
25 increased amount that the beneficiaries would pay in

1 whatever form in both Part A and Part B.

2 Senator Nickles. On deductibles and premiums, and
3 some of that is income-related.

4 Senator Graham. But the savings to the government
5 that would be a function of lowered expenditures because
6 we reduced the rate of reimbursement to doctors, for
7 instance, would not be subject to this lockbox.

8 Senator Nickles. You are right. We are talking
9 about beneficiaries' out-of-pocket costs for insurance
10 premiums.

11 Senator Bradley. If I could ask just one last
12 question. Therefore, this savings, the difference
13 between 25 percent and 31 percent, is there anything
14 more?

15 Senator Nickles. There are basically three
16 components. You have the Part B premium, that
17 difference. We are keeping it at 31 percent, but the law
18 would take it 25, so that is six percent there.

19 Senator Bradley. Right.

20 Senator Nickles. In our proposal we also have
21 elimination of subsidies for higher income people.

22 Senator Bradley. Right.

23 Senator Nickles. That has some savings. Also,
24 there is an increase in deductible. It goes to those
25 three things.

1 Senator Bradley. That amount you would dedicate to
2 the Part A purchase of bonds.

3 Senator Nickles. That is correct.

4 Senator Bradley. So it would not be available for a
5 tax cut.

6 Senator Nickles. That is correct.

7 Senator Bradley. All right.

8 Senator Chafee. Mr Chairman?

9 The Chairman. Senator Chafee.

10 Senator Chafee. I am a little bit confused on how
11 this works. We are proposing an increased fee on the
12 Part B premium for the wealthy elderly. Now, so instead
13 of paying at 31.5 percent, they could well be paying, let
14 us say, 80 percent.

15 What happens to that additional amount of money that
16 they pay for the premium, can that go to help reduce the
17 federal taxpayer's contribution to the Part B, i.e., as
18 you know, they are currently paying 69 percent? What
19 happens to that extra money that comes from the wealthy
20 elderly?

21 Senator Nickles. Basically two steps. Those
22 payments go directly into Part B. That reduces the
23 government subsidy to Part B. We are saying we would
24 take those savings and put that directly into Part A.

25 Senator Chafee. I am not sure. What do you mean by

1 the savings? In other words, let us say that the wealthy
2 person, instead of paying \$40 a month, is now paying
3 three times, that, \$120 a month. So, there is an extra
4 \$80. What happens to that \$80?

5 Senator Nickles. Directly, that money goes into
6 Part B. So that reduces government subsidy to Part B by
7 \$80, so we have the trustee estimate the government
8 savings by the increased premiums and directly transfer
9 that money, dollar for dollar, into Part A.

10 Senator Chafee. So, if I can follow it, therefore,
11 there is no deficit reduction.

12 Senator Moynihan. That is right, no deficit
13 reduction.

14 Senator Nickles. Well, the net result of this, as
15 the Senator from New York said, ultimately you will not
16 see a difference in the bottom line as far as deficit
17 reduction. But what we are doing is we are guaranteeing
18 that 100 percent of the savings caused by increased cost
19 of beneficiaries go directly into supporting Part A.

20 The net result, though, is you still have total
21 government expenditures, total government outlays, and
22 receipts would be the same, so the deficit figure would
23 not change. It would show a credit towards Part A trust
24 fund.

25 The Chairman. The time has long expired. But,

1 Senator Moynihan.

2 Senator Moynihan. Mr. Chairman, the effect of this
3 amendment, I would say to my friend from Oklahoma, would
4 be that we would be precluded from a tax cut, which means
5 that we will not borrow more, and that is what we have to
6 stop. So, I would hope we might support this amendment.

7 The Chairman. The Clerk will call the roll.

8 The Clerk. Mr. Dole.

9 The Chairman. No, by proxy.

10 Senator Nickles. No.

11 The Chairman. I mean, yes, by proxy.

12 Senator Nickles. This is the Dole amendment.

13 The Chairman. Yes.

14 Senator Nickles. Nickles-Dole.

15 The Chairman. Right on.

16 The Clerk. Mr. Packwood.

17 The Chairman. Yes, by proxy.

18 The Clerk. Mr. Chafee.

19 Senator Chafee. Aye.

20 The Clerk. Mr. Grassley.

21 The Chairman. Yes, by proxy.

22 The Clerk. Mr. Hatch.

23 Senator Hatch. Aye.

24 The Clerk. Mr. Simpson.

25 The Chairman. Yes, by proxy.

1 The Clerk. Mr. Pressler.
2 The Chairman. Aye, by proxy.
3 The Clerk. Mr. D'Amato.
4 The Chairman. Aye, by proxy.
5 The Clerk. Mr. Murkowski.
6 The Chairman. Aye, by proxy.
7 The Clerk. Mr. Nickles.
8 Senator Nickles. Aye.
9 The Clerk. Mr. Moynihan.
10 Senator Moynihan. Aye.
11 The Clerk. Mr. Baucus.
12 Senator Moynihan. Aye, by proxy.
13 The Clerk. Mr. Bradley.
14 Senator Bradley. Aye.
15 The Clerk. Mr. Pryor.
16 Senator Moynihan. Aye, by proxy.
17 The Clerk. Mr. Rockefeller.
18 Senator Rockefeller. Aye.
19 The Clerk. Mr. Breaux.
20 Senator Breaux. Aye.
21 The Clerk. Mr. Conrad.
22 Senator Conrad. Aye.
23 The Clerk. Mr. Graham.
24 Senator Graham. Aye.
25 The Clerk. Ms. Moseley-Braun.

1 Senator Moseley-Braun. Aye.

2 The Clerk. Mr. Chairman.

3 The Chairman. Aye.

4 The Clerk. It is unanimous; the ayes are 20.

5 The Chairman. Well, I congratulate the
6 distinguished Senator from Oklahoma. I think that is the
7 first unanimous agreement we have had today.

8 Senator Nickles. Thank you, Mr. Chairman.

9 The Chairman. The next amendment will be offered by
10 Senator Rockefeller.

11 Senator Rockefeller. Mr. Chairman, this amendment
12 has to do with balance billing and it would call for the
13 current law to be maintained in Medicare with respect to
14 balance billing.

15 There have been, at least in the judgment of this
16 Senator, a number of surprises in the Chairman's mark.
17 Many of the surprises have been what is omitted from the
18 mark: nursing home quality standards have been thrown
19 out; guaranteed health care coverage for poor children
20 and pregnant women, gone; minimum financial protection
21 for seniors who have spouses in nursing homes, actually,
22 I believe was preserved. I believe it was preserved,
23 although there have been new loopholes for fraud and
24 abuse that have been created.

25 My amendment addresses one of the omissions before

1 us. It would make sure that beneficiaries continue to
2 have some of the same financial protections that they
3 have under current Medicare law.

4 This amendment does not add a new costly benefit--
5 which may be argued when I am completed--it merely
6 preserves current law protection that limits what doctors
7 and hospitals can charge for their services.

8 Now, let us go back in history. In 1989, I believe,
9 particularly Senator Durenberger at that time and myself,
10 adopted a bipartisan physician payment reform legislation
11 and it was long and arduous.

12 We included at that time on a bipartisan basis limits
13 on how much a doctor can charge a Medicare patient above
14 and beyond Medicare's payment amount. Under that law,
15 doctors are prohibited from charging the Medicare
16 beneficiaries more than 115 percent of the Medicare fee
17 schedule amount, which remains intact, the fee schedule
18 amount.

19 This balance billing protection applies of a senior
20 gets coverage under traditional Medicare, and it also
21 applies if a senior citizen gets care outside of an HMO's
22 network for medical care that is authorized by the HMO.
23 So my amendment currently extends current law to all of
24 the new health care plan options that would be available
25 under the Chairman's mark.

1 I assume my colleagues know that seniors already
2 spend a lot on their health care services, 21 percent of
3 their money. Frail seniors over the age of 85, who are
4 disproportionately women, spend up to \$4,000 a year on
5 their health care services.

6 Money is spent on medical equipment, Medigap
7 premiums, home health care, prescription drugs, hospitals
8 and doctors, deductibles and co-pays, Medicare Part B
9 premiums, and that does not even include the high cost of
10 nursing homes, which vary across the country but which
11 are high in all cases.

12 Now, I make my case. The average income for West
13 Virginia seniors is \$10,700 a year, so the balance
14 billing protection is important. It is extremely
15 important.

16 I added a modification to my amendment. That is, the
17 balance billing amendment that I have introduced
18 prohibits unscrupulous providers from price-gouging
19 Medicare beneficiaries on the health plans that serve
20 them.

21 The modification that has been passed around
22 clarifies that Medicare Choice plans can adopt cost-
23 sharing requirements that are different from the cost-
24 sharing requirements in the Medicare program, but the
25 average total amount of cost-sharing per enrollee in a

1 Medicare Choice plan may not exceed the average cost-
2 sharing in the traditional Medicare program.

3 I would conclude by simply saying, before the
4 enactment in 1989 of Physician Payment Reform law,
5 Medicare beneficiaries spent over \$2 billion in out-of-
6 pocket expenses for physician balance billing charges.
7 So the limits that are imposed in 1989 would be held
8 under my amendment and extended to other plans.

9 The Chairman. Does anybody have further comment on
10 the Democratic side?

11 Senator Nickles. Mr. Chairman?

12 The Chairman. Senator Nickles.

13 Senator Nickles. Senator, it is with great respect
14 I have for my friend and colleague from West Virginia,
15 but I really hope that we do not adopt this amendment. I
16 think Congress, when it adopted prohibition on balance
17 billing without regards to income several years ago, made
18 a serious mistake. A serious mistake. And if we take
19 that and extend it to all private plans when we are
20 offering a variety of private plans, I think we are going
21 to magnify that mistake.

22 Basically, if you look at the system and you tell
23 younger people that you are going to have a law that
24 prohibits any balance billing, one, you have price
25 fixing, which does not work very well in many cases, and

1 then, two, you have a situation where, ultimately, you
2 are going to have a whole lot of people subsidizing
3 people that should not be subsidized.

4 Senator Rockefeller offered this amendment, and I
5 have the greatest respect for him. He talks about the
6 average income of people in West Virginia, and I know his
7 heart is very sincere.

8 But we also have a lot of people who are more
9 affluent. Not all senior citizens are very poor, and
10 they would not mind paying their bill, and their total
11 bill, and not asking taxpayers to be paying the balance
12 of their bill.

13 I will give you an example. If you have somebody who
14 is particularly wealthy and they have health care that is
15 needed and Medicare, for some reason, comes up with a low
16 reimbursement rate, the doctor says, well, I would like
17 to do this, but, you know, I do not get paid enough.
18 These crazy people in Washington, DC set the
19 reimbursement up and it is not near enough and I am going
20 out of business.

21 Some wealthier people might say, well, I will pay the
22 difference. Right now, by law, they cannot pay the
23 difference. To take that prohibition and then extend it
24 to all private plans, I think, would be a very, very
25 serious mistake.

1 Senator Rockefeller. May I respond?

2 Senator Nickles. Particularly, my comment on
3 balance billing would be, maybe it makes sense above a
4 particular price level or above a particular income
5 level, but to pass a law that says you cannot have any
6 balance billing, regardless of income, means you are
7 going to have a lot of lower income people subsidizing a
8 lot of higher income people for medical services. I just
9 do not think we have to compound that error, so I would
10 hope that the amendment would not be agreed upon.

11 Senator Rockefeller. Mr. Chairman.

12 The Chairman. Senator Rockefeller.

13 Senator Rockefeller. First of all, I would make
14 three points. Number one, allowing balance billing at
15 115 percent is allowed. That continues. That is current
16 law, so that that would still be there.

17 Second, this sort of theory that the so called
18 especially affluent, or whatever, seniors is very good
19 rhetoric but wilts just somewhat I would think in
20 Oklahoma, West Virginia, and other States under scrutiny.
21 I can remember we started in West Virginia something
22 called the Mountaineer Card, which gave discounts for
23 seniors when I was governor. The legislature said to me,
24 you cannot do that. It is just like giving a tax cut
25 that affluent seniors do not need.

1 So we ran, which you can do in the Executive Branch,
2 through our tax department, a survey on who was rich and
3 who was poor by a reasonable standard. Four percent of
4 West Virginia seniors qualified as being "rich." Now, I
5 do not know how you would describe rich, but the way we
6 did it, four percent were rich and 96 percent were not.

7 So I would also question, in order to find out how
8 much a person is worth, does that mean that the Senator
9 from Oklahoma is suggesting that a doctor, before
10 deciding whether this balance billing which he favors,
11 that is the continuing of balance billing, whether or not
12 that would be continued, that he would have to ask each
13 patient how much he is worth or what his annual income
14 is? Is that what the Senator would suggest?

15 Senator Nickles. Well, I would just make the
16 comment that I think it is ridiculous that we would go so
17 far as to say, we are going to have price fixing, whether
18 it is 100 percent or 115 percent, for all these services,
19 as if we know.

20 We are going to be offering beneficiaries lots of
21 choices, and we passed an amendment--and I thank my
22 colleague from West Virginia for supporting it--including
23 an option that providers can offer.

24 I think there is going to be a good relationship
25 between physicians and hospitals with the patient or with

1 the beneficiary, and I think they should be very up
2 front. Frankly, they may have balance billing, but that
3 does not mean that the patient is going to pay. You are
4 going to be putting patients back into the bargaining on
5 health care.

6 They are going to have lots of options. And it may
7 well be that if that option includes balance billing,
8 they may say, I do not want that plan. That would be one
9 of their options as well. They should be informed of
10 that decision.

11 The Chairman. Time is running out.

12 Senator Rockefeller. May I have a chance to
13 respond, Mr. Chairman, since the argument was made to me?

14 The Chairman. I would ask you to keep it brief, but
15 please proceed.

16 Senator Rockefeller. It is simply that it would be
17 nice around this table--all the way around this table--
18 if, once or twice, we thought about the beneficiary in
19 this process, the patient, the senior. The Senator from
20 Oklahoma said that doctors and patients just sort of have
21 this wonderful relationship that works out that
22 everything is fair.

23 Well, I go back to the statement that before the 1989
24 Physician Payment Reform there was just raucous abuse of
25 over-charging, so there were limits. There was no price

1 fixing, there were limits put on how much extra a doctor
2 could charge a beneficiary. That will remain. The
3 beneficiaries deserve some kind of consideration, it
4 would seem to me.

5 The Chairman. Senator Chafee.

6 Senator Chafee. Mr. Chairman, I think it is very
7 important to remember that the Chairman's mark retains
8 the balance billing provision for fee-for-service. Now,
9 what Senator Rockefeller is directing his amendment to is
10 to the other optional plans that we provided for in the
11 so called Medicare Choice.

12 Now, it may well be that in the Medicare Choice plans
13 that an individual may choose from--and, by the way,
14 every elderly is not a doddering citizen that knows
15 nothing; these are sometimes sophisticated people that
16 are looking around at these Choice plans--that the
17 physician's services are more expensive, but it also may
18 be that the plan provides for other items that are not
19 included in the fee-for-service, prescription drugs, for
20 example.

21 I think it would be a great mistake to extend the
22 balance billing feature to all these other plans. If the
23 person believes he has been taken, that individual will
24 have a choice every year to go back to the fee-for-
25 service.

1 So I would hope that a whole series of different
2 plans will be developed out there under the Medicare
3 Choice involving different charges, but also involving
4 different services, perhaps, that an individual could
5 take. So I would hope that the amendment would not be
6 adopted.

7 The Chairman. I would ask the distinguished Senator
8 from Rhode Island, is it not also required that the plans
9 make clear to any potential beneficiary whether or not it
10 had balance payment, so that this information would be
11 fully available?

12 Senator Chafee. Yes. Of course, we have not done
13 this yet, but it is my understanding that each year there
14 is going to be a packet sent out describing each of the
15 programs. I must say, I rarely disagree with the
16 distinguished Senator from West Virginia, but on this
17 occasion we have a difference of opinion.

18 The Chairman. All time has expired. The Clerk will
19 call the roll.

20 The Clerk. Mr. Dole.

21 The Chairman. No, by proxy.

22 The Clerk. Mr. Packwood.

23 The Chairman. No, by proxy.

24 The Clerk. Mr. Chafee.

25 Senator Chafee. No.

1 The Clerk. Mr. Grassley.
2 Senator Grassley. No.
3 The Clerk. Mr. Hatch.
4 The Chairman. No, by proxy.
5 The Clerk. Mr. Simpson.
6 The Chairman. No, by proxy.
7 The Clerk. Mr. Pressler.
8 The Chairman. No, by proxy.
9 The Clerk. Mr. D'Amato.
10 The Chairman. No, by proxy.
11 The Clerk. Mr. Murkowski.
12 The Chairman. No, by proxy.
13 The Clerk. Mr. Nickles.
14 Senator Nickles. No.
15 The Clerk. Mr. Moynihan.
16 Senator Moynihan. Aye.
17 The Clerk. Mr. Baucus.
18 Senator Moynihan. No, by proxy.
19 The Clerk. Mr. Bradley.
20 Senator Bradley. Aye.
21 The Clerk. Mr. Pryor.
22 Senator Pryor. Aye.
23 The Clerk. Mr. Rockefeller.
24 Senator Rockefeller. Aye.
25 The Clerk. Mr. Breaux.

1 Senator Breaux. Aye.
2 The Clerk. Mr. Conrad.
3 Senator Conrad. Aye.
4 The Clerk. Mr. Graham.
5 Senator Graham. Aye.
6 The Clerk. Ms. Moseley-Braun.
7 Senator Moseley-Braun. Aye.
8 The Clerk. Mr. Chairman.
9 The Chairman. No.
10 The Clerk. The ayes are 8, the nays 12.
11 The Chairman. The amendment does not carry.
12 Senator Conrad?
13 Senator Conrad. I thank the Chairman. Mr.
14 Chairman, this amendment expresses the sense of the
15 Finance Committee that, in the event the Congressional
16 Budget Office declares a fiscal dividend, that that
17 dividend should be used for further deficit reduction so
18 that the Social Security trust fund surpluses are not
19 raided to balance the budget, and to reduce the draconian
20 cuts that have been made to Medicare and Medicaid, those
21 health programs that benefit the elderly, children, and
22 disabled.
23 Further, that that fiscal dividend be used to reduce
24 the draconian cuts to programs that benefit working and
25 middle class Americans, like the Earned Income Tax Credit

1 that President Reagan said was the best anti-poverty and
2 the most pro-family thing that has come out of Congress.

3 Also, that that fiscal dividend be used to reduce
4 cuts to programs that invest in education and research
5 that are the future of America.

6 Colleagues, I think this debate, at its root, is
7 about priorities. I strongly support a balanced budget.
8 I think that is a good policy for the future of our
9 country. I think it will strengthen economic growth and
10 improve the performance of the economy for all Americans.
11 But the Republican balanced budget plan that is before us
12 is extreme.

13 It is not fair, it is not balanced, and it fails to
14 ask everyone to participate in this battle to balance the
15 budget. Instead, it says to the wealthiest among us, you
16 stand on the sidelines while we ask the middle class and
17 the working families to be in the front lines in this
18 battle to balance the budget.

19 Mr. Chairman, it seems to me that it is absolutely
20 unfair for us to have a policy that gives a \$20,000 tax
21 cut for people making over \$350,000 a year, but to then
22 say to families earning less than \$28,000 a year who
23 qualify for the Earned Income Tax Credit, you get a
24 \$1,500 increase in what you pay over the next seven
25 years, and to say to senior citizens, 70 percent of whom

1 in my State get by on less than \$15,000 a year, while we
2 give a \$20,000 tax break to people earning over \$350,000
3 a year, you get hit with a \$2,500 increase in what you
4 pay for Medicare.

5 It is unfair, at the time we are giving a \$20,000
6 additional tax preference to people earning \$350,000,
7 that we say to students who are getting student loans,
8 you pay \$3,100 more to get a college education. Those
9 are not the priorities, I believe, of the American
10 people. I believe that represents a wholesale attack on
11 the American middle class and working families.

12 The proposals before this committee and the Senate
13 are the wrong priorities. They slash Medicare, they
14 slash Medicaid, they slash education, they slash
15 research, all in an effort to put together a pool of
16 money to provide a \$245 billion set of new tax
17 preferences, new tax loopholes, for the wealthiest among
18 us.

19 Mr. Chairman, I believe this committee should make a
20 statement. We should make a statement that we are not
21 going to vote on a whole new set of tax preferences at a
22 time we are \$5 trillion in debt.

23 I think we should make a statement that we are going
24 to balance the budget, that we are not going to do it by
25 raiding Social Security trust fund surpluses, that we are

1 going to reduce these draconian cuts to Medicare, to
2 Medicaid, these draconian slashes in programs for
3 education, and give people a chance to go to college and
4 improve themselves, and that we are going to reduce these
5 draconian cuts to research that are the future of the
6 country.

7 At its bottom, this debate is about priorities. I
8 believe my amendment is about the right priorities for
9 America. I hope my colleagues will support it.

10 Senator Moynihan. Mr. Chairman.

11 The Chairman. Senator Moynihan.

12 Senator Moynihan. Just to emphasize Senator
13 Conrad's plea to this committee, Secretary Shalala is
14 just about now speaking to the National Association of
15 State Medicaid Directors.

16 Now, Medicaid is our provision for the poor. If you
17 are a child receiving Aid to Families of Dependent
18 Children, which we have abolished, incidentally, you live
19 in a family in which the maximum resources are \$15,000 a
20 year. You are a pauper, and Medicaid is the health care
21 you get. This is what we are cutting, the Senate bill.

22 New York State loses \$21.5 billion over the next
23 seven years, Louisiana loses \$15 billion, Texas loses \$12
24 billion, California loses \$13 billion, West Virginia
25 loses \$4.6 billion. Not in the history of social

1 legislation in our country has any such thing happened.
2 Louisiana will lose \$15 billion. This has never
3 happened. New York, \$21.5 billion, California, \$13
4 billion.

5 Surely, if we have any surplus, it should be used to
6 mitigate those losses and not to cut the taxes and pay
7 for the tax cut by borrowing more money.

8 The Chairman. Well, just let me point out that the
9 basic purpose of the Republican plan is to preserve and
10 strengthen both Medicare and Medicaid. To say that we
11 are cutting spending in these areas is just contrary to
12 the fact. What we are doing is slowing down the rate of
13 growth of these programs so that we can preserve them.

14 Senator Moynihan. Mr. Chairman, can I just say, you
15 are correct in that respect. There is no reduction, but
16 the rate we are growing, the rate slows down in these
17 amounts.

18 The Chairman. Well, I appreciate that, because we
19 have heard time and again to the contrary, that we are
20 cutting these programs. We are not cutting them. The
21 real problem that we face today is the fact that these
22 programs are growing so fast that we will not be able to
23 continue them for the future. We are concerned about the
24 baby boomers, as to whether or not there is going to be a
25 Medicare program for them.

1 Just let me point out that both of these programs are
2 anticipated to grow at the rate of 10 percent, plus. In
3 the past, sometimes they have grown 20, 30 percent.

4 Again, the trustees of the Medicare Part A have said,
5 if we do not take action, the plan will go bankrupt by
6 2002. I am proud of the fact that our plan will promote
7 solvency of Medicare until 2009, and I would say to my
8 distinguished Senator from New York that we find that
9 their plan, the substitute, that solvency would only last
10 until 2004.

11 Senator Moynihan. 2006.

12 The Chairman. That is not according to CBO. We
13 have had them run the figures and they have come out with
14 a figure that the so called substitute would only extend
15 solvency from 2002 to 2004, compared with ours, which is
16 from 2002 to 2009. That is an important, critical
17 difference. I want to emphasize that Medicare will
18 continue to grow roughly 6.3 percent, Medicaid will grow
19 roughly 4.9 percent. That is significant growth.

20 Just let me show you here, the Democrats' plan just
21 does not measure up. It would only extend solvency two
22 years compared with the seven years that ours does. That
23 is a significant, important difference.

24 Senator Rockefeller. Mr. Chairman, you have
25 exercised your right as Chairman, but as co-sponsor of

1 the amendment may I make one comment?

2 The Chairman. At the conclusion of my remarks, of
3 course.

4 The other point I want to make is, just let me read
5 again, the talk about taxes, what The Washington Post
6 says. "The Democrats have fabricated the Medicare tax
7 cut connection because it is useful politically. It
8 allows them to attack and to duck responsibility, both at
9 the same time. We think it is wrong." With that, I say,
10 amen. I agree with that. It is true, if we balance the
11 budget we can reduce taxes.

12 Just let me say, I do not think reducing taxes by a
13 \$500 tax credit for children is unreasonable. I think it
14 is in our interest to help and protect families. Time
15 and again I have heard both Democrats and Republicans
16 talk about the importance of children, and that is what
17 we seek to do by this. So I would have to respectfully
18 oppose the Conrad amendment.

19 Senator Rockefeller. Mr. Chairman.

20 The Chairman. Senator Rockefeller.

21 Senator Rockefeller. Mr. Chairman, I have two
22 points to make. One, I had made a request earlier which
23 was turned down, to request that CBO be asked, and you
24 obviously got pretty good response time from them, how
25 much more beneficiaries would be asked to pay. I would

1 renew that request.

2 Second, it seems to me that the most important thing
3 about what the Chairman has said is not what we feel, and
4 that is for \$89 billion we extend solvency to 2006, and
5 that for \$270 billion you extend it to 2007.

6 Now, you are saying there is some difference.
7 Neither of those is important because what we are talking
8 about is a short-term solution. That will work under \$89
9 billion, which was turned down on a straight-party vote.

10 Then you have a commission which works on the long-
11 term solution, which concerns itself with the baby
12 boomers that you talk about, which Senator Dole strongly
13 advocates, as he well should. So to somehow denigrate
14 the Democratic plan because it went from 2006 to 2004, or
15 something, really, I think, misses the point, if I may
16 say so respectfully.

17 The Chairman. Well, just let me say once again, the
18 revised CBO figures show that the Republican plan does
19 extend solvency to 2009. I agree with you that that is
20 basically a short-term solution. But let me also point
21 out, we have basic reform in our proposal and that basic
22 reform is Choice.

23 What we are trying to do is to give the senior
24 citizens a better program, bringing them into the 21st
25 century. For the first time, we are going to make

1 available to them what is available to the members of
2 Congress, what is available to the federal employees,
3 what is available in the private sector, a choice of
4 plans.

5 Not only is this an important reform, giving better
6 benefits to the senior citizens, but if you look at our
7 experience in the Federal Employees Health Plan, it means
8 significant savings. That is a most important factor.

9 The Senator from Oklahoma.

10 Senator Nickles. Mr. Chairman, I will be brief. I
11 know the time is out. This is the second amendment I
12 think we have seen from the Democrats that has said, we
13 want to spend the so called dividend if you balance the
14 budget, and, incidentally, we want to spend it before you
15 balance the budget. They do not want tax cuts, but they
16 want to spend more money in almost every program.

17 I have to say, when I heard people say we are
18 slashing Medicare and so on, in Medicare now we are
19 spending right now \$177 billion. In the year 2002, we
20 are going to spend \$286 billion. That is \$110 billion
21 more than we are spending today. So Medicare spending is
22 going up, and going up significantly, 6.3 percent per
23 year, and it makes it more solvent.

24 Now, I might mention, Mr. Chairman, you said under
25 our proposal CBO said it would be solvent till the year

1 2009. I do not know if that is before or after the
2 lockbox provision, but through this provision we added
3 \$71 billion, which I think will extend its solvency for
4 at least another, probably, two or three years.

5 Senator Grassley. Mr. Chairman.

6 The Chairman. Senator Grassley. All time has
7 expired, so please be brief.

8 Senator Grassley. It is impossible for me to be
9 brief.

10 The Chairman. You are not alone, unfortunately.

11 Senator Bradley. I think Senator Grassley should
12 have the time that he desires to make the point that he
13 wishes to make.

14 Senator Grassley. Well, thank you, Mr. Chairman.
15 Thank you, Senator Bradley.

16 The main point that I can make, and it can be made
17 very shortly, is this, that I think we have the high
18 ground on this side of the aisle on the issue of
19 balancing the budget.

20 We have the Congressional Budget Office as a
21 consistent supporter of our plans to balance the budget
22 by the year 2002, whereas the President of the United
23 States has had to rely, not on what he said in his 1993
24 State of the Union message that we are all going to sing
25 off the same song sheet by using CBO, he has now gone to

1 OMB as a basis for his being able to say that he balances
2 the budget in the year 2005. So, when it comes to this
3 amendment, I think the main question is whether we can
4 walk and whether we can chew gum at the same time.

5 The Majority thinks that we can, and we have done it
6 in a responsible way. We walk first, then we chew gum.
7 We balance the budget first, and then we cut taxes. Now,
8 remember, all of this is going to happen three years
9 before the President of the United States balances the
10 budget.

11 Senator Conrad. Mr. Chairman, might I just respond,
12 since we are on my amendment?

13 The Chairman. Thirty seconds.

14 Senator Conrad. Let me just say this. There has
15 been a lot of talk here, but very little has been about
16 my amendment. My amendment says, if a fiscal dividend is
17 declared, let us use that, not for more tax preferences
18 and more tax breaks when we have a \$5 trillion debt, but
19 instead let us use it for further deficit reduction so we
20 are not raising Social Security trust fund surpluses to
21 balance the budget.

22 I would say to my colleagues on the other side, read
23 your own plan. It does not say zero deficit in 2002, it
24 shows in the budget transmittal document that you have
25 got a \$108.5 billion deficit in 2002. The only way you

1 can claim balance is if you are claiming to use every
2 penny of Social Security trust fund surplus by that time.
3 I do not consider that balancing the budget. Let me just
4 say, the President's plan does the same thing. I do not
5 consider that balancing the budget.

6 If we have got a fiscal dividend, let us balance the
7 budget honestly and let us reduce the draconian cuts to
8 Medicare, Medicaid, education, research, things that are
9 the future of the country.

10 We could do all of that and balance the budget and do
11 it in a way that is fair, that says to the American
12 people, everybody contributes to this national emergency,
13 everybody is expected to wage this fight, not just the
14 middle income and working families.

15 I thank the Chair.

16 Senator Chafee. Mr. Chairman.

17 The Chairman. I would like to go to a vote.

18 Senator Chafee. Mr. Chairman, I will be very brief.
19 Mr. Chairman, if this amendment of Senator Conrad's would
20 stop from saying none of the money could be used for a
21 tax cut, I would be all for it. But it gets into a whole
22 series of other things that I just cannot agree with. I
23 do not think all of the cuts we have made in these
24 various areas, Medicare, the infrastructure, and so
25 forth, are wrong. So, I would not be in favor of the

1 amendment.

2 The Chairman. The Clerk will call the roll.

3 The Clerk. Mr. Dole.

4 The Chairman. No, by proxy.

5 The Clerk. Mr. Packwood.

6 The Chairman. No, by proxy.

7 The Clerk. Mr. Chafee.

8 Senator Chafee. No.

9 The Clerk. Mr. Grassley.

10 Senator Grassley. No.

11 The Clerk. Mr. Hatch.

12 The Chairman. No, by proxy.

13 The Clerk. Mr. Simpson.

14 The Chairman. No, by proxy.

15 The Clerk. Mr. Pressler.

16 The Chairman. No, by proxy.

17 The Clerk. Mr. D'Amato.

18 The Chairman. No, by proxy.

19 The Clerk. Mr. Murkowski.

20 The Chairman. No, by proxy.

21 The Clerk. Mr. Nickles.

22 Senator Nickles. No.

23 The Clerk. Mr. Moynihan.

24 Senator Moynihan. Aye.

25 The Clerk. Mr. Baucus.

1 Senator Moynihan. Aye, by proxy.
2 The Clerk. Mr. Bradley.
3 Senator Bradley. Aye.
4 The Clerk. Mr. Pryor.
5 Senator Pryor. Aye.
6 The Clerk. Mr. Rockefeller.
7 Senator Rockefeller. Aye.
8 The Clerk. Mr. Breaux.
9 Senator Breaux. Aye.
10 The Clerk. Mr. Conrad.
11 Senator Conrad. Aye.
12 The Clerk. Mr. Graham.
13 Senator Graham. Aye.
14 The Clerk. Ms. Moseley-Braun.
15 Senator Moseley-Braun. Aye.
16 The Clerk. Mr. Chairman.
17 The Chairman. No.
18 Senator Murkowski. Mr. Chairman, I would like to be
19 voted in personally as voting no.
20 The Clerk. The ayes are 9, the nays 11.
21 The Chairman. The amendment is not agreed to.
22 Senator Moynihan. Mr. Chairman, may I make a point
23 which is a little painful, but which I think has to be
24 said? It concerns the Congressional Budget Office. In
25 the course of the debate on the Conrad amendment we

1 learned from you that the Congressional Budget Office has
2 scored the substitute amendment which Mr. Rockefeller and
3 I offered as the first vote on the Chairman's proposal.

4 We had been told that it could not do so, it was
5 over-extended and did not have the time. Therefore, we
6 relied on an analysis from the Health Care Financing
7 Administration. The two analyses are in order, they
8 synchronize. We told this committee that our amendment
9 would keep the trust funds in balance until the year
10 2006.

11 That same Health Care Financing Administration said
12 that your mark would extend it to 2011. You now report
13 that CBO says we would only go to 2004, you would only go
14 to 2009. Those are symmetrical.

15 But, sir, do I understand that the Congressional
16 Budget Office, which could not score for the Minority the
17 substitute amendment which we offered in the first vote
18 of this procedure, has found it possible to score it for
19 the Majority?

20 Senator Nickles. Would the Senator yield just to
21 add to that discussion? CBO had not yet been able to
22 score the lockbox provision, which we just passed, which
23 would extend solvency for some time. So yours was not
24 scored, and neither was this amendment.

25 Senator Moynihan. But you see, we just learned that

1 it has been by the CBO.

2 Senator Nickles. No. That did not include the
3 lockbox.

4 Senator Moynihan. No, sir. The lockbox has nothing
5 to do with it. We were just told in the course of the
6 debate over the Conrad amendment that CBO had scored our
7 substitute provision, we having been told that it could
8 not do so. Is there someone from CBO in the room?

9 The Chairman. No, there is not. In any event, we
10 did ask for it to be scored. Of course, there had been a
11 longer period of time. I am not able to comment on your
12 complaint, Senator Moynihan.

13 Senator Moynihan. No, sir. Understand, it is in no
14 way a complaint directed towards you or any member of the
15 committee. But I will have to say to you, there will be
16 a strong letter to the director.

17 The Chairman. We understand that.

18 Senator Bradley. Mr. Chairman?

19 The Chairman. Yes, Senator Bradley.

20 Senator Bradley. Mr. Chairman, I would like to
21 offer an amendment. The amendment would strike the \$42
22 billion tax increase on moderate Americans that is
23 embodied in this bill.

24 I will offer a motion to strike the \$42 billion tax
25 increase on moderate-income Americans straightforward,

1 and later I will be offering an amendment, if the motion
2 to strike does not prevail, to pay for that with
3 offsetting provisions on corporate welfare. That will be
4 a separate amendment if this does not pass. Therefore, I
5 am not going to make the corporate welfare point at this
6 moment, although I think it could be made.

7 But I would rather focus on the proposal that is
8 embodied in the Chairman's mark, and that is the dramatic
9 tax increase, \$42 billion, on moderate- and low-income
10 Americans that come from the dramatic cut-back of the
11 Earned Income Tax Credit.

12 There are 17 million people who will have a tax
13 increase. That tax increase will be significant. Now,
14 that is well-known and we have had a number of amendments
15 that deal specifically with the tax increase. But there
16 are several provisions that are a part of the Chairman's
17 proposal that I do not think have received sufficient
18 scrutiny that I would like to address.

19 In the EIT proposal that the Chairman has made, not
20 only will 17 million low- and moderate-income Americans
21 pay more taxes, have a tax increase, but for the first
22 time ever all low- and moderate-income Americans who
23 receive Social Security will have that full Social
24 Security benefit taxed.

25 A couple of years ago, we said that 85 percent of

1 Social Security should be considered for income tax
2 purposes for the wealthiest 15 percent of the elderly,
3 and that, as Senator Nickles made the point earlier, we
4 would take the revenue from that and dedicate it to the
5 Medicare trust fund, the Part A trust fund.

6 Under this proposal, the tax increase on the lowest
7 income Americans, the Social Security benefit of the
8 lowest income Americans, will be taxed, but the revenue
9 for that will not go to the Social Security trust fund or
10 the Medicare trust fund, but will go for a tax cut for
11 the wealthiest Americans.

12 It is the clearest choice I have seen in a long time,
13 taxing the full Social Security benefit so that enough
14 revenue will be there to give the wealthiest Americans a
15 tax cut. I mean, even the wealthiest Americans only have
16 85 percent of their Social Security benefits taxed. This
17 is 100 percent.

18 Now, a second point. Under this proposal we have the
19 double taxation of child support payments. Now, the
20 other side does not like double taxation of dividends and
21 there is an argument to be made, pro or con, as to
22 whether that is good or bad. But how we can decide to
23 double tax child support payments is beyond me.

24 Let us say there are unfortunate circumstances, there
25 is a divorce, there is a court order, there is a child

1 support payment. The absent father earns X amount of
2 money, and he pays a tax on that money. Then, pursuant
3 to the court order, sends a child support payment. Under
4 this provision, that child support payment is now going
5 to be essentially fully taxed because it is counted as
6 income. That would push somewhat above the EITC
7 threshold.

8 So, Mr. Chairman, this motion to strike is made
9 because a \$42 billion tax increase on low- and moderate-
10 income Americans, the full Social Security benefit, is
11 now taxed only for those Americans and we double tax
12 child support payments.

13 Now, I think that we can get all tied up here in kind
14 of abstractions that relate to numbers, and even the
15 name, Earned Income Tax Credit, is not really something
16 that most people can kind of identify with. I think it
17 is helpful to think about who the recipients of this
18 benefit are, this tax cut.

19 As I think about that group I think about a woman in
20 my State named Linda Bailey. She works at a hospital.
21 She is a registration clerk, an entry clerk. She makes
22 \$17,000 a year. Her ex-husband pays \$6,000 in child
23 support. She has two kids, aged six and 14. She pays
24 \$1,360 of Social Security taxes and, after the child
25 credit, she pays about a net of \$400 of income taxes.

1 She receives an Earned Income Tax Credit of \$1,900, so
2 she does not have any tax to pay. It fully offsets her
3 Social Security taxes and her income taxes. She uses
4 that money to pay utility bills, gas bills, buy clothes
5 for the kids, help her kids go to school.

6 Under the proposal that the Chairman has offered,
7 this individual, Linda Bailey, making \$17,000 with two
8 kids, six and 14, \$6,000 in child support payments from
9 an absent husband, is going to have a \$1,500 tax
10 increase. A \$1,500 tax increase because the Earned
11 Income Tax Credit offsets not just the income tax, but it
12 has the effect of offsetting that Social Security tax as
13 well. We are saying to her, look, you have to pay more.

14 Now, the other side is going to say this program has
15 exploded. They are going to show you a really good graph
16 that is going to say it is going to explode. I have a
17 little graph here that shows that when the Earned Income
18 Tax Credit is fully phased in over the three years, there
19 is no increase, it is flat. The growth is flat. The
20 growth will be flat. Surprise, surprise. When you give
21 people a bigger tax cut, it costs more money.

22 We made a decision here. Ronald Reagan increased the
23 Earned Income Tax Credit, gave low- and moderate-income
24 Americans a tax cut. George Bush increased the Earned
25 Income Tax Credit, gave low- and moderate-income

1 Americans a tax cut. President Clinton increased the
2 Earned Income Tax Credit, giving low- and moderate-income
3 Americans a tax cut.

4 Senator Moynihan. This committee.

5 Senator Bradley. This committee. Right. This
6 committee. Now, when President Clinton did it, though, I
7 guess he was an admirer of Ronald Reagan in some ways.
8 He saw the way Ronald Reagan phased in the tax cut of
9 1981. He phased it in over three years, 10 percent, 10
10 percent, 10 percent.

11 So President Clinton and this committee thinking,
12 well, maybe that is not a bad way to proceed, phased in
13 the tax cut embodied in the Earned Income Tax Credit for
14 low- and moderate-income Americans over a three-year
15 period.

16 The other side is going to play the moderation card,
17 and they make this argument by saying, all we are doing
18 is deferring this third year of the tax cut for low- and
19 moderate-income Americans. Irony upon irony. It seems
20 to me like we had 50 votes in the Congress in the mid-
21 1980s deferring the third year of the 1981 tax cut for
22 the wealthiest Americans.

23 Now the other side wants to defer the third year of
24 the income tax cut for low- and moderate-income
25 Americans, once again drawing a very clear distinction:

1 deferring it for the upper income Americans was bad,
2 deferring it for low- and moderate-income Americans is
3 great policy. I simply disagree with that.

4 This is a tax cut that goes only to Americans who
5 work. This does not go to those who do not work, get on
6 welfare, shiftless, whatever your rhetoric wants to be on
7 the other side, this goes only to Americans who work.
8 They are like Linda Bailey, raising kids under tough
9 circumstances, and they deserve a tax cut. They deserve
10 the tax cut that was promised to them by the Congress in
11 1993.

12 I would like to invite anybody who thinks that is not
13 so to come to a room full of people who benefit from this
14 Earned Income Tax Credit, sit around in that room with
15 them, and tell them, as they are trying to figure out now
16 how they are going to buy their kids new school clothes,
17 and how they are going to pay for gasoline in the car,
18 and how they are going to pay the utility bills, why you
19 decided they should have to pay more taxes to finance a
20 tax cut for the wealthiest Americans. I move to strike
21 this.

22 Senator Nickles. Mr. Chairman.

23 The Chairman. The Senator from Oklahoma.

24 Senator Nickles. Mr. Chairman, I do not want to
25 question anybody's motives, but I do want to make sure

1 that we stay to the facts. We make a lot of changes in
2 this program because it needs to be changed and it needs
3 to be reformed. This is a program, the Senator is
4 correct, that is exploding. I will not hold up the
5 charts, but it is not too hard to figure.

6 The program was costing \$2 billion in 1980, and it
7 costs \$23 billion right now. Those are facts. The
8 program cost \$6.9 billion in 1990, it is \$23 billion.
9 That is over three times as much in five years. Those
10 are facts.

11 My colleague mentioned a little bit of the history of
12 the program, he talked about President Reagan kind of
13 liked it, and President Bush kind of liked it. During
14 their term, the maximum benefit was \$400 or \$500. Then
15 we had some increase. The maximum benefit in 1990 was
16 \$953, if you had two or more children. The maximum
17 benefit today is over three times that amount, \$3,110,
18 going to \$4,200.

19 These draconian proposals that I have heard my
20 colleagues say we are slashing, cutting, and increasing
21 taxes, the maximum benefit goes from \$3,100 to \$3,888.
22 It increases. Let me repeat that.

23 All of these criticisms that we have been taking on
24 the Earned Income Tax Credit, which is a negative tax
25 credit, a refundable tax credit, 80 some odd percent of

1 the money is written out in a check, it is written out in
2 a check and is not reducing anybody's taxes, it is a
3 check, it is a cash payment, the maximum amount for an
4 individual with two children increases from \$3,110 per
5 year to almost \$4,000.

6 It does not increase quite as much as proposed under
7 current law. What did we do? We keep the tax credit 36
8 percent and the law has it increased to 40 percent. I
9 think that is a mistake. Can we afford it? I might
10 mention, for one child we do not make any change. The
11 maximum benefits are the same under our proposal as they
12 are under existing law, so for a person with one child,
13 it does not change.

14 Now, we eliminate the benefit for people that have no
15 children. This is a change that was added in 1993. It
16 did not have the Republican vote. I might mention, you
17 might recall, the Chairman of the Finance Committee at
18 that time, that did not pass the Senate. The Senate did
19 not want to have a benefit for individuals without
20 children. That was in the House bill. The Senate
21 receded when we went to conference.

22 It was not in the Senate. The Senate expressly
23 stated, no, this should be reserved towards individuals
24 with one or two children. We do not change the benefit
25 for individuals that have one child. We do keep the

1 maximum tax refundable credit at 36 percent if you have
2 two or more children.

3 Again, did we freeze the amount of income? No.
4 Right now, individuals can receive this if they have two
5 or more children and they have an income of \$26,600.
6 Present law would increase that to \$3,400. Under our
7 proposal, we allow it to increase but it increases to
8 \$30,000.

9 So, in other words, if a person has two or more
10 children, under present law, they can get this benefit if
11 they have income up to \$26,000. Under our proposal, they
12 can get this benefit if the income goes up to \$30,000.
13 Now, some people are calling that a tax increase. I just
14 totally disagree.

15 I will just tell you, in the bill right now, the
16 amount of money that we are paying, we pay \$23.3 billion,
17 \$20 billion of that is a cash outlay. That is a check.
18 That is Uncle Sam. Only one percent do monthly
19 deductions, so it impacts their monthly amount.

20 Ninety-nine percent say, send me a lump sum cash
21 payment. We like this; give us a nice cash payment. Now
22 we are talking about \$3,000. Hey, this is getting
23 interesting, because for years it was \$400, then \$500.

24 The Chairman. Time is up on your side.

25 Senator Nickles. Now we are writing checks for

1 \$3,000. Even under our proposal, the maximum benefit
2 goes from \$3,100 to \$3,200 next year.

3 So, Mr. Chairman, I think our proposal is one that
4 should be sustained.

5 Senator Bradley. Mr. Chairman, if I could.

6 The Chairman. Senator Bradley.

7 Senator Bradley. So that there will be no mistake,
8 this just does not take away what was done in 1993. The
9 fact is, for some families with one child it takes away
10 the benefit that we granted in 1990 and in 1986. And if
11 there is any doubt, the Treasury Department is here and
12 will confirm that fact.

13 Senator Nickles. The benefits are the same for one
14 child.

15 Senator Bradley. Well, I would ask the Treasury if
16 they would like to come to the table.

17 Senator Nickles. Then I am going to ask if Ken
18 would come up. That is ridiculous. I am saying that the
19 benefit for one child is the same.

20 Senator Bradley. Would the Treasury give us ----

21 The Chairman. Let me point out that time has
22 expired. We have heard from Mr. Samuels on several
23 occasions. I will let you speak again, but it must be
24 kept to a minute or so.

25 Secretary Samuels. Mr. Chairman, I will be as

1 succinct as possible.

2 The Chairman's mark for families with one child
3 increases the phase-out rate, which is an effective tax
4 increase, for those families making more than \$11,600,
5 and the increase goes from 16 percent phase-out rate
6 under current law to 23.5 percent in the year 2005. It
7 is a creeping tax increase.

8 Senator Nickles. Mr. Samuels, I would disagree. Is
9 the maximum benefit the same for an individual with one
10 child or not?

11 Secretary Samuels. Senator Nickles, for families
12 with one child making more than \$11,600, they will be
13 losing their Earned Income Tax Credit over time. It is a
14 creeping tax increase. One of the things that people
15 always say about life, there is certainty about death and
16 taxes, and in this proposal there is certainty about
17 death and increasing taxes.

18 Senator Nickles. You did not answer me. Mr.
19 Chairman, could I ask Mr. Kies if he would answer that
20 question? Is the benefit the same for a person with one
21 child or not, and the maximum benefit is the same.

22 The Chairman. Mr. Kies, you, too, I want to be
23 brief because time has expired.

24 Mr. Kies. You are correct, Senator. The maximum
25 credit is the same for one child as under current law.

1 The maximum credit remains the same.

2 Senator Bradley. Mr. Chairman, this would be a
3 relevant point if there was no phase-out. I mean, that
4 would be a real good point, I would say to the Senator
5 from Oklahoma, if there is no phase-out. The point is,
6 this is a phase-out of the entire benefit.

7 If the Senator just wanted deficit savings in the
8 next seven years, then, from my opinion, he could make
9 that case. But this is a phase-out that continues ad
10 infinitum. I had a little run done. When would the
11 entire Earned Income Tax Credit, if this is passed into
12 law, disappear? It is a slow process, but in the early
13 part of the 21st century it would disappear.

14 Senator Nickles. The Senator is wrong.

15 Senator Bradley. So this is in the law, and is
16 elimination of the entire Earned Income Tax Credit.

17 Senator Nickles. Mr. Chairman.

18 The Chairman. The time has expired. Both sides
19 have had additional opportunity to discuss the matter.
20 We have debated this for several days. I think the time
21 is for the question. The Clerk will call the roll.

22 The Clerk. Mr. Dole.

23 The Chairman. No, by proxy.

24 The Clerk. Mr. Packwood.

25 The Chairman. No, by proxy.

1 The Clerk. Mr. Chafee.
2 Senator Chafee. No.
3 The Clerk. Mr. Grassley.
4 Senator Grassley. No.
5 The Clerk. Mr. Hatch.
6 The Chairman. No, by proxy.
7 The Clerk. Mr. Simpson.
8 Senator Simpson. No.
9 The Clerk. Mr. Pressler.
10 The Chairman. No, by proxy.
11 The Clerk. Mr. D'Amato.
12 The Chairman. No, by proxy.
13 The Clerk. Mr. Murkowski.
14 Senator Murkowski. No.
15 The Clerk. Mr. Nickles.
16 Senator Nickles. No.
17 The Clerk. Mr. Moynihan.
18 Senator Moynihan. Aye.
19 The Clerk. Mr. Baucus.
20 Senator Baucus. Aye.
21 The Clerk. Mr. Bradley.
22 Senator Bradley. Aye.
23 The Clerk. Mr. Pryor.
24 Senator Moynihan. Aye, by proxy.
25 The Clerk. Mr. Rockefeller.

1 Senator Rockefeller. Aye.

2 The Clerk. Mr. Breaux.

3 Senator Breaux. Aye.

4 The Clerk. Mr. Conrad.

5 Senator Moynihan. Aye, by proxy.

6 The Clerk. Mr. Graham.

7 Senator Graham. Aye.

8 The Clerk. Ms. Moseley-Braun.

9 Senator Moseley-Braun. Aye.

10 The Clerk. Mr. Chairman.

11 The Chairman. No.

12 The Clerk. The ayes are 9, the nays 11.

13 The Chairman. The amendment does not carry.

14 Senator Breaux?

15 Senator Breaux. Thank you, Mr. Chairman. I have an
16 amendment that is being passed out, and guess what, it
17 deals with the EITC. I think we have argued the merits
18 of this and we have lost, we have argued the logic of
19 this and we have lost, we have argued the philosophy of
20 this and we have lost.

21 Senator Moynihan. We have been out-voted; our
22 arguments won.

23 [Laughter]

24 Senator Breaux. It is the vote that I keep getting
25 worried about. But we have talked about the merits, the

1 logic, and the philosophy and we have all lost. I want
2 to try arguing the politics of it. I want to give
3 everybody a free shot with my amendment because it is a
4 sense of the Senate resolution to this bill.

5 It simply says that if we get an economic dividend
6 from all this budget reconciliation stuff we are doing,
7 that those savings should be used, first, to alleviate
8 the taxes on the working poor and to restore the EITC
9 reductions that are incorporated in the bill.

10 It is a free shot, I would say to my colleagues,
11 because it is just a sense of the Senate. But it gives
12 you a chance to say that, at least, I think this is what
13 we should be doing as opposed to what the draft actually
14 requires us to do.

15 I want to ask my colleagues, is it not better public
16 policy to help, financially, poor people to get them to
17 continue to work than it is to help them financially to
18 keep them on welfare? That was the whole philosophy of
19 the Earned Income Tax Credit, was that we want to keep
20 people working instead of making them go on welfare.
21 It is very clear that by wiping out practically the
22 Earned Income Tax Credit that we are going to encourage
23 more people to go on welfare than to keep them going into
24 the job market.

25 Now, it is true that the benefits go up under the

1 program that the Chairman has offered, but the taxes go
2 up a lot faster. Sure, the benefits go up, but you are
3 going to be paying a lot more taxes.

4 The chart that I used last night, I think, is very,
5 very clear. A typical mother with two children and an
6 income of \$20,000 a year in 1996, under the existing
7 program, pays about \$400 in taxes. Under this committee
8 bill, she will pay \$800 in taxes. That is a 100 percent
9 tax increase in one year.

10 In the year 2002, under the old program, she pays
11 about \$533 in taxes. Under this committee bill she is
12 going to pay \$1,580 in taxes. That is a 300 percent tax
13 increase. Do the benefits go up? Of course they do.
14 But the taxes go up a lot faster, a 300 percent tax
15 increase by the year 2002.

16 Where is a lot of this money going? It is going for
17 a tax cut that is going to go to people that make up to
18 \$200,000 a year, and we are taking it from people that
19 make less than \$20,000 a year.

20 Let me give you some numbers. In the Chairman's
21 State of Delaware, do you have any idea how many people
22 in that State earned last year less than \$30,000 a year
23 that would be eligible for this? 197,373 citizens of
24 Delaware fall into that category. Do you know how many
25 make over \$200,000 a year? 2,684.

1 In every State, it is pretty similar. In my own
2 State of Louisiana we have 1,185,000 citizens that paid
3 taxes on income of \$30,000 or less. Those are the ones
4 we are hitting. Do you know how many make over \$200,000?
5 11,000 people. It goes down for State to State.

6 In New York, Mr. Ranking Democratic and the other
7 Senator from New York, 4,764,000 of New York citizens
8 paid taxes on \$30,000 or less; only 102,000 made over
9 \$200,000 a year. It goes on. To the Senator from
10 Oklahoma, in his State 913,000 made \$30,000 or less, only
11 7,400 made over \$200,00.

12 So what we are doing is increasing the taxes
13 dramatically on people who make \$30,000 or less in order
14 to find enough money to give a tax cut to people who are
15 making over \$200,000.

16 Now, we have argued the logic, we have argued the
17 merit, we have argued the philosophy, and we have not
18 gotten anywhere. I think we ought to look at it, just as
19 a last desperate effort.

20 Look at the politics of it. How many more people are
21 we sticking it to with this proposal than we are helping,
22 just in the numbers? If you do not like the philosophy,
23 you do not like the merits, be political and look at the
24 numbers in this case.

25 It is true, we are increasing the benefits, but we

1 are increasing the taxes on the people a lot more rapidly
2 than we are increasing the benefits. A 300 percent tax
3 increase on these people in the year 2002 over what they
4 pay now in taxes is not good public policy, and it is
5 certainly not good politics.

6 Senator Nickles. Mr. Chairman.

7 The Chairman. Yes, the Senator from Oklahoma.

8 Senator Nickles. Mr. Chairman, just a couple of
9 comments. One, I totally disagreed with Senator Bradley
10 when he was saying this thing was going to phase out in
11 the long term. We do not do that. Just for the seven
12 years, I will give an example ----

13 Senator Bradley. If I would show you the place in
14 the legislation where you do that, would you amend it to
15 eliminate that part?

16 Senator Nickles. Well, let us just talk about
17 something else. We moved those points. I would be happy
18 to ----

19 Senator Bradley. No, I mean after the seven years.
20 Would you amend the part? You just said you did not
21 intend to do it longer than seven years.

22 Senator Nickles. No, I did not say after seven
23 years. I said what we did was, we indexed ----

24 Senator Moynihan. He said he would like to talk
25 about something else.

1 Senator Nickles. No. What I would like to do is
2 just tell a few facts. The phase-out period for somebody
3 that has one child is \$24,000. Under our proposal, that
4 increases to \$26,000, and under present law it goes to
5 \$30,000. We index it. It moves, it increases, the
6 amount of money that people can have.

7 Now, we have been criticized because we have say we
8 should count more money. The so called Earned Income Tax
9 Credit is supposed to be for low-income people, but right
10 now some people have a lot of income that does not count
11 towards that.

12 You could have a business loss, and maybe that
13 business loss is depreciation on home rental property.
14 Well, that does not count. You are able to have
15 offsetting losses, so you can have a lot of money and
16 still qualify under this proposal. There is a lot of
17 money, my point, being eligibility.

18 Who is eligible? Some people said, well, you have a
19 tax increase on Social Security, you are taxing Social
20 Security. No, we are trying to define who is eligible to
21 receive this payment from the Federal Government and we
22 are saying that you should basically count almost all
23 income.

24 If you are going to be giving benefits to people with
25 two children that have incomes of \$30,000 some, then

1 should we not target that benefit for people that maybe
2 are on lower income? That is the point. So we say we
3 should limit some of the payments. We say we should
4 limit tax-exempt interest. That should count towards it.
5 Right now that is not added, but it should be.

6 We should add tax-exempt interest, and we should add
7 non-taxable portions of Social Security. Right now, that
8 is not. It should be. If somebody is receiving a lot of
9 money, that should be added to determine whether or not
10 they are eligible to receive this credit.

11 Again, I just want to repeat a couple of things. The
12 maximum credit increases under our proposal. It
13 increases under our proposal. For a person that has two
14 or more children, it goes from \$3,100 to \$3,800, so it
15 increases every year.

16 To say that, well, that is a tax increase, no, it
17 does not increase quite as fast. Current law, it
18 increases to \$4,300. Do not forget, the maximum credit
19 was less than \$1,000 in 1990, so it has increased very
20 dramatically. We slow the growth of the increase.

21 Senator Simpson. Mr. Chairman?

22 The Chairman. Yes, Senator Simpson.

23 Senator Simpson. Mr. Chairman, I have listened to
24 this here and in my chambers. Since we are down, now, t
25 politics, apparently, as my friend from Louisiana's

1 poignant tales from the political wars on this one shows,
2 it is going to be very easy for me to go into a town
3 meeting and get up and just say one thing, that the
4 maximum EITC is equally available to both a cashier who
5 works at Benny's Big Boy, 2,000 hours a year, and earns
6 \$5.50 an hour, and also a part-time lobbyist who works
7 \$100 a year and earns \$100 an hour. I hope people will
8 hear that.

9 Senator Nickles. A good point.

10 The Chairman. I think the Senator makes a very
11 important point. The steps taken in the Chairman's mark
12 really have two goals. The first goal is to reduce, to
13 eliminate, the waste, fraud, and abuse. The General
14 Accounting Office has testified that that has averaged
15 over the years up to 30-40 percent, extremely high, so a
16 number of steps have been taken to try to reduce that.

17 Second, is to ensure that the program is focused on
18 the working poor with children. That is the point that
19 Don has made, that a number of types of income have not
20 been included as to eligibility and is unfair.

21 As far as requiring work, let me point out that it
22 really does not do that because if you are earning \$9,000
23 in one hour, you still would be eligible for this credit.
24 So what we are trying to do is eliminate some of these
25 factors so that the program is more fair, focused on what

1 it was originally intended to do.

2 Senator Bradley. Mr. Chairman, if I could. I have
3 heard these diversions that are thrown out about tax-
4 exempt interest. When I talked to Linda Bailey and her
5 two kids, they do not ask me about bond prices, they do
6 not ask me about which municipality is offering the best
7 rate, they are not interested in yields, they are
8 interested in paying their utility bills, and without
9 this they will not be able to do that.

10 I do not know a lot of people that make \$9,100 an
11 hour, but it is unbelievable to me that we throw that
12 example out as the excuse to rip away from working
13 families in this country the one tax break that they have
14 gotten in the last decade. Now, all of this talk about
15 error rate. Well, we have made some changes. The study
16 that the distinguished Chairman cites is a 1993 study.

17 Senator Moynihan. I believe, if I may say, the
18 Treasury Department says that the simplifications that
19 were put in the 1993 legislation have sharply reduced the
20 error rate.

21 Senator Bradley. Right. It has reduced the error
22 rate from 42 percent to 19 percent. In 1995, there is a
23 large number of people who are no longer applying for the
24 Earned Income Tax Credit because we plugged those holes
25 by the changes that the Treasury has already made. I do

1 not understand it, I am not talking about politics, or
2 the numbers. I mean, we can tighten it up and prevent
3 money from being wasted. We can do that, and we have
4 done that in the last two or three years. Why are we so
5 reluctant to give people making \$128,000 a year a break?
6 Why are we so reluctant to have the government send them
7 a check--indeed, in many cases it does--that offsets
8 their Social Security taxes? Why are we so reluctant to
9 do that? I do not have a good answer.

10 I do not think the other side is at all kind of
11 heading down this road in terms of being mean-spirited, I
12 just think that they do not understand who the people are
13 out there who are benefitting from this program. When
14 you yank it away from them, you have a big responsibility
15 then to try to figure out, well, how are they going to
16 pay their bills? They are already working.

17 Linda Bailey would like to make more than \$17,000 a
18 year as a receptionist in a hospital, but she cannot get
19 a better job. She is working, though. Her two kids are
20 getting older every year and they are going to require
21 more in support, not less. What we are saying to her is,
22 \$1,500 more a year in taxes.

23 Senator Nickles. No, that is not correct. I would
24 just tell my friend ----

25 Senator Bradley. This is the age-old tactic back

1 here, whenever the facts are uncomfortable, deny them.

2 Senator Nickles. The facts are, that is not the
3 case. I am happy to talk facts any day, any time, and
4 that is not the case. I would just tell my friend,
5 somebody making \$17,000 a year on income tax pays \$15.

6 Senator Bradley. What about child support of
7 \$6,000?

8 Senator Nickles. Just a minute.

9 Senator Bradley. That is denied under this.
10 Remember, we double tax child support.

11 Senator Nickles. No, we do not.

12 Senator Rockefeller. Mr. Chairman?

13 The Chairman. The time is running out, so I would
14 ask the Senator to be brief.

15 Senator Rockefeller. I will be very brief. I would
16 simply say to my friend from Wyoming and the lobbyists
17 who are going to come running in to sign up for EITC to
18 burnish their reputation with their employers, that 95
19 percent of EITC goes to workers with less than \$11.11 per
20 hour. Yes. \$11.11 per hour.

21 I would just wonder if there are any lobbyists out
22 there who would encourage and give comfort to the Senator
23 from Wyoming when he goes to his next town meeting with
24 this message about lobbyists, if there any out there who
25 are planning to sign up for EITC. There is a large group

1 of lobbyists. Anybody raise your hand if you are going
2 to sign up for EITC. Is that something you want to do?

3 Senator Simpson. Mr. Chairman, before we completely
4 lose our marbles here ----

5 [Laughter]

6 Senator Simpson. [continued]. Let us hear what
7 Alan K. Simpson said. It was a very simple sentence. I
8 said, the maximum EITC is equally available to both a
9 cashier who works at Benny's Big Boy 2,000 a year and
10 earns \$5.50 an hour, and also available to a part-time
11 lobbyist who works 100 hours a year and earns \$100 an
12 hour. That is what I said.

13 Senator Rockefeller. That is correct. I know
14 that.

15 Senator Graham. Mr. Chairman.

16 The Chairman. The time has expired on this
17 amendment. We have debated this issue for hours now.

18 Senator Graham. Mr. Chairman, could I make one,
19 within 60 seconds, statement?

20 The Chairman. That will be the final comment.

21 Senator Graham. Mr. Chairman, it seems to me this
22 is a peculiarly inappropriate time to be considering this
23 kind of reduction in the Earned Income Tax Credit. We
24 have in this bill the embodiment of the welfare reform
25 bill that passed on the Senate floor a few days ago.

1 We know that that bill is going to require people
2 who do what we ask them to do, study, learn a skill, go
3 to work. They are going to end up, in their initial
4 jobs, earning less money per hour than the per hour value
5 of their current welfare benefits.

6 What has made it possible for people to do what we
7 are asking them to do? It is the Earned Income Tax
8 Credit which has provided that bridge for those initial
9 months when a person is getting a job, getting
10 established, and beginning to earn something more than
11 just bare minimum wage.

12 If we take this away, we are going to undercut a
13 significant part of the foundation upon which our
14 aspirations of moving 2.5 million Americans from welfare
15 to work in the next five years are predicated.

16 The Chairman. I would just make one comment, that
17 what we are trying to do through the reforms is to ensure
18 that the program is focused on the working poor with
19 children.

20 The question is on the amendment. The Clerk will
21 call the roll.

22 The Clerk. Mr. Dole.

23 The Chairman. No, by proxy.

24 The Clerk. Mr. Packwood.

25 The Chairman. No, by proxy.

1 The Clerk. Mr. Chafee.
2 Senator Chafee. No.
3 The Clerk. Mr. Grassley.
4 Senator Grassley. No.
5 The Clerk. Mr. Hatch.
6 Senator Hatch. No.
7 The Clerk. Mr. Simpson.
8 Senator Simpson. No.
9 The Clerk. Mr. Pressler.
10 The Chairman. No, by proxy.
11 The Clerk. Mr. D'Amato.
12 Senator D'Amato. No.
13 The Clerk. Mr. Murkowski.
14 Senator Murkowski. No.
15 The Clerk. Mr. Nickles.
16 Senator Nickles. No.
17 The Clerk. Mr. Moynihan.
18 Senator Moynihan. Aye.
19 The Clerk. Mr. Baucus.
20 Senator Moynihan. Aye, by proxy.
21 The Clerk. Mr. Bradley.
22 Senator Bradley. Aye.
23 The Clerk. Mr. Pryor.
24 Senator Pryor. Aye.
25 The Clerk. Mr. Rockefeller.

1 Senator Rockefeller. Aye.

2 The Clerk. Mr. Breaux.

3 Senator Breaux. Aye.

4 The Clerk. Mr. Conrad.

5 Senator Moynihan. Aye, by proxy.

6 The Clerk. Mr. Graham.

7 Senator Graham. Aye.

8 The Clerk. Ms. Moseley-Braun.

9 Senator Moseley-Braun. Aye.

10 The Clerk. Mr. Chairman.

11 The Chairman. No.

12 The Clerk. The ayes are 9, the nays 11.

13 The Chairman. The amendment does not carry.

14 Senator Chafee. Mr. Chairman?

15 The Chairman. Yes. If I could, I would just like

16 to make one announcement. It was my intent, and I just

17 checked it out with Senator Moynihan, that we take up one

18 more amendment and then have a break for lunch. We will

19 set the time we reconvene after we complete this.

20 Senator Rockefeller. Why, Mr. Chairman? I thought

21 we agreed we were going to go right on through.

22 The Chairman. Well, some of my colleagues have said

23 they are hungry.

24 Senator Bradley. Senator Rockefeller will buy pizza

25 in the back room.

1 Senator Rockefeller. I will buy the company.

2 [Laughter]

3 The Chairman. Is that a deal?

4 Senator Chafee.

5 Senator Chafee. Mr. Chairman, I have an amendment
6 which you could call the Generic Drug Conforming
7 Amendment. Now, Senator Pryor and I submitted an
8 amendment dealing with generic drugs, and this was
9 declared out of order.

10 So what I am doing here, Mr. Chairman, is appealing
11 the ruling of the Chair. I do that because this is a
12 matter that really should be dealt with. This is as good
13 a forum as any. Frankly, it is better, because I do not
14 know in what other forum we can get the attention to it
15 and the matter considered and disposed of.

16 So, Mr. Chairman, I direct your attention to a packet
17 of materials which will be distributed, and the
18 amendment, likewise, is being distributed.

19 Here is the situation, Mr. Chairman. When we adopted
20 the GATT there was an extension of the length of time
21 that a patent would apply. There was further provided a
22 transition period for those companies who are dependent
23 upon the earlier expiration of the patent date if they
24 had made a commitment of resources, and if they were
25 ready to go into production, then they would be permitted

1 to do so but they would have to pay a royalty to the
2 owner of the patent over a period of time which is set
3 forth in the legislation.

4 Now, Mr. Chairman, when we did that, that applied to
5 everything, but by mistake we failed to include
6 pharmaceuticals into this transition rule. It was
7 intended, everybody thought, that the so called generic
8 drug manufacturers would be able to come along and get
9 into production, and they thought that this transition
10 rule would apply, namely that royalties would be paid to
11 the owner of the patent in the interim period. But that
12 did not occur, just through a plain oversight.

13 So, Mr. Chairman, might we have order here?

14 The Chairman. Yes. The Senator has an important
15 amendment. He is entitled to be heard.

16 Senator Chafee. Now, Mr. Chairman, the situation
17 thus has arisen that the owners of the patent have gotten
18 the extension and have achieved a windfall that was
19 completely unanticipated and, indeed, totally
20 inadvertent.

21 It has resulted in our not achieving savings in the
22 Medicaid program that we might have achieved, and it
23 also, of course, is costing consumers additional sums of
24 money. And we are not talking small amounts here, Mr.
25 Chairman, we are talking literally billions of dollars

1 that the Medicaid and other--not solely in Medicaid--
2 seniors and other consumers might have saved.

3 It was interesting that one of the beneficiary
4 companies of this who, it is my understanding, will reap
5 an additional \$3.6 billion in exclusive sales as a result
6 of this omission, that the company's own counsel referred
7 to it as an eureka moment. Eureka, he exclaimed, when he
8 discovered that there was this loophole. And I might
9 say, he is entitled to shout, "Eureka" when you have a
10 \$3.6 billion discovery.

11 Now, you might say, Mr. Chairman, that this is a
12 matter that ought to be considered by the Labor
13 Committee, it is not in our jurisdiction. Well, Senators
14 Kassebaum and Kennedy have indicated that they have no
15 objection to making this correction in the Finance
16 Committee.

17 Furthermore, Mr. Chairman, in case there are scoring
18 problems for this, I might say that we could lower the
19 federal Medicaid cap by the amount of savings that would
20 result from enabling generic drug manufacturers to
21 compete for this business. Those savings are, as we are
22 dealing in billions, not that great, but still they are
23 about \$146 million, which is no insignificant amount.

24 So, Mr. Chairman, at a time when we are asking
25 everybody to sacrifice, I would think that we all should

1 be prepared to make this change that is required in order
2 that the consumers, senior citizens, Medicaid, programs
3 run by the States, can achieve these savings.

4 Now, Mr. Chairman, another argument that might be
5 advanced is that this will interfere with out trade
6 situation. Well, we have information from the special
7 Trade Representative who says that this provision in no
8 way upsets our efforts to strengthen international
9 intellectual property protections.

10 In the package that is being distributed there is a
11 letter from the Food & Drug Administration which lays to
12 rest the arguments made by beneficiaries of the windfall,
13 that this amendment would upset the balance established
14 in 1984 with the enactment of the Drug Price Competition
15 and Patent Term Restoration Act. So, Mr. Chairman, I
16 would now ask that my co-sponsor, Senator Pryor, be given
17 an opportunity to comment.

18 The Chairman. Senator Pryor.

19 Senator Pryor. Did you want to say something,
20 Senator Moynihan?

21 Senator Moynihan. Yes. May I just take one moment
22 to say that, having been Chairman of the committee when
23 the Uruguay Round was passed, we received provisions that
24 went into our final implementing legislation from five
25 committees, I believe. The provisions at issue here came

1 from Judiciary, and there was a technical oversight.
2 They did not change the rules of the Federal Drug
3 Administration when they agreed to this change in the
4 treaty provisions.

5 I just want to say that Ms. Katherine Field, the
6 Associate General Counsel of the U.S. Trade
7 Representative who was a negotiator for the Uruguay Round
8 intellectual property provisions is here today. I would
9 recommend that she be heard. She will testify that the
10 amendment is consistent with the Uruguay Round
11 agreements, and that it fixes, simply, a mistake in the
12 implementing bill.

13 The Chairman. Senator Pryor.

14 Senator Pryor. Thank you, Mr. Chairman and Senator
15 Moynihan.

16 This issue should be very simple. It should be very,
17 very simple. This should be in the form of a technical
18 correction. This technical correction, if not granted in
19 this piece of legislation in the Chairman's mark, is
20 going to leave egg on our faces.

21 I would love to have the opportunity to basically
22 cleanse my soul and vote for this amendment now or on the
23 floor of the Senate so that I could look back and say
24 that we corrected an error that put \$2 billion
25 unintentionally in the pockets of about four or five drug

1 companies unexpectedly, unnecessarily, unjustifiably, and
2 we took that money, those billions of dollars, out of the
3 pockets of people who have to have Zantac, Capitan, and
4 three or four other major pharmaceuticals where they
5 cannot be competed with now for a period of years because
6 we did not correct this error.

7 The generic companies, my colleagues, have stood
8 ready, willing, and able to come into this market when
9 the patents expired and to give these companies
10 competition. For example, for Zantac, a 60-day supply,
11 brand-name, at the corner drug store, on the average, is
12 \$216; the estimated generic price, \$108.

13 Can we look at our seniors in the face, can we look
14 at our people in the face, when we go back home and say,
15 no, we decided not to give you that break, we decided to
16 give that break to the drug companies?

17 Now, they are here today and they are represented
18 here today, but I think there are a lot more people
19 represented here today that are asking for basic fairness
20 and asking for this correction to be had.

21 Capitan, for 365 days, is \$832, brand-name; \$500, or
22 60 percent of the costs is the generic competitor,
23 waiting ready to market and sell their drugs.

24 Is this a trade problem? No, says Mickey Kantor. Is
25 this a plus for our deficit? Yes, says Mr. Brown, the

1 Secretary of Veterans Affairs, where they are going to
2 save over \$200 million in that particular department. We
3 have a Patent Office letter here saying that this was
4 wrong and it needs to be rectified.

5 Finally, Mr. Chairman, I would like to say this. In
6 GATT, what we did was, we made patent laws apply to
7 everybody, people who make pencils, television sets,
8 microphones, cars, and electric light bulbs, whatever.
9 We applied the patent laws right across the board,
10 especially related to competitive generics, to every
11 industry, every product, except one: drugs.

12 We carved them out inadvertently, and now this is an
13 opportunity that we have to make that correction and I
14 hope that we will. In the name of God, let us make this
15 correction so that we will not be embarrassed and
16 humiliated that we saw what the score was and we did not
17 do anything about it.

18 Senator Hatch. Mr. Chairman?

19 The Chairman. Senator Hatch.

20 Senator Hatch. Mr. Chairman, by that logic we ought
21 to just make everything generic. It would save the
22 consumers all kinds of money. It would dry up all
23 research and development in this country and we would
24 lose blockbuster drugs right and left and we would not
25 solve an awful lot of health problems in this country,

1 and, by and large, we would all be losers.

2 This is not a simple, little, technical amendment,
3 and anybody who says it is does not understand what they
4 are talking about. First of all, I am the author of the
5 Hatch-Waxman act. It was negotiated in my office over a
6 two-week period, 18 hours a day.

7 I remember it specifically, because I had a root
8 canal during that time. And I am not sure which was
9 worse, the root canal or the negotiations. I have to
10 tell you, I have friends on both sides of this issue,
11 both on the generic side and on the research side and I
12 care for every one of them.

13 But this is not a simple issue. Both Hatch-Waxman
14 and the Uruguay Round were hard-won compromises which
15 were negotiated very carefully, and I think this issue is
16 too complicated to be considered in a reconciliation
17 mark-up. It has both trade and intellectual property
18 implications, as well as implications for the Food & Drug
19 law.

20 If we are going to do this on a reconciliation bill,
21 I have a Food & Drug reform bill that I think we ought to
22 reform too that will save consumers trillions of dollars,
23 if that is what we are concerned about here. Maybe we
24 ought to add that to reconciliation as well.

25 The fact here, any savings in Medicaid are

1 tangential. This is simply not a policy to be negotiated
2 or determined and deliberated on the Medicare/Medicaid
3 reform bill.

4 Now, the generics are right, some brand-name
5 companies may have received what some consider to be a
6 windfall. On the other hand, that is what Hatch-Waxman
7 did, it drew a line and it said there are going to be
8 some winners and there are going to be some losers.

9 There are two aspects to it. One, is we want to
10 encourage research and development through patent life
11 extension, and the other is, we want to encourage the
12 whole generic industry through the ability to come on-
13 line the day that patent expires rather than wait two or
14 three years until the patent expires. Frankly, it has
15 worked very well. It has saved billions of dollars to
16 consumers, but it did cause some winners and some losers.

17 Both GATT and the Hatch-Waxman Drug Price Competition
18 Patent Term Restoration Act of 1984 are extremely complex
19 pieces of legislation that balanced many interests, and
20 they should not be easily reopened without disrupting
21 this delicate balance.

22 Now, my good friends from Rhode Island and Arkansas
23 seem to indicate that had Congress fully considered the
24 issue it would have definitely come down on the side
25 embraced by the amendment. That may be so, I do not

1 know.

2 But my experience in negotiating the Hatch-Waxman
3 bill back in 1983 and 1984 leads me to conclude that it
4 is often difficult to achieve consensus between the
5 generic and research and development-based drug firms,
6 and we are trying to help both.

7 Now, the companies that have these so called
8 windfalls barely missed the benefits of Hatch-Waxman, I
9 think one, by 18 months. And others got tremendous
10 windfalls, if that is what you want to call them, from
11 Hatch-Waxman. But Hatch-Waxman also helped to create the
12 generic drug industry and make it what it is today, at
13 least the good aspects of it.

14 Now, the carefully crafted GATT law clearly states
15 that in order for a manufacturer to take advantage of the
16 "equitable remuneration" tool, the patent must be
17 infringed by virtue of the extension granted by the URAA.
18 Now, this issue has been litigated. The courts have
19 concluded that infringement did not occur.

20 Because of the special treatment already afforded
21 generic drugs by Hatch-Waxman, a strong argument can be
22 made that in the area of drugs, unlike other patented
23 products, that the equitable remuneration tool should not
24 be available.

25 Now, again, I have to say, I am not persuaded that

1 the reconciliation process is the place to solve this.
2 Hatch-Waxman was a delicate balance between the brand
3 names and the generics. The balance, of course, was
4 between the interests of consumers ----

5 The Chairman. I would point out, all time has
6 expired.

7 Senator Hatch. Mr. Chairman, this is a pretty
8 important issue, if I could just finish these few
9 remarks.

10 The Chairman. All right.

11 Senator Hatch. There are sincere people on both
12 sides of this. I understand both sides of it. It is
13 driving me crazy, because I do not want to see either
14 side not benefit. But I did not when I did Hatch-Waxman,
15 either. There are, by necessity, some winners and
16 losers.

17 Let me just say this, that the balances between the
18 interests of consumers and having speedy access to lower
19 cost alternatives and the need to preserve appropriate
20 intellectual property rights for brand names so that they
21 would have an adequate return on investment to use for
22 the research and development which would lead to break-
23 through drugs, any changes to Hatch-Waxman, which the
24 prior amendment would entail, it seems to me, would have
25 to be considered in the same careful, methodical, and

1 thoughtful way that we did when we passed it to begin
2 with, and a reconciliation amendment is not the way to do
3 that.

4 Let me just say this one last thing, Mr. Chairman.
5 Senator Bradley. Mr. Chairman?

6 Senator Hatch. I will yield.

7 The Chairman. I will let Senator Bradley ask one
8 question.

9 Senator Baucus. Mr. Chairman, I would like to ask a
10 question, too.

11 Senator Bradley. I would like to ask the sponsor,
12 Senator Chafee, a question if I could.

13 Senator Chafee. Sure.

14 Senator Bradley. In the amendment, do you have any
15 definition for substantial investment or equitable
16 remuneration?

17 Senator Chafee. No.

18 Senator Bradley. So that it conforms with the
19 existing GATT. Mr. Chairman, I am like Senator Hatch; I
20 have friends on both sides of that issue and I am for my
21 friends. I do not know if I will be able to vote with
22 both of them, though.

23 Senator Chafee. Mr. Chairman.

24 The Chairman. Senator Chafee.

25 Senator Chafee. May I just say, in answer to

1 Senator Hatch's concerns, I addressed that specific
2 question to Dr. Kessler, Commissioner of the Food & Drug
3 Administration, does this language, namely the language
4 that we have here, upset the balance between the patent
5 and generic pharmaceutical manufacturers established by,
6 in effect, the Hatch-Waxman Act?

7 The answer is, the language would not upset the
8 balance. This came from the Deputy Commissioner for
9 Policy in the FDA, so I do not think we have any worries
10 along the lines that Senator Hatch was indicating.

11 Senator Hatch. If I could just have a response to
12 that. I have a letter dated September 20th from William
13 Brock, former Chief Trade Negotiator.

14 Senator Baucus. Mr. Chairman.

15 Senator Hatch. Frankly, he says that the proponents
16 suggest that this legislation is only a "technical"
17 correction to the Uruguay Round Agreements Act and
18 neither weakens patent protection under URAA, nor
19 diminished the United States' ability to fight for
20 stronger international patent protection. I disagree.
21 This issue is far too important to risk on the basis of
22 hoped for good intentions in nations which have never
23 favored intellectual property protection.

24 Now, as Chairman of the Judiciary Committee, I deal
25 with all of these intellectual property issues. We deal

1 with them as they arise in Europe, and through various
2 conventions. I have to tell you, this is not a simple
3 issue. It is not one that we should decide here. I hope
4 that people will vote down this amendment.

5 The Chairman. I will let two additional questions
6 be asked, one by Senator Baucus, one by Senator
7 Rockefeller, then I will rule.

8 Senator Baucus. Thank you, Mr. Chairman. Mr.
9 Chairman, I think I, as much as anybody, believe strongly
10 in knocking down trade barriers and have worked hard, as
11 other Senators have, to help negotiate strong trade
12 agreements.

13 The one provision that is critically important is the
14 TRPs provision, the trade-related assistance for
15 intellectual property. That is because most countries
16 take advantage of the United States' patents. I think
17 other countries infringe upon our patents more than they
18 do other countries. It was very important to get a good,
19 solid TRPs provision in the Uruguay Round.

20 Now, the negotiator who negotiated the agreement for
21 this administration, Mickey Kantor, for example, has
22 indicated that this does not disrupt trade at all. He is
23 negotiator, and he was there. In fact, I have spoken
24 with the negotiator herself who negotiated, and she said
25 it was an oversight. It was a total oversight.

1 So if our trade negotiators say it is an oversight,
2 and if our trade negotiators say it does not disrupt
3 trade relations, and if it is a windfall, as it is, it is
4 unnecessary, and, as the Senator from Arkansas said, an
5 unjustified windfall, it just seems to me that, in
6 fairness, the best thing to do is to pass this amendment.

7 Senator Hatch. Well, Mr. Chairman, could I just add
8 one last thing here? I notice this letter from Mr.
9 Schultz, who is certainly knowledgeable, because he was
10 Henry Waxman's top staffer. But let me tell you
11 something. He reverses what the FDA wrote in its letter
12 of May 25, 1995.

13 Now, how do you trust an agency that sends out
14 definite language on May 25, 1995 saying this is not a
15 simple, little issue, and now sends out a letter during
16 the height of this, which seems to be very political,
17 that it is?

18 Frankly, I would rather go with this 16-page document
19 that they sent back in May of this year, which was also
20 signed, by the way, by William B. Shultz, Deputy
21 Commissioner for Policy. The conclusion--I will not read
22 it--basically rebuts what he says in this letter we got
23 today.

24 Senator Chafee. Well, also, he did not have the
25 conforming amendment before him in May, whereas he did in

1 September.

2 Senator Hatch. No, but he said you need more than
3 just a technical amendment, that this needs hearings and
4 everything else.

5 The Chairman. Senator Rockefeller?

6 Senator Rockefeller. Mr. Chairman, honestly,
7 without trying to offend anyone, everyone seems to have
8 friends on all sides of this thing, and then savagely are
9 going for what they can.

10 This boils down to a very simple thing. That is,
11 these certain brand companies got a break, which was not
12 intended to be given to them, which was entirely
13 inadvertent, which has been admitted to that by all
14 parties. The Clinton health bill used to get teased for
15 being 1,342 pages. I think GATT was something like
16 36,000 pages, was it not, Senator Moynihan?

17 Senator Moynihan. It felt like 36,000.

18 Senator Rockefeller. Yes. So, I mean, an error is
19 understandable, but that does not forgive that it be
20 continued if it was not intended to be there when there
21 are a few companies that are making a great deal of
22 companies, they are brand companies. There are not many,
23 as Senator Pryor has indicated. It is at the expense of
24 generics, in some cases.

25 In any event, they do not deserve to be making the

1 money. Do I blame them for wanting to make the money?
2 Of course I do not blame them for wanting to make the
3 money. They just want to maximize their profits under
4 the loophole. But it is wrong, and we should change it.

5 The Chairman. Well, as I have already indicated, I
6 must rule that Senator Chafee's amendment is out of
7 order. It is non-germane, under Finance Committee Rule
8 2-A, because the amendment covers matters not in the
9 Finance Committee's jurisdiction.

10 I know Senator Chafee's amendment, as is perfectly
11 obvious from what we have heard today, has bipartisan
12 support, but I think I must apply the committee rules
13 consistently across the board. I realize that some may
14 wish to overrule the Chair, but I would remind them that
15 at least two-thirds of the numbers present must agree to
16 consider the non-germane item.

17 Senator Pryor. Mr. Chairman.

18 Senator Moynihan. Mr. Chairman, we must
19 respectfully disagree. We believe a majority vote is all
20 that is ever required with respect to an issue of
21 germaneness. In my experience there has never been a
22 two-thirds vote, and I would hope we would not do it
23 today. I am sorry.

24 Senator Pryor. If I may speak just one moment to
25 the subject of germaneness. This amendment offered by

1 Senator Chafee, myself, and Senator Rockefeller, who has
2 done a lot of work in this area, this amendment would
3 save \$150 million in Medicaid funds. So we have
4 jurisdiction, this Finance Committee does. The Labor and
5 Human Resources Committee, Senators Kassebaum and Kennedy
6 have signed off. They say, we waive jurisdiction.

7 In other words, they waive jurisdiction to the Senate
8 Committee on Finance. Jurisdiction rests with this body.
9 I say, Mr. Chairman, if we do not correct this, who can,
10 who will? It is time that we faced this and correct this
11 mistake.

12 The Chairman. Well, as I said, based on the facts,
13 I find this non-germane. It is not within the
14 jurisdiction of the Finance Committee. It is either in
15 the jurisdiction of the Judiciary Committee or Labor
16 Committee.

17 I would point out to my distinguished friend and
18 colleague that, under the rules, no non-germane item may
19 be brought up during that meeting unless at least two-
20 thirds of the members present agree to consider those
21 items.

22 Senator Moynihan. But, Mr. Chairman, I would say,
23 because this measure relates to Medicaid, as the Senator
24 from Arkansas has said, it is germane.

25 The Chairman. I rule that is non-germane because it

1 is without the jurisdiction of our committee.

2 Senator Chafee. Mr. Chairman, I would appeal the
3 ruling of the Chair and ask for a roll call vote.

4 Senator Graham. Could I ask a question, a
5 parliamentary inquiry?

6 The Chairman. I think we have discussed this long
7 enough.

8 Senator Graham. Could I ask a question of
9 parliamentary inquiry?

10 The Chairman. Yes.

11 Senator Graham. Are we really talking about two
12 issues here? First, appealing the determination that it
13 is germane or non-germane if the Chair is sustained in
14 his ruling that is non-germane, then it will take a two-
15 thirds vote to consider it. But the question is, what
16 vote is required to appeal the judgment as to its
17 germanity?

18 The Chairman. Two-thirds members of the committee
19 present.

20 Senator Graham. You read the rule. If it were
21 determined to be non-germane, it would take a two-thirds
22 vote.

23 The Chairman. It is automatically out of order.

24 Senator Graham. What is the vote required to have
25 the full committee ----

1 The Chairman. To be overruled, it has to be two-
2 thirds of those present.

3 Senator Bradley. I think the Senator's contention
4 is that the appeal is the majority, but the substance
5 would be two-thirds.

6 The Chairman. Well, I am told that that is exactly
7 the way the committee rule works. It takes two-thirds on
8 this vote.

9 Senator Moynihan. Mr. Chairman, I have never known
10 us to require a two-thirds vote on such a motion. Can we
11 take a vote on whether we should have a vote?

12 [Laughter]

13 The Chairman. We have discussed this matter with
14 the parliamentarian, and our ruling is based on that
15 discussion.

16 Senator Bradley. So the parliamentarian has ruled
17 that it takes two-thirds to win or defeat an appeal of
18 the ruling of the Chair, and two-thirds on the substance,
19 should that appeal be overruled or sustained?

20 The Chairman. The situation is this. I am making
21 the finding that it is non-germane, and it takes a two-
22 thirds vote of those present to overturn that
23 determination.

24 Senator Pryor. Well, is there any committee in the
25 United States Congress then that could correct this

1 terrible oversight?

2 The Chairman. By changing the Senate rules.

3 Senator Pryor. By changing the Senate rules?

4 Senator Baucus. If I might, Mr. Chairman, what if
5 this issue were before the Labor Committee, would it be
6 germane because it affects Medicaid?

7 The Chairman. Well, the Labor Committee, of course,
8 sets its own rules, just as the Finance Committee does.

9 Senator Baucus. No.

10 Senator Chafee. Mr. Chairman, I am ready to vote on
11 this.

12 The Chairman. Let us proceed.

13 Senator Simpson. Mr. Chairman, with regard to the
14 vote, I will abstain. I own \$5,000 worth of Glaxo common
15 stock.

16 The Chairman. All right. The question is on the
17 Chair's determination of whether the amendment is non-
18 germane. The Clerk will call the roll.

19 Senator Chafee. Could you just explain, now, a yea
20 or nay vote? Could you explain how each vote slices up?

21 The Chairman. A nay vote means it is not germane,
22 cannot be considered.

23 Senator Chafee. A yea vote means it can be
24 considered.

25 The Chairman. A yea vote would mean that it can be

1 considered.

2 The Clerk. Mr. Chafee.

3 Senator Chafee. Yea.

4 The Clerk. Mr. Grassley.

5 Senator Grassley. No.

6 The Clerk. Mr. Hatch.

7 Senator Hatch. No.

8 The Clerk. Mr. Simpson.

9 Senator Simpson. I abstain.

10 The Clerk. Mr. D'Amato.

11 Senator D'Amato. No.

12 The Clerk. Mr. Murkowski.

13 Senator Murkowski. No.

14 The Clerk. Mr. Nickles.

15 Senator Nickles. No.

16 The Clerk. Mr. Moynihan.

17 Senator Moynihan. Aye.

18 The Clerk. Mr. Baucus.

19 Senator Baucus. Aye.

20 The Clerk. Mr. Bradley.

21 Senator Bradley. Aye.

22 The Clerk. Mr. Pryor.

23 Senator Pryor. Aye.

24 The Clerk. Mr. Rockefeller.

25 Senator Rockefeller. Aye.

1 The Clerk. Mr. Breaux.
2 Senator Breaux. Aye.
3 The Clerk. Mr. Conrad.
4 Senator Conrad. Aye.
5 The Clerk. Mr. Graham.
6 Senator Graham. Aye.
7 The Clerk. Ms. Moseley-Braun.
8 Senator Moseley-Braun. No.
9 The Clerk. Mr. Chairman.
10 The Chairman. No.
11 The Clerk. The nays are 7. The Chair is sustained.
12 Senator Moynihan. Could we hear the vote?
13 The Clerk. Do you want the vote again?
14 Senator Moynihan. No, just tell us what the vote
15 was. We did not hear the tally.
16 The Clerk. The yeas are 9, the nays 7.
17 Senator Moynihan. So there is a majority in favor
18 of taking this up, but you ruled that two-thirds would be
19 required.
20 The Chairman. That is correct.
21 Senator Grassley. Mr. Chairman.
22 Senator Pryor. Mr. Chairman, I would just like to
23 say, I cannot speak for my good friends and colleagues,
24 Senator Chafee or Senator Rockefeller, but this amendment
25 will be going to the floor and it will be subject to a

1 lot of debate.

2 Senator Grassley. Mr. Chairman?

3 Senator Grassley. Yes, Senator Grassley. I did not
4 speak on the amendment, but I had a statement. So, since
5 I did not speak, I want to put that statement in the
6 record in support of my vote.

7 The Chairman. I am sorry. I did not hear you.

8 Senator Grassley. I want to put a statement in the
9 record in support of my vote.

10 The Chairman. Without objection, so ordered.

11 [The statement of Senator Grassley appears in the
12 appendix.]

13 The Chairman. There will be a vote at 3:00 p.m. I
14 suggest we be back here at 3:30.

15 Senator Grassley. Mr. Chairman, is there any
16 winnowing down of the amendments so that we can get some
17 feel of how things are shaping up?

18 The Chairman. That is a very good question, John.
19 The staff on both sides have been working all day on that
20 effort. Hopefully we will make some progress. That is
21 one of the reasons we are taking a brief recess.

22 The committee is in recess.

23 [Whereupon, at 2:45 p.m., the meeting was recessed.]

24

25

1 AFTER RECESS

2 [4:10 p.m.]

3

4 The Chairman. The committee will please be in
5 order.

6 Senator Moynihan, as I mentioned to you, we have a
7 non-controversial item that I think we all have agreed
8 upon. It involves the two-year extension of the computer
9 automation deadline and the Family Support Act of 1988.

10 In it, there was a provision that required states to
11 have in effect an automated data processing information
12 system for use in the administration of child and spousal
13 support.

14 Under the Family Support Act, the states were
15 required to have these systems up and running by October
16 1st, 1995, but unfortunately, the Department of Health
17 and Human Resources did not publish final regulations in
18 a timely manner.

19 And for this reason, the states have requested an
20 extension to October 1st, 1997. This two-year extension
21 reflects the delay in HHS publishing final regulations.

22 This provision was included in the welfare bill that
23 passed the Senate and is non-controversial.

24 But if we don't pass the measure today, states that
25 have not been able to get their computer system up and

1 running will face a penalty for not being in compliance
2 with the law.

3 The House passed this measure earlier this week. And
4 with your concurrence, I would like to move that the
5 Committee approve the House bill and report the bill.

6 Senator Moynihan. Mr. Chairman, we thank you for
7 this timely measure.

8 Senator Baucus is necessarily delayed, but I am sure
9 that he would like to report that the only state that has
10 so far met the deadline is Montana.

11 But this is not a problem for the ---- that the state
12 ---- this is a problem created by Department of Health
13 and Human Services, easily resolved at no cost. And I
14 very much hope that we can approve this.

15 The Chairman. I would move that we report the bill
16 out.

17 Senator Breaux. Second.

18 Senator Moynihan. There is a second.

19 The Chairman. Those in favor, signify by saying,
20 aye.

21 [Chorus of ayes.]

22 The Chairman. No?

23 [No response.]

24 The Chairman. The ayes have it. The legislation is
25 reported out.

1 Senator Moynihan. Mr. Chairman, I have an amendment
2 when you are ready.

3 The Chairman. Please proceed.

4 Senator Moynihan. And before I say that, may I ask
5 that I be allowed to place in the record a letter
6 concerning this mild dispute we had about the germaneness
7 and the appeal to the Chair and so forth for the record?

8 The Chairman. Certainly.

9 Senator Moynihan. Thank you.

10 The Chairman. Without objection.

11 Senator Moynihan. Mr. Chairman, I have an amendment
12 here which establishes teaching hospitals and a graduate
13 medical education trust fund, almost precisely on the
14 lines that the Finance Committee did a year ago in
15 reporting out a general health care bill.

16 The amendment would strike the provision in the
17 Chairman's mark which would reduce the indirect medical
18 education provision to 4.5 percent over three years and
19 arrange for the graduate medical education and the
20 indirect medical education payments be deposited in the
21 trust fund.

22 According to the CBO, these funds will total \$5.9
23 billion in 1996 and rising to \$8.9 billion in the year
24 2002.

25 The amendment also sets up, as we did previously in

1 the last Congress, an advisory commission to make
2 recommendations regarding teaching hospitals and graduate
3 medical education.

4 The commission is directed to make recommendations in
5 many areas, including alternative funding sources. Last
6 time, we had a health insurance premium surcharge that
7 would do this.

8 Mr. Chairman, this is perhaps the least understood
9 problem. And it is a genuine problem of health care in
10 this country today.

11 Because of the advances we are making and which we
12 are encouraging in this legislation and which we should
13 encourage of health maintenance organizations and such
14 like, the medical schools and their teaching hospitals
15 become increasingly priced out of the medical market.
16 And in consequence, they are in increasing difficulty.

17 Last May, we had a nice exchange. And I think in
18 talking about health care, it helps to remember how new
19 the medical science we know of today is.

20 Dr. John Rowe, who is President of Mt. Sinai Hospital
21 and the Mt. Sinai School of Medicine in New York City, I
22 asked him a question. I said in what decade of which
23 century ---- Mt. Sinai is a century old, built in the
24 nineteenth.

25 In what decade of which century would you say that

1 the random patient with the random disease encountering
2 the random doctor at Mt. Sinai was better off with the
3 treatment that was received, not just comforted and
4 counseled, but actually in some sense treated in an
5 efficacious way?

6 This is a major hospital. It has been there for the
7 longest time. And Dr. Rowe said, "Oh," he said,
8 "Somewhere in the late 1930s, early 1940s. That is where
9 modern medicine began. And it has made such
10 extraordinary changes that we can scarce keep up with
11 them."

12 But even as those changes take place, changes in
13 medical services, HMOs make it increasingly difficult for
14 the hospitals to maintain themselves.

15 And the Congressional Budget Office just released a
16 study, Medicare and Graduate Medical Education. And Dr.
17 O'Neil had a cover letter which he concluded that a major
18 finding of the report is that, and I quote, Reductions in
19 GME payments could have a significant impact on other
20 activities of teaching hospitals, including research and
21 the provision of uncompensated care. End quote.

22 More importantly, in a March 1995 report to Congress,
23 the Respective Payment Assessment Commission, PROPAC as
24 we say, which advises Congress on Medicare Part A,
25 summarized the situation of teaching hospitals as

1 follows: "As Competition in the health care system
2 intensifies, the additional cost borne by teaching
3 hospitals will place them at a disadvantage relative to
4 other facilities. The role, scale, function, and number
5 of these institutions increasingly will be challenged.
6 Their overall financial health ranks among the poorest."

7 I think we are all familiar with this issue. We have
8 discussed it at great length during the health care
9 debate, as the Chairman recalls.

10 It is one of those unintended consequences. You get
11 more efficient modes of delivering health care. And the
12 front of health care science begins to be threatened.

13 Now, we can deal with this. It is simply providing a
14 ---- since we are moving to managed care, out-of-fee for
15 service, these hospitals are at a disadvantage. We know
16 we need them.

17 If we provided a trust fund for them, it would go on
18 indefinitely. I would hope one day we might have a
19 premium on all health policies, but this would do it for
20 the next decade or so. And I very much hope that we
21 might accomplish that in this bill.

22 The Chairman. Any other comment on Senator
23 Moynihan's ----

24 Senator Rockefeller. Mr. Chairman, I would just say
25 that I would support the amendment.

1 The Chairman. Well, let me say that I share the
2 understanding and importance of these hospitals. And we,
3 because of our interest in this area, have attempted, I
4 would say to my distinguished colleague, to take a
5 balanced approach to Medicare saving proposals that
6 impact on these teaching hospitals.

7 Senator Moynihan. I recognize this.

8 The Chairman. We have, as you know, worked very
9 closely with you, as well as Senator D'Amato on these
10 matters. And I admire and support, as I said, the
11 important role played by them.

12 However, your amendment does reduce important party
13 savings that do not meet our objectives of improving the
14 financial picture of the Medicare trust fund. And I
15 regret to have to say that it just plain costs too much
16 money and would cause the Chairman's mark to miss its
17 goal of saving the \$270 billion over seven years.

18 So for that reason, I must oppose your amendment.

19 Senator Moynihan. We had hoped that this could be
20 paid for with an offset of a portion of the fiscal
21 dividend that CBO had said it would score for bringing
22 the budget to near balance, but I recognize the
23 Chairman's position.

24 Senator Chafee. Mr. Chairman?

25 The Chairman. Yes, Senator Chafee.

1 Senator Chafee. Mr. Chairman, I must say I share
2 the distinguished Senator's from New York concerns about
3 graduate medical education.

4 And I am somewhat leery of trust funds being set up,
5 but I agree with you that we start down a slippery slope
6 here, if we start spending money and then say that it is
7 going to be offset by the fiscal dividend. That is the
8 only difficulty, it seems to me, here.

9 First, let's get that fiscal dividend. And then, we
10 can have a royal time spending it.

11 And I personally, as you know, I make no secret. I
12 would use it all for deficit reduction. And there may be
13 some. I certainly would not use it for tax cuts, but not
14 that that is being suggested here.

15 But the immediate point is, I just don't think we can
16 start approving expenditures and then saying that they
17 are going to be paid for from the dividends, as worthy as
18 the cause might be.

19 The Chairman. With that, I would say, amen. I
20 think that puts it very well, Senator Chafee.

21 Does the Senator from New York care for a roll call
22 vote?

23 Senator Moynihan. Could we have a roll call, sir?

24 The Chairman. The question is on the Moynihan
25 amendment. Please call the roll.

1 The Clerk. Mr. Dole?
2 The Chairman. No, by proxy.
3 The Clerk. Mr. Packwood?
4 The Chairman. No, by proxy.
5 The Clerk. Mr. Chafee?
6 Senator Chafee. No.
7 The Clerk. Mr. Grassley?
8 Senator Grassley. No.
9 The Clerk. Mr. Hatch?
10 The Chairman. No, by proxy.
11 The Clerk. Mr. Simpson?
12 The Chairman. No, by proxy.
13 The Clerk. Mr. Pressler?
14 The Chairman. No, by proxy.
15 The Clerk. Mr. D'Amato?
16 The Chairman. He is unavoidably absent. He
17 votes ---- no, he cannot vote. I meant Mr. Murkowski.
18 The Clerk. Mr. Murkowski?
19 The Chairman. No.
20 The Clerk. Mr. Nickles?
21 The Chairman. No.
22 The Clerk. Mr. Moynihan?
23 Senator Moynihan. Aye.
24 The Clerk. Mr. Baucus?
25 Senator Moynihan. Aye, by proxy.

1 The Clerk. Mr. Bradley?
2 Senator Moynihan. Aye, by proxy.
3 The Clerk. Mr. Pryor?
4 Senator Pryor. Aye.
5 The Clerk. Mr. Rockefeller?
6 Senator Rockefeller. Aye.
7 The Clerk. Mr. Breaux?
8 Senator Breaux. Aye.
9 The Clerk. Mr. Conrad?
10 Senator Conrad. Aye.
11 The Clerk. Mr. Graham?
12 Senator Moynihan. Aye, by proxy.
13 The Clerk. Ms. Moseley-Braun?
14 Senator Moynihan. Aye, by proxy.
15 The Clerk. Mr. Chairman?
16 The Chairman. No.
17 The Clerk. The ayes are 9, the nays 10.
18 The Chairman. The amendment is not agreed to.
19 We do have six additional amendments that have been
20 accepted on both sides. One is a Baucus amendment on
21 home and family farm protection, with Senator Conrad.
22 Two by Senator Graham: one, no cost shifting to
23 local governments; the second disallows the planning the
24 funds.
25 Senator Grassley requires access to appropriate

1 providers, including credentialed specialists for all
2 medically necessary treatment and services.

3 Moseley-Braun, disabled children amendment. And
4 Senator Rockefeller, primary care access.

5 Senator Moynihan. Mr. Chairman, I would move that
6 these amendments be adopted in banc.

7 Senator Chafee. Mr. Chairman, could I just ask a
8 question about the ---- I did not get the Grassley
9 amendment. Provides access to what?

10 The Chairman. To appropriate providers, including
11 credentialed specialists for all medically necessary
12 treatment and services.

13 Senator Chafee. Thank you.

14 The Chairman. Thank you very much.

15 Without objection, these amendments are accepted in
16 block.

17 Senator Pryor?

18 Senator Pryor. Thank you, Mr. Chairman. Mr.
19 Chairman, I have three small amendments. I wish I could
20 have gotten them in that package right there, but I will
21 say that I wanted to introduce all of these in one
22 amendment. But I have been advised that it will take
23 three small amendments.

24 Mr. Chairman and colleagues, this relates to the Drug
25 Rebate Program that has been so very successful and saved

1 our states and the veterans of our country so much.

2 And I am offering this amendment on behalf of myself
3 and Senator Rockefeller who is, of course, the ranking
4 member of the Veterans Committee of the United States
5 Senate.

6 In 1990, Mr. Chairman, we adopted a Drug Rebate
7 Program. And basically, we said to the states that if
8 you do business with pharmaceutical companies and bring
9 in enormous amounts, those companies in order to do
10 business and sell the volume where they would be selling,
11 they would have to sign rebate agreements with the
12 various states.

13 Well, what do you know? This program has worked
14 beautifully. And the states have been able to save for
15 the poorest to the poor that they provide for in Medicaid
16 some \$5 billion, \$5 billion since 1991, an enormous
17 savings for the states.

18 And the drug companies seem to be not too unhappy
19 with it, even though they are not making quite the profit
20 that they might be making in other sectors of the
21 economy.

22 We are expecting this Drug Rebate Program, if
23 continued as is, to save us another \$12 billion. And
24 that would be over the next seven years, Mr. Chairman.

25 The first of my amendments relates to the veterans,

1 the Department of Veterans Affairs, the Public Health
2 Service clinics, the community health centers, Indian
3 Health Service.

4 And this is a technical amendment which restores the
5 statutory language critical to the implementation of the
6 Drug Rebate Program for these several entities.

7 I am not certain as to what the Chairman's mark has
8 in specific language, but I don't see why this might be
9 accepted. And I, at the appropriate time, will move its
10 adoption.

11 The Chairman. Any further comment?

12 [No response.]

13 The Chairman. Essentially, what the Chairman's mark
14 provides for is a three-year, what I call, sunset of the
15 program. After three years, it will be phased out,
16 ended. But, of course, at that time, as with any sunset,
17 the legislation can be reenacted, if that is the desire
18 at the time.

19 So I essentially look upon the Chairman's mark as a
20 sunset, and for that reason, would oppose the amendment.

21 The Chairman. Roy, would you care to comment?

22 Senator Pryor. Roy, would you help me out a moment?
23 Is the language that I am proposing, is it already in the
24 mark? If it is, I will be glad to withdraw the
25 amendment. I was not certain I have seen the language.

1 Mr. Ramthun. The Chairman's mark retains the current
2 law language. There are no changes. I know the House
3 bill did make a change to current law. And this
4 amendment would be necessary if that were the language
5 that we were carrying.

6 We are carrying exactly current law. So I would just
7 advise the committee that I believe that this amendment
8 is unnecessary.

9 Senator Pryor. Well, does it still carry with it
10 the sunset provision?

11 Mr. Ramthun. The mark still carries the sunset
12 provision, yes.

13 Senator Pryor. Is there any reason ---- this
14 program is working. I don't know why we are going to
15 sunset it and make the veterans department pay more for
16 their drugs. I don't understand that.

17 Mr. Ramthun. Well, we removed the link between
18 Medicaid and the veterans and the Public Health Service
19 rebates three years ago. And from that perspective, I do
20 not believe that it is necessary to retain this
21 provision.

22 Senator Pryor. Mr. Chairman, with your permission,
23 I am going to temporarily withdraw or set aside this
24 amendment. I may revisit it later in the process.

25 I will go now with your permission, Mr. Chairman.

1 Can I do these other two little amendments?

2 The Chairman. Yes.

3 Senator Pryor. Or do you want to move to your ----

4 The Chairman. No. Please proceed with your other
5 amendments.

6 Senator Pryor. All right. The second amendment
7 does relate to the rebate program, as we passed over in
8 1990. And it relates specifically to the sunset
9 provision.

10 This amendment would basically allow each of the
11 states that have not opted out of this program to have
12 the option of continuing the program, as the program is
13 now. It would give them that option. And it would
14 eliminate the language that calls for the sunset of the
15 programs.

16 It gives the states the opportunity to make an
17 election, Mr. Chairman, to make election, to participate
18 in the existing program, or to negotiate independently of
19 their rebates, independently of the Medicaid laws.

20 Secondly, it would establish a task force to be
21 convened by the Secretary of HHS no later than June 1,
22 1998 to report its findings to the Secretary by October
23 1, 1998 to see if this program should be continued or if
24 it should sunset.

25 I think it is pretty sound policy. And I hope that

1 the distinguished Chairman and our colleagues would
2 accept the amendment.

3 The Chairman. Roy, would you comment on these
4 amendments?

5 Mr. Ramthun. I'm sorry, Mr. Chairman. I just
6 received a copy.

7 [Pause]

8 The Chairman. While Roy is reviewing this proposed
9 amendment, Senator D'Amato would like to be recorded as
10 voting yes on the Moynihan medical education amendment.
11 This would change the Moynihan amendment to a 10 to 10
12 vote. So it would still fail, as unanimous consent that
13 we still record it.

14 Senator Pryor. Would Senator Moynihan like to
15 change any of the votes that he has cast today? I wonder
16 if he would, or just that one.

17 Senator D'Amato, I apologize.

18 Senator Moynihan. We are sufficiently ahead for the
19 moment.

20 Senator Pryor. I'm sorry, Mr. Chairman. Excuse me.

21 The Chairman. Roy, would you comment, please, on
22 these amendments?

23 Mr. Ramthun. Yes. Mr. Chairman, if I may, the
24 reason we sunsetted the rebate requirement under the
25 Medicaid program is because, as states move forward into

1 managed care, maintaining the rebate program gives an
2 incentive for them to pull prescription drugs out of the
3 entire benefit program.

4 And repealing the rebate program in no way limits
5 states' ability to have their own rebate programs, if
6 they so desire.

7 The Chairman. So this basically makes no change.

8 Mr. Ramthun. No. This amendment, as I read
9 especially the first bullet, would retain the federal
10 Drug Rebate Program, but allow states to participate in
11 that rebate program, if they choose.

12 The federal infrastructure for the rebate program
13 would remain. States would have access to the revenue
14 and would essentially continue the existing arrangements.

15 The Chairman. I think we can accept that amendment.

16 Senator Pryor. Thank you. I thank the Chairman
17 very much for accepting that.

18 Mr. Chairman, I have one minor amendment that still
19 relates to rebates. And this relates to rebates given
20 now to the nursing homes out in the country. And this
21 would eliminate the rebate program for drugs to the
22 nursing homes.

23 There is a feeling out in the provider community, Mr.
24 Chairman, that there has been some kind of, I guess you
25 might describe it as, double dipping.

1 That would be the nursing homes gave them the maximum
2 rebates permitted on prescription drugs used in nursing
3 facilities. And they have been exceeding the rebates
4 under the Medicaid program.

5 And the manufacturers here would not be subjecting
6 themselves to this, I guess you would call it, double
7 dipping, rebating on the prescription drugs sold through
8 nursing facilities.

9 And I think once again this is more in the way of a
10 technical amendment. And if there are any concerns, I
11 would like to hear those expressed. Otherwise, I move
12 its adoption.

13 The Chairman. Roy, are there are any changes?

14 Mr. Ramthun. No. I think this would correct an
15 oversight of current law.

16 The Chairman. If that be the case, then again, I
17 would be pleased to accept the amendment.

18 Mr. Ramthun. A clarification of current law.

19 Senator Pryor. Therefore, we need no roll call vote
20 on that. Mr. Chairman, I thank you very much for your
21 patience.

22 The Chairman. Thank you, Senator Pryor.

23 Senator Rockefeller. Mr. Chairman, can I just make
24 a comment?

25 The Chairman. Yes.

1 Senator Rockefeller. I just think it is important
2 Senator Pryor is not running for reelection which if he
3 did, he would win easily.

4 Senator Pryor. That is debatable.

5 Senator Rockefeller. But he is going to be long
6 remembered around this place for what he has done. And
7 Senator Chafee knows this. And a lot of us know it, you
8 know, to provide senior citizens with affordable drug
9 prices.

10 I mean, it has been a long-standing effort on his
11 part, and also to make sure that the consumers are
12 charged fairly. And he has done some more work today
13 very quietly.

14 And I just ---- it has really been quite remarkable.
15 I have been associated with him for 10 years now. And I
16 have seen him never let up on this issue, not once.

17 Senator Pryor. Thank you, sir.

18 Senator Rockefeller. And it needs to be known.

19 Senator Chafee. Mr. Chairman, I would just like to
20 reiterate, echo what Senator Rockefeller said. Senator
21 Pryor has really been a bulldog in these areas.

22 I think the drug companies are going to give him a
23 tremendous farewell party when he leaves.

24 [Laughter]

25 The Chairman. Just let me add that I have worked

1 very closely with Senator Pryor, particularly in the
2 defense area on waste, fraud, and abuse. We have worked
3 together very closely on operational testing.

4 And I can tell you he is indeed a bulldog on any
5 matter in which he believes and believes in strongly. It
6 has been a pleasure for me to have had the opportunity to
7 join hands with him.

8 Senator Pryor. I thank the Chairman and I thank my
9 colleagues.

10 Senator Moynihan. Mr. Chairman, I must insist. He
11 is not gone yet.

12 Senator Pryor. I am not quite gone yet. Thank you.
13 Thank you very much.

14 Senator Chafee. I was just going to suggest that he
15 got the last amendment accepted unanimously. I think he
16 should have had a roll call vote and then taken a victory
17 lap.

18 [Laughter]

19 The Chairman. There is a roll call vote on the
20 Kerrey amendment on increased funding for information
21 highway. I guess it's about nine minutes. So we will
22 recess and come back and reconvene promptly afterwards.

23 [Whereupon, at 4:32 p.m., the meeting was recessed.]

24

25

AFTER RECESS

[5:12 p.m.]

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The Chairman. The committee will please be in order.

5

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Senator Rockefeller, I think you are next in line.

7

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Senator Rockefeller. Thank you, Mr. Chairman. I believe this is an important amendment. It has to do with the arbitrary budget caps.

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And I am offering an amendment that would replace what I consider the arbitrary and budget driven cap on vouchers that seniors can use under the Chairman's mark to buy private health insurance.

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Instead of indexing the growth of these vouchers to a rate that was determined based upon the need, in my judgment, to get \$270 billion in Medicare cuts, my amendment would tie the growth of these payments to what private health insurance premiums actually are projected to cost over the next seven years.

20

21

22

23

So in effect, I would take the mark's language which indexes the Medicare-based payment amount for Medicare choice plans to per capita growth in the gross domestic product.

24

25

I would strike per capita growth to gross domestic product and insert an index each year to the growth of

1 private health insurance premiums.

2 Under the Chairman's mark, vouchers that seniors can
3 use to buy private health insurance would be capped at
4 about 4.3 percent annual growth rate.

5 And private health insurance is projected to grow at
6 a much higher growth, in fact around 7 percent. So that
7 is a very large difference.

8 What that means is that seniors will have to make up
9 the difference of any shortfalls from their own pockets
10 or return to traditional Medicare.

11 But the choices available under traditional Medicare
12 won't be so great either anymore. Hospital and ----

13 Mr. Chairman, could I have attention, please, order
14 or whatever?

15 The Chairman. The Senator does have an important
16 amendment. And he is entitled to the attention of the
17 group.

18 Senator Rockefeller. Thank you, sir.

19 As I indicated, the choice under traditional Medicare
20 will not be so great from this point forward if
21 everything passes anyway.

22 Hospital and doctor payment rates are being slashed
23 so severely under this proposal that many rural hospitals
24 will be forced to shut down.

25 And many doctors will refuse to see traditional

1 Medicare patients because their payment rates will be way
2 too low, not to mention the significant hike in
3 deductibles and premiums that traditional Medicare
4 beneficiaries will also have to pay under this plan in
5 the Chairman's mark.

6 Now, earlier this year, we heard a lot of rhetoric,
7 particularly from members on the House side about how
8 their plan to reform Medicare was going to save \$270
9 billion merely by giving people more choices. And in
10 fact, we have heard an awful lot of talk about more
11 choices.

12 Handing out vouchers to let seniors buy private
13 health insurance plans was going to solve the problem.

14 So now, we are dealing with reality. And the hard
15 cold facts and figures by the Congressional Budget Office
16 show us that savings that the Republicans promised would
17 result from handing out managed care vouchers and
18 expanding choices is far from actual budget reality.

19 In fact, in the plan before us today in the
20 Chairman's mark, it actually proposes handing out
21 vouchers to pay for medical savings accounts that will
22 actually cost the Medicare program \$2.8 billion over the
23 next seven years.

24 What the CBO tells us is that the bulk of the savings
25 achieved by the Republican budget are not from massive

1 enrollment into these managed care networks or from the
2 great new expansion of choice.

3 The savings come from an arbitrary budget cap, the
4 Chairman Roth's plan places on the vouchers being handed
5 out to seniors to buy a private health insurance policy.

6 Last week, I asked the Congressional Budget Office
7 for estimates on how this plan would increase a Medicare
8 beneficiary's out-of-pocket costs, based upon whether
9 they stayed in traditional Medicare or decided to cash in
10 a managed care voucher.

11 I have yet to see any of these estimates. And I am
12 not blaming CBO because I know they are working night and
13 day, but I do hold this committee accountable in a rush
14 to jam through a plan that they are going to take votes
15 on, in which they are going to take votes on the Medicare
16 plan without having the faintest idea on how much more
17 their plan is going to cost senior citizens and the
18 disabled strikes me as irresponsible.

19 My amendment merely indexes the voucher that the
20 Chairman wants to hand out to a much more reasonable
21 standard that is not tied to an arbitrary budget cap.

22 At a minimum, the Chairman's vouchers ought to grow
23 at the expected rate of private health insurance,
24 particularly in that we are moving away in theory.

25 That is the point. We are moving away from

1 traditional Medicare into managed care and other new,
2 innovative marketplace systems.

3 So last year, we heard a lot of scare talk about
4 rationing from the other side of the aisle. The
5 President's health care plan was not enacted because it
6 set an overall budget target. I didn't say cap. It set
7 a target for the country to meet on health spending.

8 This, however, is a rigid cap on health care spending
9 that applies only to senior citizens and to the disabled.

10 Beyond the concern about how much more seniors are
11 going to have to pay for the health care under this plan,
12 frankly, I worry about the quality of care that they can
13 expect to receive.

14 We all know about the second class status of the
15 Medicaid program because of the extremely low provider
16 reimbursement rates. This plan puts the Medicare program
17 on that same path.

18 And again, if the cap is at 4.3 percent and private
19 health insurance premium costs are going up at 7.1
20 percent, it is obvious what is going to happen.

21 Seniors who can afford to make up the difference will
22 still be able to buy quality health care. Those who
23 can't, won't.

24 I hope my amendment is adopted.

25 Senator Conrad. Mr. Chairman?

1 The Chairman. Senator Conrad.

2 Senator Conrad. Mr. Chairman, I can't help but
3 reflecting on what a difference a year makes. When I
4 look back on the debate we had during the health care
5 fights of last year and recall Senator McCain saying just
6 about a year ago this time, September 23rd, on the floor
7 of the Senate in 1993, two years ago. He said, quote, It
8 is impossible to cut \$238 billion from these programs
9 without substantially harming the people we are supposed
10 to be helping.

11 He was referring to the Medicare program. Now, the
12 proposal before us is to cut \$270 billion.

13 Senator Hatch said last year during the debate on
14 health care reform, he asked this question, is it justice
15 to take almost \$240 billion out of the Medicare program,
16 severely jeopardizing its future?

17 Last year, it was jeopardizing its future to take
18 \$200 billion out. This year, it is saving it to take
19 \$270 billion out. What a difference a year makes.

20 I hope that we will pass the Rockefeller amendment
21 because it is a more responsible measure than the
22 underlying one.

23 Senator Moynihan. Mr. Chairman?

24 The Chairman. Senator Moynihan.

25 Senator Moynihan. If I could simply say that

1 Senator Rockefeller has made a powerful point. If you
2 would just do as we have to do, think of consequences
3 over time as different rates compound.

4 Health care premiums now double on an average of
5 about every 10 years. GDP is much longer than that. In
6 10 year's time, you won't believe the spread that we have
7 put in place. In 20 year's time, you won't recognize
8 these as two comparable programs.

9 The Chairman. The Democratic time is up.

10 Let me start out by pointing out that this amendment,
11 of course, would cost money. And there is no offset to
12 it, but important, I do not believe that the growth in
13 private health insurance premiums is an appropriate
14 index.

15 Frankly, it has been going down very dramatically
16 during the last few years. And in many ways, the best
17 example of that is the federal employees health plan.

18 I would point out that the federal employee health
19 premiums next year will increase only .4 percent. In
20 1995, they went down 3.4 percent. So it does not seem to
21 me that this is an appropriate measure for the premium.

22 We think that the average per capita growth in the
23 GDP is a far better index for one very, very important
24 reason.

25 And that reason is it is an indication of what the

1 Nation can afford. In other words, it is based on what
2 the Nation has grown.

3 The problem in so many of our insurance or rather
4 health problems have been that their cost have been
5 growing far in excess of the growth of the country.

6 We have been experiencing very, very substantial
7 growth. In fact, in the case of Medicare, it is
8 projected that it will grow in the future as much as 10
9 percent.

10 But here, we have an effort by providing choice to
11 bring competition into the picture. That should mean
12 savings.

13 We believe that by permitting those premiums to grow
14 by the increase in GDP, we have established a measure
15 that is realistic and practical. And for that reason, we
16 object to the amendment.

17 With that, I assume you would like a roll call vote.
18 The clerk will call the roll.

19 Senator Rockefeller. Mr. Chairman?

20 The Chairman. Yes.

21 Senator Rockefeller. Would I be allowed just a
22 quick response?

23 The Chairman. Yes, sure.

24 Senator Rockefeller. Number one, the Chairman
25 references the decrease in prices on the FEHPB, federal

1 employee health plan, to which I say bravo. I mean, what
2 could be more wonderful?

3 All we are saying here is that if it does not go down
4 like that in the case of Medicare that we would, you
5 know, reflect a more reasonable rate of growth.

6 Secondly, that what this, what the Chairman's mark in
7 my judgment is going to do and according to the National
8 Leadership Coalition on Health Care what it will
9 absolutely do, it will cost shift \$91.6 billion. And
10 that is not I think desirable.

11 The Chairman. The vote will be on the Rockefeller
12 amendment. The clerk will call the roll.

13 The Clerk. Mr. Dole?

14 The Chairman. No, by proxy.

15 The Clerk. Mr. Packwood?

16 The Chairman. No, by proxy.

17 The Clerk. Mr. Chafee?

18 Senator Chafee. No.

19 The Clerk. Mr. Grassley?

20 Senator Grassley. No.

21 The Clerk. Mr. Hatch?

22 Senator Hatch. No.

23 The Clerk. Mr. Simpson?

24 Senator Simpson. No.

25 The Clerk. Mr. Pressler?

1 The Chairman. No, by proxy.
2 The Clerk. Mr. D'Amato?
3 The Chairman. No, by proxy.
4 The Clerk. Mr. Murkowski?
5 The Chairman. No, by proxy.
6 The Clerk. Mr. Nickles?
7 The Chairman. No, by proxy.
8 The Clerk. Mr. Moynihan?
9 Senator Moynihan. Aye.
10 The Clerk. Mr. Baucus?
11 Senator Moynihan. Aye.
12 The Clerk. Mr. Bradley?
13 Senator Bradley. Aye.
14 The Clerk. Mr. Pryor?
15 Senator Moynihan. Aye, by proxy.
16 The Clerk. Mr. Rockefeller?
17 Senator Rockefeller. Aye.
18 The Clerk. Mr. Breaux?
19 Senator Moynihan. Aye, by proxy.
20 The Clerk. Mr. Conrad?
21 Senator Conrad. Aye.
22 The Clerk. Mr. Graham?
23 Senator Graham. Aye.
24 The Clerk. Ms. Moseley-Braun?
25 Senator Moseley-Braun. Aye.

1 The Clerk. Mr. Chairman?

2 The Chairman.. No.

3 The Clerk. The ayes are 9, the nays 11.

4 The Chairman. The amendment does not carry.

5 Senator Bradley will offer the next amendment.

6 Senator Bradley. Thank you very much, Mr. Chairman.

7 Earlier today, I offered an amendment on the earned
8 income tax credit. And as I offered the amendment, I
9 told the story of Linda Bailey.

10 If everybody recalls, Linda Bailey, who was a
11 receptionist at the hospital in Lizmuth, New Jersey, had
12 two kids, six and 14 years of age, earn \$17,000 and was
13 going to have to pay \$1,500 more in terms of taxes
14 because she lost the earned income tax credit.

15 Well, she also, as you recall, receive child support.
16 And in this proposal, she will have pay a 10 percent tax
17 on that child support. I mean, that is unbelievable, but
18 that is in this proposal on child support.

19 She will have to pay a 10 percent tax on child
20 support. So if she was getting \$5,000 in child support,
21 she would be paying \$500 off the top to compensate the
22 state for withholding from her husband's wages so that
23 she could get the child support.

24 Right now what happens is the absent father in many
25 cases disappears. The state has to find that person and

1 then attach, withhold the wages or the tax refund or
2 whatever.

3 Under the proposal in the Chairman's mark, she would
4 have to pay 10 percent before she could get her child
5 support which means she would pay 10 percent less.

6 Now, that makes no sense to me. It is counter the
7 whole thrust of child support enforcement. It is the
8 government's job to enforce court orders.

9 What this would say is, if you want the government to
10 enforce a court order and enforce a father to pay the
11 child support that the court has ordered him to pay,
12 you've got to pay a tax of 10 percent of your child
13 support. That to my mind, makes no sense.

14 The Chairman. Senator Bradley, can I just
15 interrupt? I think they have passed out the wrong
16 amendment.

17 Senator Bradley. No, no. This is not the
18 amendment. The ranking member has the correct one.
19 Maybe if you can just listen to my explanation. I don't
20 know if you are going to read the amendment anyway.

21 The Chairman. But I would hope that the proper
22 amendment would be passed out because a number of members
23 have spoken.

24 Senator Bradley. Well ----

25 The Chairman. But go ahead.

1 Senator Bradley. Mr. Chairman, I have wrapped up
2 the explanation. I mean, it is fairly simple. It is not
3 a complicated matter. It is ---- and if you believe
4 fathers should support their children and if you believe
5 that the father isn't and therefore the state has gone to
6 attach his wages and the wages are coming in now to
7 support the child, why do we want to tax that?

8 This would say that you need a 10 percent fee, tax,
9 10 percent of the child support to go to the state for
10 doing what the state does on a regular basis for every
11 other kind of court order, enforce it. And it seems to
12 me that this the wrong direction to go.

13 And the amendment I offer is simply to strike the 10
14 percent tax on child support enforcement that is provided
15 in the bill.

16 Senator Conrad. Would the Senator from New Jersey
17 yield for a question?

18 Senator Bradley. I would be pleased to yield.

19 Senator Conrad. Is the Senator from New Jersey
20 suggesting that somehow it is unfair to tax child
21 support, put a new tax, a tax we have never had before on
22 child support of 10 percent so that we can get a kitty of
23 money put together so that we can afford to give a
24 \$20,000 tax break to somebody earning \$350,000 a year?
25 Does the Senator from New Jersey think that is unfair?

1 Senator Bradley. Well, I definitely think that is
2 unfair.

3 Senator Chafee. I object that question is a leading
4 question.

5 [Laughter]

6 Senator Bradley. Well, the Senator makes a
7 reasonable point. Yes, I think that is unfair. But what
8 I think that is even worse is that this will end up
9 costing the state more because what will happen, if you
10 are a rational person and your child support monies are
11 being taxed at 10 percent, what are you going to do?

12 You are going to call the state. And you are going
13 to say, well, he is now sending me money. You no longer
14 have to attach his wages. So the state will say, fine.

15 And then, it will get out to about a year and a half.
16 And suddenly, the old pattern will reoccur. And the
17 payment will not be made.

18 You will then call the state up and say, remember the
19 person that wasn't paying, that didn't start to pay.
20 Well, he is now not paying again.

21 And they will say we have no record of that here.
22 Well, let's begin the whole thing all over again and go
23 through the whole procedure once again. Thereby costing
24 the state more money.

25 And it is that realization that in the House of

1 Representatives would lead the Ways and Means Committee
2 say, we don't want to do this because this is going to
3 end up costing the state more money, not less money.

4 So not only does the Senator have a point on the
5 wealthy tax cut, but even on fiscal grounds from the
6 states' perspective. This will cost them more money, not
7 less money.

8 The Chairman. Well, I will not answer again this
9 claim about a tax cut for the wealthy. I do not know who
10 is proposing that. I don't find a \$500 tax credit for
11 the American family being limited only to the rich.

12 But it seems to me that those allegations are merely
13 raised to cloud the issue.

14 I do oppose the Bradley amendment because, as I
15 pointed out previously, it is out of order because there
16 is no offset.

17 Having said that, let me also point out that I
18 believe we have addressed the concerns which have been
19 raised about this provision as they relate to families
20 under the poverty level.

21 We have been working with members to modify this
22 provision so that the states will not be allowed to
23 collect an administrative fee if the family income is
24 less than under the national poverty level.

25 The states will be able to design their own methods

1 of recovering administrative costs. States can charge
2 the entire fee to the absent parent. So the actual
3 payment to the children is not reduced.

4 States can apply fees to particular services. States
5 could use a sliding fee scale based on income. They
6 could charge interest on arrearages or adopt a variety of
7 other innovative methods of cost recovery while at the
8 same time ensuring that the custodial family receives its
9 full child support payment.

10 I do not think we should mandate how these costs are
11 recovered.

12 I do think there is widespread support for the
13 concept of recovering some of the administrative costs
14 incurred by the states and Federal Government, the cost
15 of administering the child support enforcement system.
16 For the non-AFDC population is over \$1 billion.

17 It is unfair to low income working families who must
18 pay the taxes to help run this system because absent
19 parents are not living up to their legal and moral
20 responsibilities.

21 Again, I want to emphasize, I think we have addressed
22 the basic concern that has been raised about this
23 provision as it relates to families under the poverty
24 level. We have worked to modify it so that they will not
25 be allowed to collect an administrative fee.

1 Senator Bradley. Mr. Chairman?

2 The Chairman. Yes.

3 Senator Bradley. Has that modification been made?

4 The Chairman. Yes. We have discussed it with
5 staff. For the current status, we have discussed it with
6 staff. And it will be concluded as part of the
7 Chairman's mark.

8 Senator Bradley. So the Chairman as of this moment
9 is modifying your amendment so that you will not affect
10 anybody in poverty.

11 The Chairman. That is correct.

12 Senator Bradley. Okay. Well, let me say I think
13 that we are making progress, but what that simply means
14 is that those immediately above poverty which are the
15 working families, the Linda Baileys that are making
16 \$17,000 a year in the hospital are going to have to pay
17 more than 10 percent in order to pay for the
18 administration of the whole program.

19 So I think that it is good that we are not doing it
20 for people in poverty, but it seems to me that the same
21 argument would apply for people immediately above
22 poverty, those people who are working, who are making
23 \$16,000 and \$17,000 a year.

24 If their husbands skip, why should their child
25 support order be cut by more than 10 percent in order to

1 pay for the state system that attaches the wages?

2 I still think that it does not make sense. And it is
3 counter productive to the whole thrust of child support
4 enforcement which is you go to the court. The court
5 makes an order. The court enforces the order, collects
6 the child support, gives it to the mother who is making
7 \$16,000 and \$17,000 a year. Why should 10 percent of
8 that come out of that payment?

9 Senator Nickles. Would the Senator yield?

10 Senator Bradley. Yes.

11 Senator Nickles. All right. As the Senator who is
12 sponsoring the amendment, I concur with a lot of the
13 statements that he has made. And I would like to try to
14 remedy it if I could.

15 Senator Bradley. Right.

16 Senator Nickles. Right now, I do not think you have
17 an offset for it. And I would like to work with the
18 Senator from New Jersey to see if we can find an offset,
19 but right now, I would be a little reluctant to vote with
20 him and just not cover that.

21 What is it, 3. and some billion dollars?

22 Senator Rockefeller. 3.8.

23 Senator Nickles. 3.8

24 Senator Bradley. Well, we could maybe just sliver
25 off that fiscal dividend just a little bit.

1 Senator Moynihan. Would the Senator consider laying
2 the matter over until we return from the recess and find
3 a way to have done it?

4 Senator Nickles. I don't know if we can lay it
5 over. I think the Chairman wants to finish tonight. But
6 if you want to lay it aside?

7 Senator Bradley. Sure. I'd be glad to lay it
8 aside.

9 Senator Grassley. Mr. Chairman?

10 The Chairman. Yes, Senator Chafee.

11 Senator Chafee. One of the other things, as I
12 understand what you did, Mr. Chairman, I may be wrong, if
13 you could correct me, that the poor woman wouldn't have
14 to pay the \$25 application fee. But is the poor woman
15 exempted from the 10 percent, the very poor woman?

16 The Chairman. Well, it is left to the state how to
17 raise the funds.

18 Senator Chafee. In other words, I think there
19 should be an exemption in this for a very poor woman, not
20 only from the application fee, but also from the 10
21 percent.

22 The Chairman. I would point out that the woman at
23 poverty rate would have to pay ---- would not have any
24 cut from her ---- there would be no administrative fee to
25 be paid by her.

1 Senator Chafee. Also, if the Senator from Oklahoma
2 is going to be working on this with the Senator from New
3 Jersey, I wish they would give some attention to how are
4 you going to get the fathers, get them up for some of
5 this.

6 Senator Nickles. We went after the fathers pretty
7 significantly in the welfare bill that is here. There is
8 a lot of stuff to go after the deadbeat dad. We have a
9 lot of provisions.

10 Senator Chafee. I mean, but it seems to me ----

11 The Chairman. It is going to raise money.

12 Senator Chafee. If there is a fee of 10 percent to
13 be collected, there ought to be a 10 percent addition to
14 what they pay. And then, take it from there rather than
15 out of the woman's payment.

16 The Chairman. I would point out to the Senator that
17 the states, of course, could get the entire 10 percent
18 from the fathers.

19 Do I understand that you are going to set this aside?

20 Senator Bradley. Yes, Mr. Chairman, I will be
21 pleased to set it aside, but we have to understand a
22 little bit how it works before we assume that we can just
23 get this from the fathers.

24 Of course, it is going to come from the fathers. But
25 if we say under the current amendment it now comes from

1 the payment that in most cases the fathers make, so that
2 means 10 percent less.

3 Or in a modification, after you eliminate the poverty
4 population, more than 10 percent less goes to the mother.

5 And the Senator from Rhode Island suggest, well, we
6 just make sure that we get it from the fathers. Well,
7 the way you get it from the fathers is you tell small
8 businesses across America, you know, we are going to
9 attach the wages and divert it to the mother.

10 Now, we are saying, in addition to attach your wages
11 and divert it to the mother, by the way, you know.

12 Alice's laundry that employs two or three people.
13 And we are going to attach the wage. And then, we are
14 going to add a little more complexity. We are also going
15 to attach a sliding scale of somewhere between 10 and 18
16 percent, depending on the situation, the income of the
17 recipient. And Alice's laundry will then have to also
18 administer that complication.

19 I just think it is going to be more trouble than it
20 is worth. And the small business people are going to not
21 like it. And it will be better that we didn't tax
22 anybody who is receiving child support.

23 But I am pleased to try to work to see if we can
24 figure out some way.

25 But again, my suggestion is just a little sliver

1 would solve this whole problem.

2 The Chairman. Well, I think as Senator Chafee
3 earlier had said, once we go down that slippery slope,
4 there is no return. So I don't think we want to start
5 even a little bit.

6 But it is my understanding that the Senator is
7 willing to set aside his amendment and try to work out
8 something at the staff level.

9 Senator Bradley. I would be more than happy to.

10 The Chairman. All right. The amendment is
11 withdrawn for the moment.

12 Let's see. Who has the next amendment? Senator
13 Chafee I think.

14 Senator Chafee. Mr. Chairman, I would ask that my
15 amendment be circulated. What my amendment does is say
16 that federal Medicaid funds under this revised Medicaid
17 program must be used to cover family planning, services,
18 and supplies.

19 Now, let me just say a word or two about this, if I
20 might, Mr. Chairman. In 1972, 23 years ago, Congress
21 mandated the inclusion of family planning services and
22 supplies in every state Medicaid program.

23 Now, this has been the law for 23 years. And why?
24 Why did this law come about? It came about to provide
25 these services for very poor women, usually single,

1 usually on welfare, usually lacking knowledge about how
2 to take proper preventative care of themselves.

3 And, Mr. Chairman, just to give you some statistics,
4 in 1990, 1.7 million Medicaid enrollees, women, received
5 Medicaid-funded family planning services.

6 And, Mr. Chairman, as you know, the Nickles amendment
7 is in here, which says that no funds can be used in
8 connection with abortions, except for in cases of rape,
9 incest.

10 So therefore, these women need some advice, need some
11 help in family planning.

12 And by the way, I would say that my amendment has
13 nothing to do with abortion. It has the only funds ----
14 it only funds family planning, not abortions.

15 So, Mr. Chairman, I would hope this amendment would
16 be adopted. It is something that has been in the law, I
17 say, for 23 years. And it is the right thing to do.

18 Senator Nickles. Mr. Chairman?

19 The Chairman. Yes, Don.

20 Senator Nickles. Mr. Chairman, as I am looking at
21 this amendment, it says that the federal Medicaid funds
22 under the revised program must be used to cover family
23 planning services and supplies.

24 Looking at page 74 and 75 of the mark-up, it says
25 federal funds ---- or it says states will be able to

1 claim federal matching funds for the following services.

2 And it lists a lot of services: hospital and
3 patient, outpatient, clinical services, physician
4 services, surgical services, dental services, a lot of
5 things that are optional.

6 State funds may be used ---- or federal funds may be
7 matching state funds, including family planning services
8 and supplies. It is already available. It is there.

9 To take this one category and alleviate it and say
10 that they must be used I think would be a mistake.

11 Senator Chafee. Well, the services that you recited
12 there are optional services that the states aren't
13 required to provide them pursuant to the Medicaid
14 program.

15 And what are these poor women going to do? Where are
16 they going to get this type of information, or these
17 supplies, or the prescriptive drugs that might be
18 required?

19 And, Mr. Chairman, we have been pretty tough on these
20 women. In connection with the welfare legislation, as
21 you know, they have to go to work at the end of two years
22 on welfare.

23 And as I say, we have passed the Nickles amendment --
24 -- or not passed it. It did not come for a vote. It was
25 inserted in the Chairman's mark.

1 And so, Mr. Chairman, I think these poor women are
2 entitled to this.

3 The Chairman. Well, again, I have to point out that
4 what this amendment does, of course, is provide a mandate
5 for the services to cover family planning services and
6 supplies.

7 That is contrary to the reform intended by this
8 legislation where we want to give flexibility to the
9 governors in the states to determine how to use the funds
10 in Medicaid.

11 For that reason, I must oppose the amendment and
12 would urge it not be adopted.

13 Senator Chafee. Well, Mr. Chairman, I will point
14 out that in your mark, you provide ---- you mandate that
15 Medicaid funds must be used for immunizations, for
16 example.

17 And the Senator from Oklahoma pointed out, singling
18 out one program. He singled out one program in the
19 Nickles amendment.

20 So I don't think this violates any consistency rules
21 that have been ----

22 Senator Simpson. Mr. Chairman.

23 The Chairman. Yes, Senator Simpson.

24 Senator Simpson. Mr. Chairman, I think this is a
25 very good amendment. I don't see how we ever addressed

1 the issue of teenage pregnancy in society, how we ever
2 addressed unwed mothers without some sensible approach
3 toward family planning, and, yes, and even don't throw
4 anything, sex education.

5 You have a society, a completely wash in it, and to
6 pretend that that is not an influence on young people or
7 old. And I think that there is more discussion of sex
8 without a discussion of sexuality. And that is a most
9 disturbing trend.

10 And so until we get to dealing with these things, it
11 is in my mind always rather naive to believe that you can
12 dealt with issues of teenage pregnancy and all the things
13 that go with this terrible thing we all address without
14 talking family planning, contraceptive, education, people
15 who don't talk about that.

16 And I am not talking about the schools forcing it on
17 the parents. I have been through all of that. But I
18 think that you just somewhere to start doing something
19 instead of just talking about it as a terrible societal
20 problem.

21 Senator Nickles. Mr. Chairman?

22 The Chairman. Yes.

23 Senator Nickles. Mr. Chairman, I will be very
24 brief. We have several programs that mandate funding for
25 family planning right now and provide funding for family

1 planning. That is Title X of the Public Health Service
2 Act. The Maternal and Child Health Care is Title V of
3 the Social Security Act and Title XX of the Social
4 Security Act.

5 So I think we already have other provisions in other
6 parts of the law that deal with family planning.

7 Under the new formulated Medicaid program, we are
8 saying that federal funds can be used. And we give the
9 states lots of options, like I said before, hospitals,
10 surgical, in-patient, outpatient, you name it. And
11 included in that, family planning. It is all optional.

12 The only mandate I believe would be the one that our
13 colleague from Rhode Island said there may be a mandate
14 to the states for providing immunizations for children.

15 So I think this amendment is quite inconsistent with
16 the rest of the bill. And I would hope that it would not
17 be agreed to.

18 Senator Chafee. Mr. Chairman?

19 The Chairman. Yes, Senator Chafee.

20 Senator Chafee. Let me briefly say that Medicaid
21 currently provides 50 percent of all public funds spent
22 on contraceptive services and supplies in the United
23 States.

24 And furthermore, as far as Title X goes, that has
25 been slashed away at. In the last 12 years, the funding

1 for Title X has decreased 72 percent.

2 So this is the last area really where there is
3 funding for these poor women who are low-income women who
4 need this type of advice.

5 And if we are serious about doing something about
6 these illegitimate births that we are constantly seeing,
7 I think we ought to do everything we can to get family
8 planning information out.

9 Senator Conrad. Mr. Chairman?

10 The Chairman. Yes, Senator Conrad.

11 Senator Conrad. Mr. Chairman, when you say that you
12 are opposed to this because there is a mandate, it raises
13 a question in my mind.

14 Is it your position that when we are sending \$950
15 billion to the states in the next seven years in
16 Medicaid, the Federal Government is sending them \$950
17 billion over the next seven years, that we have no right
18 to say anything about how they spend it?

19 The Chairman. Well, as I have said on several
20 occasions today, it is the purpose of the provisions in
21 Medicaid to give great flexibility to the governors and
22 states to design the kind of Medicaid program is best
23 suited for the people in their state.

24 When we go down the road of beginning to mandate that
25 this be provided or something else be done, we are

1 limiting that flexibility.

2 So we are. Yes, you are correct. We are opposed to
3 that.

4 Now, we have provided, as you know, and Senator
5 Chafee made a correction in the Chairman's mark to carry
6 out the intent of the Chairman that we do mandate certain
7 spending floors.

8 But beyond that, with the exception of immunizations,
9 it was and is our intent to keep the flexibility at the
10 state level.

11 Senator Simpson. Mr. Chairman?

12 The Chairman. Yes.

13 Senator Simpson. I think it has to be emphasized
14 again and again. It keeps getting lost that we direct
15 that the states will expend 85 percent, at least 85
16 percent on the most vulnerable segments of society. And
17 that is what this does: elderly, disabled, children,
18 pregnant women.

19 That is in this legislation. It can't go lower than
20 85 percent on any one of those programs. That is in
21 here.

22 The Chairman. That is correct. And that is what I
23 was making reference to.

24 Senator Graham. Mr. Chairman?

25 The Chairman. Yes, Senator Graham.

1 Senator Graham. Mr. Chairman, I agree with the
2 analysis you have made. And I don't think you can have
3 it both ways.

4 This is a situation which does not allow for
5 mongrelization. If you believe that the states ought to
6 have the responsibility to run these programs, then I
7 think we ought to give it to the states with the absolute
8 fewest strings attached.

9 Essentially, we are taking federal money, converting
10 it to state money, and turning it over to the state's
11 treasury, and telling the states to use it as they will.

12 And I don't think you can pick and choose which
13 mandates you want to impose and which ones you wish to
14 withhold.

15 If I were a state legislator, I would vote, as in
16 fact I have, for these programs. In the form that we are
17 now proceeding, I think it is inappropriate.

18 The Chairman. The vote is on the question.

19 Senator Chafee. A roll call, please.

20 The Chairman. A roll call vote has been demanded.

21 The clerk will call the roll.

22 The Clerk. Mr. Dole?

23 The Chairman. No, by proxy.

24 The Clerk. Mr. Packwood?

25 The Chairman. Yes, by proxy.

1 The Clerk. Mr. Chafee?
2 Senator Chafee. Yes, aye.
3 The Clerk. Mr. Grassley?
4 Senator Grassley. Aye.
5 The Clerk. Mr. Hatch?
6 The Chairman. No, by proxy.
7 The Clerk. Mr. Simpson?
8 Senator Simpson. Aye.
9 The Clerk. Mr. Pressler?
10 The Chairman. No, by proxy.
11 The Clerk. Mr. D'Amato?
12 Senator D'Amato. No.
13 The Clerk. Mr. Murkowski?
14 The Chairman. No, by proxy.
15 The Clerk. Mr. Nickles?
16 Senator Nickles. No.
17 The Clerk. Mr. Moynihan?
18 Senator Moynihan. Aye.
19 The Clerk. Mr. Baucus?
20 Senator Moynihan. Aye, by proxy.
21 The Clerk. Mr. Bradley?
22 Senator Bradley. Aye.
23 The Clerk. Mr. Pryor?
24 Senator Moynihan. Aye, by proxy.
25 The Clerk. Mr. Rockefeller?

1 Senator Rockefeller. Aye.
2 The Clerk. Mr. Breaux?
3 Senator Breaux. Aye.
4 The Clerk. Mr. Conrad?
5 Senator Conrad. Aye.
6 The Clerk. Mr. Graham?
7 Senator Graham. No.
8 The Clerk. Ms. Moseley-Braun?
9 Senator Moseley-Braun. Aye.
10 The Clerk. Mr. Chairman?
11 The Chairman. No.
12 The Clerk. The ayes are 11, the nays 9.
13 The Chairman. 11 to 9.
14 Senator Grassley. Mr. Chairman?
15 The Chairman. Yes, Senator Grassley.
16 Senator Grassley. I want to change my vote from aye
17 to no.
18 The Clerk. Aye to no. That makes it a tie.
19 The Chairman. That makes the vote a tie. The
20 amendment is not carried.
21 Senator Bradley. Mr. Chairman, could you go over
22 that vote once more just so we have it?
23 Senator Moynihan. Could we read the tally?
24 The Chairman. Sure.
25 The Clerk. The ayes are 10 now. The nays are 10.

1 Senator Chafee. Could you report how everybody
2 voted?

3 The Clerk. Certainly. In the affirmative, I have
4 Mr. Packwood, Mr. Chafee, Mr. Simpson, Mr. Moynihan, Mr.
5 Baucus, Mr. Bradley, Mr. Pryor, Mr. Rockefeller, Mr.
6 Conrad, and Ms. Moseley-Braun.

7 In the negative, I have Mr. Dole, Mr. Grassley, Mr.
8 Hatch, Mr. Pressler, Mr. D'Amato, Mr. Murkowski, Mr.
9 Nickles, Mr. Breaux, Mr. Graham, and Mr. Chairman.

10 The Chairman. As I say, it is a 10-10 vote. And
11 the amendment is not agreed to.

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1 AFTER 6:00 P.M.

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3 The Chairman. I believe Senator Moseley-Braun is
4 next. It is my understanding that a vote is to begin at
5 6:00 o'clock. So maybe, we ought to lay down your
6 amendment and recess for the vote.

7 Senator Moseley-Braun. Mr. Chairman?

8 The Chairman. There are supposed to stack votes.

9 Senator Moseley-Braun. Mr. Chairman, I hope ----
10 maybe I am laboring under a misimpression, but I was
11 given to understand that this amendment to restore civil
12 rights protections to the legislation was going to be
13 agreed on ---- agreed to. If that is the case, then ----

14 Senator Moynihan. Well, what is the answer then?
15 Why not? I move we agree. We've got another conference.

16 Senator Moseley-Braun. Is that impression ----

17 Senator Nickles. Carol, what page is this? Mr.
18 Chairman, could we have a copy of the amendment?

19 The Chairman. I would say to the distinguished lady
20 that we are prepared to accept this amendment with the
21 condition that the committee has the opportunity to
22 consult with the Judiciary Committee.

23 Senator Moseley-Braun. I would certainly accept
24 that offer with the condition, as well.

25 The Chairman. Thank you.

1 Senator Moynihan. I move that the Moseley-Braun
2 amendment be adopted.

3 The Chairman. On those conditions.

4 Senator Moynihan. On those conditions.

5 The Chairman. Those in favor, signify by saying
6 aye.

7 [Chorus of ayes.]

8 The Chairman. Those opposed, nay?

9 [No response.]

10 The Chairman. The ayes have it. The amendment is
11 accepted.

12 Senator Moseley-Braun. Thank you.

13 The Chairman. I understand that you have a second
14 amendment, Senator Moseley-Braun?

15 Senator Moseley-Braun. I do.

16 The Chairman. Number four.

17 Senator Moseley-Braun. Thank you very much, Mr.
18 Chairman. This amendment would provide for those people
19 who are transitioning off of AFDC or temporary employee
20 assistance to have Medicaid coverage nonetheless for 12
21 months from the time that the individual stopped
22 receiving the AFDC or TEA benefits.

23 Essentially, under current law, if an individual
24 comes off of welfare or transitional assistance, they
25 would receive transitional Medicaid coverage.

1 The amendment would certainly ---- would just make
2 certain that that provision of current law was not lost.

3 Obviously, as everyone on this committee knows, the
4 lack of health care is one of the most significant
5 reasons why many times people are forced to return public
6 assistance.

7 This amendment would most dramatically impact
8 uninsured children. And it would provide and would make
9 certain that those children and the families
10 transitioning off of welfare, trying to go to work, to
11 get into the work force that they would not lose health
12 care coverage during this transitional period.

13 Senator Moynihan. I believe this is the current
14 law. And it is the contemplated provision in the bill as
15 it passed the House and Senate. Is it not?

16 Senator Moseley-Braun. That is correct.

17 Senator Moynihan. So basically, we have a statement
18 of current law and projected possible law.

19 Senator Moseley-Braun. That is correct, sir.

20 Senator Moynihan. And if the new law doesn't come
21 into effect, the old law stays in effect.

22 Senator Moseley-Braun. That is correct.

23 The Chairman. Well, my understanding of this is
24 that what it would do is maintain a mandate on the
25 states. And, of course, for the same reasons that I have

1 outlined in the past, it goes contrary to our goals. So
2 I must oppose this amendment.

3 Senator Moseley-Braun. Mr. Chairman, I understand
4 the interest in flexibility. But certainly, if we don't
5 provide children, uninsured children with health care
6 coverage during the time their parents are transitioning
7 off of the current system, off of welfare or temporary
8 assistance, if we don't provide them with health coverage
9 under Medicaid at that point, all we are doing is
10 shifting the cost of their care should they get sick into
11 the uncompensated care area.

12 And either the state or the private pay patients will
13 wind up picking up the costs in any event. It is like
14 punching a pillow.

15 As we increase the number of uninsured children,
16 children who are currently receiving Medicaid health care
17 coverage, as we increase that number, all we do is shift
18 costs elsewhere in the health care system.

19 Nobody in this country, Mr. Chairman, does not get
20 health care services. Think about it. Nobody does not
21 get health care services. The only question is how will
22 those services be paid for.

23 And right now, poor children are covered under the
24 Medicaid program. Or alternatively, they are covered
25 under what is called transitional medical assistance.

1 All this says is the states should maintain that
2 coverage, that health care coverage during the 12-month
3 period of the transition off of welfare.

4 And certainly this is not. If anything, this is not
5 an unfunded mandate on the states. If anything, we would
6 be helping the states bear the expense and the cost of
7 these children for this transitional period by the
8 adoption of this amendment.

9 The Chairman. Let's vote. Do you want a roll call
10 vote?

11 Senator Moseley-Braun. Yes.

12 The Chairman. The clerk will call the roll.

13 The Clerk. Mr. Dole?

14 The Chairman. No, by proxy.

15 The Clerk. Mr. Packwood?

16 The Chairman. No, by proxy.

17 The Clerk. Mr. Chafee?

18 Senator Chafee. Aye.

19 The Clerk. Mr. Grassley?

20 Senator Grassley. No.

21 The Clerk. Mr. Hatch?

22 The Chairman. No, by proxy.

23 The Clerk. Mr. Simpson?

24 Senator Simpson. No.

25 The Clerk. Mr. Pressler?

1 The Chairman. No, by proxy.
2 The Clerk. Mr. D'Amato?
3 Senator D'Amato. No.
4 The Clerk. Mr. Murkowski?
5 The Chairman. No, by proxy.
6 The Clerk. Mr. Nickles?
7 Senator Nickles. No.
8 The Clerk. Mr. Moynihan?
9 Senator Moynihan. Aye.
10 The Clerk. Mr. Baucus?
11 Senator Moynihan. Aye, by proxy.
12 The Clerk. Mr. Bradley?
13 Senator Bradley. Aye.
14 The Clerk. Mr. Pryor?
15 Senator Pryor. Aye.
16 The Clerk. Mr. Rockefeller?
17 Senator Rockefeller. Aye.
18 The Clerk. Mr. Breaux?
19 Senator Breaux. Aye.
20 The Clerk. Mr. Conrad?
21 Senator Conrad. Aye.
22 The Clerk. Mr. Graham?
23 Senator Graham. Aye.
24 The Clerk. Ms. Moseley-Braun?
25 Senator Moseley-Braun. Aye.

1 The Clerk. Mr. Chairman?

2 The Chairman. No.

3 The Clerk. The ayes are 10, the nays 10.

4 The Chairman. It is a tie vote. The amendment is
5 not agreed to.

6 Senator Moynihan. Mr. Chairman, I think we are
7 about one more amendment.

8 The Chairman. Senator Breaux?

9 Senator Rockefeller. My amendment requires no vote.

10 Senator Moynihan. I am for that.

11 The Chairman. I would suggest that.

12 Senator Rockefeller. Let's go ahead and do the
13 amendments. The vote hasn't gone. We can finish.

14 The Chairman. Senator Breaux?

15 Senator Moseley-Braun. Mr. Chairman, I've got this.
16 I have one more in this series. I can just finish this
17 one off. And then, I had an EITC one. And that would be
18 the end of me.

19 [Laughter]

20 Senator Moseley-Braun. And I can speak real fast,
21 Mr. Chairman.

22 The Chairman. If you don't mind, why don't we
23 proceed with Senator Breaux. Are you ready with yours?
24 And then, we will come right back.

25 Senator Breaux. Let her go first.

1 The Chairman. We don't know what the amendment is
2 yet.

3 Senator Moseley-Braun. I thought it had been
4 passed. All right.

5 Mr. Chairman, I will withdraw the amendment.

6 The Chairman. All right.

7 Senator Moseley-Braun. I withdraw the amendment.

8 The Chairman. Thank you, Senator Moseley-Braun.

9 Senator Rockefeller. May I ask to give my amendment
10 after Senator Breaux, to explain it? It does not require
11 a vote.

12 The Chairman. You want to propose an amendment, you
13 say, after Senator Breaux, Senator Rockefeller?

14 Senator Rockefeller. Yes.

15 The Chairman. Well, I hear that we have a vote on
16 the floor. I think the time has come maybe to recess.
17 We will recess for the vote and come back. We will
18 recess for 30 minutes. It is 6:00 o'clock now. So we
19 will reconvene at 6:30.

20 Senator Rockefeller. Mr. Chairman, but can we do it
21 because the last time we did it, we reconvened an hour
22 later?

23 The Chairman. Well, as you know, the staffs on both
24 sides were trying to work out some amendments during that
25 period. And that is the reason for the delay. But we

1 certainly intend to be expeditiously.

2 Senator Bradley. Mr. Chairman, can we say that,
3 anyone who wants to offer an amendment has to be here at
4 6:40? And if they are not, they are automatically
5 disqualified from offering such an amendment.

6 [Laughter]

7 The Chairman. Well, I am willing to accept that
8 proposition.

9 Senator Bradley. Good.

10 The Chairman. But I also would say that it is
11 important that they let us know what the amendments are
12 going to be to help the expeditious handling of the
13 amendments.

14 Senator Chafee. Is it 6:40?

15 The Chairman. So I would ask that.

16 What is that?

17 Senator Chafee. 6:40 is it, a half an hour from
18 now?

19 The Chairman. Let's make it 6:45. And please,
20 have your staff make available the amendments you propose
21 to bring up upon our return so we can proceed as rapidly
22 as possible.

23 [Whereupon, at 6:08 p.m., the meeting was recessed.]

24

25

1 AFTER RECESS

2 [9:50 p.m.]

3

4 The Chairman. The committee will please be in
5 order. Once again, I have to admit that our reconvening
6 was slower than I initially planned, but I think progress
7 again was made.

8 At this time, I would ----

9 Senator Bradley. Mr. Chairman, when we left, we
10 said that, if you recall, if anyone who was not here at
11 6:40 would not be able to offer an amendment. And I
12 wondered if the Chair had ----

13 The Chairman. The Chair reserves the right to
14 change its mind on these matters.

15 [Laughter]

16 Senator Bradley. And do the same rules apply to
17 appeal the ruling of the Chair?

18 [Laughter]

19 The Chairman. That depends.

20 Senator Chafee?

21 Senator Chafee. Mr. Chairman, I have an amendment
22 which deals with the modification to the Chairman's mark
23 that was made in connection with the, what I will call,
24 Nickles language.

25 And my amendment on page 75 of the Chairman's mark

1 would strike the following: quote, In addition, federal
2 Medicaid funds could not be used to pay for abortions,
3 except in cases of rape, incest, or to save the life of
4 the mother.

5 Mr. Chairman, we pretty well know how people feel
6 about this. I won't spend a lot of time on it. But it
7 is a matter that is covered by the appropriations bills
8 each year. I think that is the proper way to do it.

9 If it is in the basic language, then we don't get a
10 chance at it. And so I would ---- as a result of my
11 amendment, we would go back to the existing situation
12 where the Hyde language comes in the appropriations
13 bills.

14 The Chairman. Well, I would just say to my
15 distinguished friend that this matter is not an issue of
16 rights, the right to die or the right to have an
17 abortion.

18 It is an issue about the appropriate use of public
19 money. The public is clear that it does not want
20 taxpayer money used for these purposes. I think it is
21 something like 70 percent are opposed according to a USA
22 Today poll. I think it is that simple.

23 And what is in the mark reflects the will of
24 Americans.

25 Do you want a roll call vote?

1 Senator Chafee. Yes, I would, Mr. Chairman.

2 The Chairman. The clerk will please call the roll.

3 Senator Nickles. Mr. Chairman?

4 The Chairman. Yes, Senator Nickles.

5 Senator Nickles. Can I make this very quick
6 comment? And I think you summarized it very quickly.

7 Abortions are a very complicated or a very controversial
8 issue.

9 A lot of people are very upset about it because it is
10 the destroying of an innocent human life. And a lot of
11 people are doubly upset when they find out that taxpayer
12 funds are used to subsidize that destruction.

13 So what we have in this language basically preserves
14 status quo. It preserves. It is the Hyde language. It
15 says no funds will be used to pay for abortions, unless
16 necessary to save the life of the mother or in cases of
17 rape and incest.

18 And that is what we have done in appropriation bills.
19 That is just to try and make sure that we don't subsidize
20 abortions with federal taxpayer dollars.

21 I would hope the committee would keep the amendment
22 in the language.

23 Senator Bradley. Mr. Chairman?

24 The Chairman. Yes, Senator Bradley.

25 Senator Bradley. Mr. Chairman, I think this reveals

1 the inconsistency of the position of the Chairman's mark.
2 We impose no mandates on the states to take care of poor
3 children.

4 We impose no mandates on the states to make sure that
5 women get their child support, but we are imposing a
6 mandate saying no Medicaid funds for abortion.

7 This is totally inconsistent with the views expressed
8 by the Chairman on virtually every other issue that has
9 come before this committee.

10 I strongly support Senator Chafee's position.

11 Senator Moseley-Braun. Mr. Chairman?

12 The Chairman. Yes, the distinguished Senator from
13 Illinois.

14 Senator Moseley-Braun. Mr. Chairman, just briefly,
15 I strongly support Senator Chafee's position, as well,
16 particularly in light of the fact that this amendment
17 that was adopted, the Nickles amendment that was adopted
18 to the Chairman's mark, does not even allow for a
19 physician to express an opinion about the health of his
20 patient.

21 There is no provision for medically necessary
22 abortions in the Chairman's mark.

23 And it just seems to me that it not only expresses
24 the inconsistency in terms of the larger question of who
25 is going to care for the children, but quite frankly, I

1 for one have really gotten really distressed with having
2 people who cannot themselves be pregnant talking about
3 the issue of abortion like they are experts.

4 The Chairman. The question is on the motion by the
5 distinguished Senator from Rhode Island. The clerk will
6 call the roll.

7 The Clerk. Mr. Dole?

8 The Chairman. No, by proxy.

9 The Clerk. Mr. Packwood?

10 The Chairman. Yes, by proxy.

11 The Clerk. Mr. Chafee?

12 Senator Chafee. Aye.

13 The Clerk. Mr. Grassley?

14 Senator Grassley. No.

15 The Clerk. Mr. Hatch?

16 Senator Hatch. No.

17 The Clerk. Mr. Simpson?

18 The Chairman. No, by proxy.

19 The Clerk. Mr. Pressler?

20 The Chairman. No, by proxy.

21 The Clerk. Mr. D'Amato?

22 Senator D'Amato. No.

23 The Clerk. Mr. Murkowski?

24 Senator Murkowski. No.

25 The Clerk. Mr. Nickles?

1 Senator Nickles. No.
2 The Clerk. Mr. Moynihan?
3 Senator Moynihan. Aye.
4 The Clerk. Mr. Baucus?
5 Senator Moynihan. Aye.
6 The Clerk. Mr. Bradley?
7 Senator Bradley. Aye.
8 The Clerk. Mr. Pryor?
9 Senator Pryor. Aye.
10 The Clerk. Mr. Rockefeller?
11 Senator Rockefeller. Aye.
12 The Clerk. Mr. Breaux?
13 Senator Breaux. No.
14 The Clerk. Mr. Conrad?
15 Senator Conrad. No.
16 The Clerk. Mr. Graham?
17 Senator Graham. Aye.
18 The Clerk. Ms. Moseley-Braun?
19 Senator Moseley-Braun. Aye.
20 The Clerk. Mr. Chairman?
21 The Chairman. No.
22 The Clerk. The ayes are 10, the nays 10.
23 The Chairman. The motion to strike does not carry.
24 Senator Chafee?
25 Senator Chafee. Mr. Chairman, I have another

1 amendment dealing with family planning services.

2 Could I hold on one second?

3 [Pause]

4 Senator Chafee. And Mr. Chairman, I will read my
5 amendment.

6 And has it been distributed?

7 The amendment reads as follows. "Federal Medicaid
8 funds under the revised Medicaid program must be used to
9 cover pre-pregnancy, family planning services, and
10 supplies as selected by the state."

11 Now, what this amendment does is say that federal
12 funds can be used for family planning.

13 And, Mr. Chairman, we discussed this somewhat in the
14 previous amendment that I had that dealt with a subject
15 very similar to this before.

16 But the fact of the matter is that currently under
17 Medicaid, that is the principle source of family planning
18 information now.

19 And we are dealing with poor women, usually single
20 who have limited knowledge of family planning or how to
21 prevent pregnancy.

22 And this has nothing to do again with abortion. This
23 is solely dealing with pre-pregnancy family planning
24 services and supplies, as selected by the state.

25 We are not dictating what the supplies are from the

1 federal government.

2 I think it is a very fair, Mr. Chairman. And I would
3 hope it be adopted.

4 Senator Nickles. They distributed the wrong
5 amendment. Could you have the ---- they distributed your
6 one for low income.

7 Senator Chafee. I'm sorry.

8 The Chairman. But Senator Chafee did read the
9 amendment.

10 Senator Moynihan. I move the adoption of the
11 amendment, Mr. Chairman.

12 The Chairman. I would be ----

13 Senator Chafee. Mr. Chairman, might we hold up
14 because in fairness, that hasn't been distributed?

15 [Pause]

16 Senator Chafee. Mr. Chairman?

17 The Chairman. Senator Chafee.

18 Senator Chafee. Have people seen copies of this?
19 Have we distributed? Does everybody understand the
20 amendment?

21 Senator Breaux. No.

22 Senator Nickles. Mr. Chairman?

23 The Chairman. Yes.

24 Senator Nickles. Mr. Chairman? Mr. Chairman?

25 The Chairman. Yes, Don.

1 Senator Nickles. Mr. Chairman, one, for those who
2 don't have the amendment, I will just read it again. It
3 says: "Federal Medicaid funds under the revised Medicaid
4 program must be used to cover pre-pregnancy, family
5 planning services, and supplies as selected by the
6 state."

7 Mr. Chairman, I would still prefer ---- as I told my
8 colleague and friend from Rhode Island, I would prefer
9 not to have language mandating family planning services.

10 Under the bill, family planning is an option. It is
11 not a mandate. This is going to mandate it.

12 However, I will say this language is a lot more
13 acceptable to me than the previous language that we voted
14 on earlier today.

15 You might say, why? Well, this says pre-pregnancy.
16 So none of this may ---- would be used for abortion.

17 Also, it says supplies as selected by the states. I
18 was concerned. Originally, they were talking about
19 mandating supplies, i.e. birth control devices and so on.
20 We were going to mandate that.

21 I didn't want the Federal Government to mandate to
22 the states that they would have to. Now, it says these
23 supplies would be selected by the states.

24 So I see this amendment as a significant improvement
25 over the amendment that we voted on earlier. Although my

1 preference in voting ---- and I am not going to ask for a
2 recorded vote.

3 My preference would still be that we wouldn't mandate
4 that one particular service would be mandated that right
5 now is an option to the state.

6 The Chairman. Any further comment? If not, I would
7 say ----

8 Senator Bradley. Mr. Chairman?

9 The Chairman. Yes, Senator Bradley.

10 Senator Bradley. Can we have a roll call vote?

11 Senator Chafee. Mr. Chairman, I don't need a roll
12 call vote.

13 Senator Moynihan. A request has been made for a
14 roll call, sir.

15 The Chairman. A request has been made.

16 And let me say that I find ---- I personally find
17 this amendment acceptable and join my ranking member in
18 recommending that we vote in favor of it.

19 Senator Chafee. How about just adopting it, Bill?

20 Senator Bradley. I'd really like to have a roll
21 call.

22 The Chairman. There has been a request for a roll
23 call. So the clerk will call the roll.

24 The Clerk. Mr. Dole?

25 The Chairman. Aye, by proxy.

1 The Clerk. Mr. Packwood?
2 The Chairman. Aye, by proxy.
3 The Clerk. Mr. Chafee?
4 Senator Chafee. Aye.
5 The Clerk. Mr. Grassley?
6 Senator Grassley. No.
7 The Clerk. Mr. Hatch?
8 Senator Hatch. No.
9 The Clerk. Mr. Simpson?
10 Senator Simpson. Aye.
11 The Clerk. Mr. Pressler?
12 Senator Pressler. No.
13 The Clerk. Mr. D'Amato?
14 Senator D'Amato. Aye.
15 The Clerk. Mr. Murkowski?
16 Senator Murkowski. Aye.
17 The Clerk. Mr. Nickles?
18 Senator Nickles. No.
19 The Clerk. Mr. Moynihan?
20 Senator Moynihan. Aye.
21 The Clerk. Mr. Baucus?
22 Senator Baucus. Aye.
23 The Clerk. Mr. Bradley?
24 Senator Bradley. Aye.
25 The Clerk. Mr. Pryor?

1 Senator Pryor. Aye.

2 The Clerk. Mr. Rockefeller?

3 Senator Rockefeller. Aye.

4 The Clerk. Mr. Breaux?

5 Senator Breaux. Aye.

6 The Clerk. Mr. Conrad?

7 Senator Conrad. Aye.

8 The Clerk. Mr. Graham?

9 Senator Graham. Aye.

10 The Clerk. Ms. Moseley-Braun?

11 Senator Moseley-Braun. Aye.

12 The Clerk. Mr. Chairman?

13 The Chairman. Aye.

14 The Clerk. The ayes are 16, the nays 4.

15 The Chairman. The amendment is carried.

16 Senator Chafee?

17 Senator Chafee. Well, I am in the unusual
18 experience of being on the winning side. And I thank
19 everybody.

20 Senator Nickles. Let's go home.

21 Senator D'Amato. All winning streaks come to an
22 end.

23 Senator Breaux. Maybe not.

24 Senator D'Amato. Sooner or later.

25 Senator Chafee. Mr. Chairman?

1 The Chairman. Senator Chafee.

2 Senator Chafee. I have an amendment on behalf of
3 myself. And Senator Rockefeller worked on this with me.
4 The language is just about the same.

5 What it would do it would guarantee health care
6 coverage to low-income pregnant women and children and
7 individuals with disabilities.

8 And at the appropriate place, I would ask that
9 language be inserted which guarantees coverage to
10 pregnant women and children aged 12 and under living in
11 families below 100 percent of the federal poverty level
12 and individuals with disabilities.

13 And, Mr. Chairman, this addresses a deep concern that
14 I have had and Senator Rockefeller have had about what
15 this overall bill does.

16 As I have said several times today, this overall bill
17 eliminates guarantees or entitlements, if you want to
18 call it, for children aged 11 and below up to 100 percent
19 of poverty, but that goes up a year every year, as I
20 mentioned before.

21 And furthermore, children aged 5 and below are
22 guaranteed coverage up to 133 percent of poverty.

23 Well, we don't quite equal that in this amendment,
24 but we take care of one of the three groups, that is the
25 children below 100. It should say at 100 percent, at or

1 below 100 percent of the poverty level up to age 12. So
2 we make a little improvement over the current thing.
3 Plus, individuals with disabilities.

4 Now, let me just say, as far as the individuals with
5 disabilities, Mr. Chairman, we have not defined that
6 here.

7 And it would be my belief and hope that we could
8 arrive at who exactly is in that group, the definition
9 with staffs working together in the following week when
10 we've got some time. And then, it could be inserted as a
11 manager's amendment.

12 So I don't define the disability group. But the
13 coverage would be package that the states come up with,
14 as would be the health care package for this group of
15 children that Senator Rockefeller and I have previously
16 discussed.

17 Senator Rockefeller. Mr. Chairman?

18 The Chairman. Senator Rockefeller.

19 Senator Rockefeller. In the wasteland of the day,
20 this is I think a very significant amendment. We have
21 done a lot of damage today. But in this amendment, at
22 least we make up for a little bit of it.

23 Several years ago, we had something called the
24 National Commission on Children. It was divided between
25 Republicans and Democrats. And there were members of the

1 Bush Administration who were actually on the commission.

2 And in those days, evidently, we were able to work
3 together in a more bipartisan fashion because on issues
4 like this and others that were more controversial, we
5 achieved a 32 to nothing vote. It was an unanimous vote
6 on the part of all.

7 And I think the driving force of that was the
8 children have to be at the center of our agenda, that we
9 have lost sight of that, that we talk that game, but we
10 don't walk that game.

11 And in this case, Senator Chafee, as he has
12 throughout his entire career, has fought for children.

13 And hopefully, this amendment will carry.

14 Senator Breaux. Mr. Chairman?

15 The Chairman. Yes, Senator Breaux.

16 Senator Breaux. I am trying to figure out who is
17 covered exactly. And I will ask the Senator from Rhode
18 Island. Would it cover a women who is not pregnant with
19 three children who has an income of under \$14,000 which
20 is the poverty level for a family of four?

21 Senator Chafee. Under the definition, it would only
22 cover pregnant women and children age 12 and less with --
23 -- in the family being at 100 percent of poverty or less.

24 Senator Breaux. Well, the question I am trying to
25 figure out ----

1 Senator Chafee. I don't know. The figure you gave
2 me about the income level. I am not sure where that ----

3 Senator Breaux. I think for a family of four, it is
4 about \$14,000. But let's assume, whatever the poverty
5 level, suppose the woman is not expecting and has three
6 children and is under the poverty level.

7 Senator Chafee. The children would be covered.

8 Senator Breaux. How about the woman?

9 Senator Chafee. Not the mother.

10 Senator Breaux. If she gets pregnant, she gets
11 covered?

12 Senator Chafee. Yes. Under current law, she
13 wouldn't be covered either, unless she was entitled to
14 AFDC.

15 Senator Moynihan. We have abolished AFDC in the
16 name of helping children.

17 Senator Breaux. So under your amendment, if you got
18 pregnant and under those circumstances, you would be
19 eligible? If she is not pregnant, she wouldn't be?

20 Senator Chafee. Yes. That is current law. That is
21 right.

22 Senator Breaux. That is current law, 100 percent of
23 poverty? That is not the cut-off point.

24 Senator Nickles. Current law is 133 percent.

25 Senator Breaux. It is up to 185 percent of the

1 poverty line right now.

2 Senator Nickles. In some states, I think it is 133.

3 Senator Chafee. Some of you will have to help me
4 out here, but I believe that would be on a waiver,
5 wouldn't it?

6 Senator Bradley. No. It is a 133 percent.

7 Mr. Ramthun. States are required to cover pregnant
8 women and children up through the age of five to 133
9 percent of poverty. States have the option to cover
10 pregnant women and infants under age 1 up to 185 percent
11 of poverty.

12 But you are incorrect in that a women could not be
13 covered if she is not pregnant, unless she is part of an
14 AFDC family.

15 Senator Breaux. Well, I would support the Senator's
16 from Rhode Island amendment, but I think it is an example
17 of ----

18 Senator Moynihan. There will not be any more AFDC
19 families if the Senate legislation is passed, right?

20 Mr. Ramthun. I was only describing current law.

21 Senator Moynihan. But that will end in what, about
22 November?

23 Mr. Ramthun. AFDC is still current law.

24 Senator Moynihan. What about December when it is no
25 longer? Speak up, man. You've been very good at

1 answering questions.

2 Mr. Ramthun. I'm not sure how that came out on the
3 welfare bill.

4 Senator Breaux. Mr. Chairman, I will conclude by
5 saying I support the amendment, but I think it indicates
6 how far down we have gone.

7 The Chairman. Yes, the Senator from Illinois.

8 Senator Moseley-Braun. I was just going to comment,
9 I think the answer to the question that the Senator from
10 Louisiana was asking was that that woman that he
11 described with the three children under poverty could
12 only get it if she pretended she was pregnant. Then, she
13 might be eligible.

14 That is a joke. I'm sorry. It is late.

15 The Chairman. Are there any further comments?

16 Senator Hatch. Mr. Chairman?

17 The Chairman. Senator Hatch.

18 Senator Hatch. I want to compliment the
19 distinguished Senator from Rhode Island. I think he is
20 working very hard to try and make sure that people are
21 covered who deserve to be covered.

22 And I just want to personally co-sponsor and endorse
23 this amendment.

24 Senator Nickles. Mr. Chairman?

25 The Chairman. Yes, the Senator from Oklahoma.

1 Senator Nickles. Mr. Chairman, Senator Chafee has
2 mentioned that this was very important to him from the
3 minute of go.

4 Many of us felt it wasn't necessary. I still don't
5 think it is necessary. I happen to think that governors
6 and states and states legislators are just concerned
7 about women and children.

8 And I have talked to several, almost all which said
9 that they would cover this population. And I think they
10 would cover this population without the mandate.

11 Some people say, well, it is not really necessary
12 because they are going to cover them anyway. But Senator
13 Chafee has insisted on this. And he is going to win
14 today. So I compliment him.

15 Senator Bradley. Mr. Chairman?

16 The Chairman. Yes, Senator Bradley.

17 Senator Bradley. If I could, I certainly support
18 the Chafee amendment, but I think it illustrates once
19 again that the real brunt of this program, meaning the
20 bill that we are considering, the Chairman's mark, will
21 hit working Americans who are right above poverty, the
22 people like Linda Bailey that I talked about earlier
23 today, you know, the family with two kids earning
24 \$17,000, a receptionist in a hospital, trying to make
25 ends meet.

1 Well, under Senator Chafee's proposal, she would not
2 be able to get any help because she is above poverty.

3 In the current Medicaid program, she would be covered
4 up to 133 percent of poverty. Her two children could
5 have health insurance.

6 And the real question is going to be whether, when we
7 send this medical revenue sharing back to the states with
8 the great hope and trust that they are going to cover all
9 the people, as the Senator from Oklahoma said, that are
10 covered under current law, will be how many states will
11 provide full health care coverage for children up to 133
12 percent of poverty?

13 That will be an expansion over what Senator Chafee
14 has done in this amendment. And it will be a real test.

15 But once again, the people who are getting hit here
16 are working Americans who don't have health coverage, who
17 have kids. And when this amendment and this block grant
18 passes in the absence of state action, will have no
19 health coverage for their children.

20 Senator D'Amato. Mr. Chairman?

21 The Chairman. Yes, Senator D'Amato.

22 Senator D'Amato. Mr. Chairman, I think we are being
23 somewhat disingenuous as it relates to the states now.
24 Are we really saying that all the governors in all the
25 states and all the legislators in all the states are

1 going to simply abandon their commitment? I don't
2 believe that to be the case.

3 I suggested that maybe there have been some states,
4 and notwithstanding all the federal legislation, have not
5 met maybe the kind of commitment that other states have
6 met.

7 I mean, why don't we look at it? I mean, this system
8 is broken. We are attempting to do something. And it is
9 going bankrupt. And it is going to bankrupt all of us.

10 Now, certainly, there are some problems, legitimate
11 as we move forward.

12 I think Senator Chafee has attempted to recognize one
13 and say there at least should be a minimum effort. He
14 needs to be congratulated.

15 I don't particularly want to see mandates, but I do
16 think that my colleague when he says, well, look, we have
17 some minimum there should be met. That is what he has
18 done.

19 Oh, boy, we can demagogue this. We can say, if you
20 vote for this, you are voting to put kids out into the
21 street and make them homeless. That is nonsense. That
22 is wrong.

23 I am going to support the Chafee amendment, but I
24 certainly don't buy into this that we are going to let
25 everybody suffer, that every legislature is going to turn

1 its back, that suddenly we have lost the heart and
2 compassion. It is not why we are undertaking this.

3 Senator Bradley. Could the Senator ask a question,
4 Mr. Chairman, of the Senator? Could I ask the Senator?

5 Senator D'Amato. You could ask. I don't know if I
6 have the answer.

7 Senator Bradley. Would the Senator define needy
8 families as poverty, 133 percent of poverty, 150 percent
9 of poverty? What does the Senator ----

10 Senator D'Amato. I think it may very well be that,
11 for example, in the great Garden State of New Jersey that
12 you come from, they may indeed find that that is an
13 appropriate level that they can and want to and can
14 afford to and by way of their own definition, rather than
15 Congress telling them what they can and must and should.
16 And indeed, that judgment may not be the same in another
17 state.

18 Senator Bradley. But what about the great Empire
19 State?

20 Senator D'Amato. The great Empire State is going to
21 have to make that decision also.

22 Senator Bradley. But in terms ----

23 Senator D'Amato. But that will be their
24 responsibility and their duty.

25 Senator Nickles. Let's vote.

1 Senator Chafee. Mr. Chairman, my amendment seems to
2 be causing a cross fire here. And I would be very happy
3 if we could vote on it.

4 And I also would point out to everybody here that we
5 are dealing with the disabled, as well. We are dealing
6 with the low-income pregnant women and children and the
7 disabled, as I mentioned before, with the definition to
8 be worked out in which the various staffs will be
9 consulted.

10 So I would like to have a vote.

11 Senator Nickles. Mr. Chairman, all time has expired
12 on both sides.

13 The Chairman. We are trying to proceed. I
14 congratulate the distinguished Senator from Rhode Island.
15 I urge support of the amendment. The clerk will call the
16 roll.

17 The Clerk. Mr. Dole?

18 The Chairman. Aye, by proxy.

19 The Clerk. Mr. Packwood?

20 The Chairman. No, by proxy.

21 The Clerk. Mr. Chafee?

22 Senator Chafee. Aye.

23 The Clerk. Mr. Grassley?

24 Senator Grassley. No.

25 The Clerk. Mr. Hatch?

1 Senator Hatch. Aye.
2 The Clerk. Mr. Simpson?
3 Senator Simpson. Aye.
4 The Clerk. Mr. Pressler?
5 Senator Pressler. Aye.
6 The Clerk. Mr. D'Amato?
7 Senator D'Amato. Aye.
8 The Clerk. Mr. Murkowski?
9 Senator Murkowski. Aye.
10 The Clerk. Mr. Nickles?
11 Senator Nickles. No.
12 The Clerk. Mr. Moynihan?
13 Senator Moynihan. Aye.
14 The Clerk. Mr. Baucus?
15 Senator Baucus. Aye.
16 The Clerk. Mr. Bradley?
17 Senator Bradley. Aye.
18 The Clerk. Mr. Pryor?
19 Senator Pryor. Aye.
20 The Clerk. Mr. Rockefeller?
21 Senator Rockefeller. Aye.
22 The Clerk. Mr. Breaux?
23 Senator Breaux. Aye.
24 The Clerk. Mr. Conrad?
25 Senator Conrad. Aye.

1 The Clerk. Mr. Graham?

2 Senator Graham. Aye.

3 The Clerk. Ms. Moseley-Braun?

4 Senator Moseley-Braun. Aye.

5 The Clerk. Mr. Chairman?

6 The Chairman. Aye.

7 The Clerk. The ayes are 17, the nays 3.

8 The Chairman. The amendment is carried.

9 Senator Conrad. Mr. Chairman, first, let me mention
10 that Senator Doles has asked that his proxy vote on the
11 Chafee amendment dealing with pre-pregnancy family
12 planning be changed from a yes to a no.

13 And on the Chafee amendment to strike language on
14 abortion in the mark, the total vote count was 11 no, 9
15 yes, instead of 10-10 which was announced.

16 Senator Conrad. Mr. Chairman?

17 The Chairman. Yes, Senator Conrad.

18 Senator Conrad. Might I be at least permitted the
19 observation on the last vote since time ran out in terms
20 of discussing it beforehand? I find it just an
21 incredible double standard after for two days hearing
22 from the other side no mandate, no mandate on any kind of
23 minimum standard for anything. All of a sudden, a lot of
24 the other side voted for a minimum standard. It is just
25 a very interesting double standard.

1 Senator D'Amato. We have seen the light.

2 Senator Nickles. It is late at night. Let's go
3 home.

4 The Chairman. Senator Bradley.

5 Senator Bradley. Mr. Chairman, earlier today, we
6 considered the amendment that I offered to strike the 10
7 percent tax on child support payments.

8 In the bill, if an absent father is ordered by the
9 court to pay \$5,000 to support his family, under the
10 bill, there is a 10 percent tax on that which means that
11 his former wife gets \$4,500. And I did not think that
12 was the right way to go. And I wanted to strike it.

13 The Chairman modified his original proposal so that
14 that would not affect families in poverty, but it then,
15 of course, would affect families immediately above
16 poverty even more.

17 It would be more than a 10 percent tax to get the
18 revenues to reimburse the state for withholding the wages
19 of the absent father who refused to support his children.
20 The result meaning less money for the mother of the
21 children.

22 Senator Nickles and I really did try to work out some
23 way to pay for this figure. He suggested block granting,
24 foster payments, and a variety of other suggestions that
25 just wasn't ultimately acceptable on this side.

1 I suggested that we push this over until we get to
2 the tax component. It was always easier to find \$3
3 billion in taxes than it would be in foster payments, but
4 that was not acceptable either.

5 So, Mr. Chairman, we are at the point where I think
6 we have to have an up or down vote on the motion to
7 strike this 10 percent tax on child support payments, the
8 effect of which would be to reduce the money that gets to
9 the mother from the absent parent who is ordered by a
10 court to support his children.

11 [Continued on page 233.]

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1 The Chairman. Yes. The Senator from North Dakota.

2 Senator Conrad. Mr. Chairman, we have heard
3 endlessly today, on anything to set a minimum standard,
4 and anything to protect the most vulnerable among us,
5 whether it is children or disabled people, that there
6 cannot be a mandate.

7 Now, all of a sudden, in the Chairman's Mark, we
8 find that there is a mandate to take 10 percent of child
9 support payments. I would like to understand how that is
10 in line with the repeated statements that the Majority is
11 in opposition to mandates. All of a sudden now, it is
12 all right to mandate a new 10 percent tax on people that
13 get child support.

14 Senator Moseley-Braun. Mr. Chairman?

15 The Chairman. The Senator from Illinois.

16 Senator Moseley-Braun. It seems to me that it is
17 absolutely incongruous for an individual to talk about
18 being for family values, and then put a tax on top of
19 child support collection efforts.

20 The way the Chairman's Mark is structured, not only
21 is there the 10 percent; there is also a \$25 fee.
22 Particularly for those families that are right on the
23 poverty line, this 10 percent will come out of the hides
24 of the children, will be diminishment of their support.

25 I strongly, strongly urge support for this motion to

1 strike, on the grounds that we really should be a family
2 values first Congress. And it is absolutely
3 incomprehensible and insupportable, insupportable to say
4 that we are going to charge custodial parents, taking
5 care of children by themselves, a fee for helping them go
6 and get child support from the noncustodial parent.

7 Senator Murkowski. Mr. Chairman?

8 The Chairman. Mr. Murkowski.

9 Senator Murkowski. How does this score, if I may
10 ask? What is the score on this?

11 The Chairman. It would cost \$3.8 billion. And for
12 that reason, we oppose it.

13 Senator Bradley. Mr. Chairman?

14 The Chairman. Senator Bradley.

15 Senator Bradley. It is \$3.8 billion not going to
16 the mother.

17 Senator Baucus. Mr. Chairman?

18 The Chairman. Senator Baucus.

19 Senator Murkowski. Assuming you could get it.

20 Senator Baucus. Mr. Chairman, I think there is
21 something unseemly about this. I just cannot understand
22 how we are going to impose a 10 percent fee on child
23 support. I just do not understand it. To me, not only
24 is it unseemly, it is in the nature of something
25 punitive, something almost grotesque. I just cannot

1 understand it.

2 We are imposing a fee on collecting child support
3 payments? I just do not understand it.

4 Senator Moynihan. Child support payments are
5 ordered by a court, are they not?

6 Senator Baucus. Yes, they are.

7 Senator Moynihan. So is this selling justice?

8 Senator Baucus. It is punitive. I just think it
9 is just nuts here.

10 Senator Simpson. Mr. Chairman?

11 The Chairman. Senator Simpson.

12 Senator Simpson. Before I sink in a sea of law, I
13 am not really going to get into this amendment. But I
14 would get into the issue of double standard. Let us be
15 precise. You cannot let that slip--once is good, twice,
16 three times. But there is a real double standard for
17 someone who can vote against a balanced budget amendment,
18 and then talk about it all day.

19 Now we want to balance the budget, and when the
20 voting comes, we do not vote for that. Not Senator Carol
21 Moseley-Braun.

22 Senator Moseley-Braun. Thank you.

23 Senator Simpson. But if we really want to talk
24 about double standards, there it is, perfectly.

25 I soon will present, along with Bob Kerrey, seven

1 bills to restore solvency in Social Security. Everyone
2 at this table knows exactly what is going to happen to
3 it. At least if they believe in their own side of the
4 aisle, their own trustees of the President of the United
5 States, who are three members of the United States
6 Cabinet, Social Security will go broke in the year 2029.

7 In the early 1980's, Senator Moynihan and Bob Dole
8 put together a package that would save it until 2063, and
9 now we are told it will go broke in the year 2029. And
10 next year, they will move it up 5 more years. You know
11 that, he knows that, I know that. It will begin its
12 decline in the year 2013. The trustees have told us
13 that. It is totally unsustainable, and there is not a
14 Democrat or a Republican, other than Bob Kerrey and I,
15 who will put that before the American people.

16 We are going to put it before the American people,
17 and people are going to vote on it. I am going to see
18 that they vote on a affluence test, on the means test, if
19 you will, on the COLA on Social Security, which is \$7 to
20 \$12 to \$15 billion bucks, and goes to people, regardless
21 of their net work or income. Will you join me? It could
22 pick up a lot of this chicken feed around here.

23 Forty percent of the people on Social Security would
24 be described as rich in any other country on earth. In
25 1960, they got everything back that they put in within

1 2-1/2 years. Twenty years ago, they got it all back in 5
2 years. Now they are getting it all back in 6-1/2 years,
3 and nobody is doing a thing.

4 Well, we are going to do something. We are going to
5 increase the age of Social Security recipients. We are
6 going to affluence test the COLA's. We are going to say
7 that you can put into the kitty 4-1/2 percent toward the
8 Federal Government, and you get to put 2 percent of the
9 payroll tax into your own personal investment account.

10 Now that is what we are up to. You know that, and I
11 know that. How can you leave Social Security off the
12 table? You really want to talk about the little guy?
13 Then think about the real little guy, because the only
14 way to sustain these programs in the future is to lower
15 the benefits of Social Security or raise the payroll tax.

16 The seniors will tell you how to do it--raise the
17 payroll tax--because they ain't paying it. So you have
18 \$360 billion bucks you have left off the table, and you
19 are talking about double standards, the poor, the
20 wretched and the destitute. Come on. I hope Americans
21 can figure this one out.

22 Senator Moseley-Braun. Mr. Chairman?

23 The Chairman. Time is running out.

24 Senator Moseley-Braun. A point of personal
25 privilege. My name was mentioned in debate. I think I

1 am entitled to speak.

2 My colleague has eloquently changed the subject, or
3 attempted to. The fact is that some of us did vote for a
4 balanced budget.

5 The Chairman. We all did.

6 Senator Moseley-Braun. But, quite frankly, I
7 believe that you are looking for cuts in all the wrong
8 places when you take it out of child support enforcement
9 for children.

10 This is about making sure that parents take care of
11 their kids. This is supposed to be consistent with what
12 we are all in agreement on. To say that we are going to
13 charge people a fee to help them get child support for
14 their children is beyond Draconian, and does not--does
15 not--address the issue of restoring the Social Security
16 trust fund or anything else. It is just wrong.

17 And I have finished my point of personal privilege.
18 I just again strongly encourage support for Senator
19 Bradley's motion.

20 The Chairman. I would like to ask Kathy to explain
21 exactly what this amendment does.

22 Ms. Tobin. This amendment would charge non-AFDC
23 families a \$25 application fee.

24 Senator Moynihan. We do not have AFDC families any
25 more. We abolished it. Kathy, do you not remember?

1 The Chairman. We are in the process so to speak.

2 Ms. Tobin. They would charge non-AFDC families a
3 \$25 application fee. There is a current law which says
4 that the State can charge up to \$25 for the application
5 fee. In addition, States would be required to collect a
6 10 percent collection fee.

7 Now to the Chairman's modification, we worked with
8 Senator Moseley-Braun and Senator Chafee, and we tried to
9 modify the amendment so it would not hit families with
10 incomes below 100 percent of poverty.

11 We will continue to work with Senator Moseley-Braun
12 and Senator Chafee. Right now, the way their amendments
13 were set out, CBO would score it as a cost. We will
14 continue to work with both Senators to see if we can come
15 to a little bit more of an agreement, and make it more
16 equitable.

17 However, I would like to point out that, under
18 current law, private collection agencies charge these
19 families between 25 and 33 percent. This provision
20 charges 10 percent. It allows the States to collect just
21 an amount equal to. They can do it however they want.
22 If they want to establish a sliding fee scale, they can
23 do so, so that it will not hit the people at \$13,000 or
24 \$14,000 in income.

25 If they would like to go after the fathers who deny

1 paternity, they can try to collect the costs that way.
2 States are currently doing this. States are currently
3 charging \$122 to do a tax intercept. Some States are not
4 doing this because they say that the current Federal
5 regulations are too onerous.

6 I have been given a report. It is from 37 States
7 that replied, and it tells what the States are currently
8 charging. But if you speak to a lot of these people,
9 Federal regulations are a problem.

10 We need to collect some of this money. We are
11 losing \$1 billion a year on administrative costs of child
12 support, and we are trying to recoup some of this money.

13 Senator Bradley. Mr. Chairman?

14 The Chairman. Senator Bradley.

15 Senator Bradley. Mr. Chairman, I think that Ms.
16 Tobin has correctly described the proposal. There is
17 only one thing she left out, and I am not sure she could
18 know the exact number. But when we exempt the poverty
19 population, and then we are going to assess a fee on the
20 mother who receives the money from the absent father, it
21 could very well be much higher than 10 percent. I do not
22 know how high it could be. It could be higher than the
23 collection agencies.

24 The point is, do we really believe, as a matter of
25 policy, that when the State has intercepted and taken the

1 wages of the father, and diverted them to the mother,
2 that before the mother gets it, she has to pay a tax that
3 is clearly more than 10 percent. Because 10 percent
4 would include the poverty population.

5 The thing that strikes me is that the House of
6 Representatives, the Ways and Means Committee, actually
7 considered this. They thought this looked like a good
8 idea. Maybe these were some of the impulses that led to
9 the Majority thinking this was a good idea.

10 And then they came face to face with the reality of
11 child support. What will happen is that a woman will
12 then get her child support from the absent parent, and
13 then she will call the State and say, well, I am getting
14 it now. You do not need to intercept his wages any more.

15 Then, a year and a half later, the inevitable will
16 occur again, as it frequently does, and the father will
17 not support the child again. Then she will have to call
18 the State and say, well, now I want his wages withheld
19 again. And they will say the do not have any record, and
20 they will have to begin the whole case over, and it will
21 end up costing the State much more than if we simply kept
22 the situation as it is right now.

23 So I do not think it makes any sense, from the
24 standpoint of the State's revenues. The Ways and Means
25 Committee of the House agreed with that. I certainly do

1 not think it makes any sense in terms of the money that
2 ultimately gets to the kids. And I think it just sends
3 the wrong message.

4 Do we want absent fathers to support their children?
5 Then the money should go to the children, not to the
6 State, not to the politicians at the State level or at
7 the Federal level. It should go to the children.

8 Senator Graham. Mr. Chairman?

9 The Chairman. Senator Graham.

10 Senator Graham. Mr. Chairman, the issue has been
11 raised about whether there is an offset for the
12 additional cost. Could I ask the staff, what was the
13 dollar figure that we were assigned to save under the
14 Medicaid program?

15 Ms. Tobin. I do not know.

16 Senator Graham. Well, according to CBO, we were
17 supposed to save \$181.6 billion over a 7-year period. Is
18 that correct?

19 Ms. Tobin. One eighty-two billion.

20 Senator Graham. Well, to be precise, \$181.6
21 billion.

22 Does this simulation sheet called "Finance Committee
23 Medicaid Formula Simulation" represent what is in the
24 bill at this time?

25 The Chairman. Roy, do you want to answer that?

1 Mr. Ramthun. Is that the one I handed out?

2 Senator Graham. Yes.

3 Mr. Ramthun. In reference to your previous
4 question, the Finance Committee was not assigned a number
5 for Medicaid. The budget resolution assumed \$181.6
6 billion.

7 Senator Graham. Does this sheet represent what is
8 in the bill at the present time?

9 Mr. Ramthun. Yes.

10 Senator Graham. According to this sheet, we are
11 making allocations over the 7-year period of
12 \$767,605,728,40. Is that correct?

13 Mr. Ramthun. That is correct.

14 Senator Graham. Well, working off the CBO
15 baseline, that indicates that rather than \$181.6, we are
16 actually reducing the Medicaid budget by \$187.2 billion.
17 Is that correct?

18 Mr. Ramthun. Compared to the current law baseline,
19 that is correct.

20 Senator Graham. The same baseline which led to the
21 \$181.6 billion that was assigned to this Committee.

22 So, according to that, if those numbers are correct,
23 as you say they are, that would indicate that we have
24 adequate funds in the excess that we have already
25 achieved, in terms of the reduction in the Medicaid

1 program, to more than cover the cost of the amendment
2 offered by the Senator from New Jersey. Is that correct?

3 The Chairman. The time on this amendment has more
4 than expired. [Laughter]

5 Senator Bradley. Mr. Chairman?

6 Senator Graham. I would like to have confirmation.

7 Senator Bradley. Let me modify the amendment and
8 have it paid for in the way Senator Graham has suggested.
9 So this is fully paid for. This is no longer a matter of
10 increasing the deficit. I think that is a great
11 sleuthing job, Senator. It is only if you want to put on
12 that 10 percent tax.

13 The Chairman. Let me make a couple of
14 observations. The non-AFDC caseload has now grown to
15 over 8 million cases. As much as 27 percent of the non-
16 AFDC caseload requesting child support enforcement
17 services had income in excess of 300 percent of the
18 national poverty level.

19 That is over \$37,700 of income today for a family of
20 three. And I must say that I see no reason why low-
21 income working families which do not use these services
22 should pay the cost of administering this system, when
23 there is a clear ability to pay.

24 Let me stress that this proposal deals only with the
25 non-AFDC caseload. The General Accounting Office has

1 recommended for several years now that Congress take
2 appropriate steps to recover some of these costs to the
3 taxpayers.

4 Senator Hatch. Mr. Chairman?

5 The Chairman. Yes.

6 Senator Hatch. I just have a couple of questions.
7 The other side has had plenty of time, and we have not
8 had any time on this side. I do not want people to vote
9 on this amendment without realizing that there is a
10 legitimate reason for this amendment.

11 Could I ask Ms. Tobin, the fact of the matter is
12 that there are billions of dollars that are not being
13 collected every year, right?

14 Ms. Tobin. Yes, sir.

15 Senator Hatch. The fact of the matter is that
16 there are mothers with children who are not getting any
17 child support payments from their spouses.

18 Senator Hatch. The fact of the matter is, a lot of
19 States are not collecting those funds. And they are not
20 doing a good job collecting those funds.

21 Ms. Tobin. That is correct.

22 Senator Hatch. And is not the real reason for this
23 to try to give some incentives for the States will
24 collect these funds ----

25 Ms. Tobin. Yes, sir.

1 Senator Hatch. ---- to help these poor mothers,
2 and give them monies they would not otherwise have, and
3 they do not have. We are assuming that these people get
4 these monies out of somewhere. The fact is that they are
5 not getting them. And this is an incentive to try and
6 get the monies. Now it may not be the best incentive in
7 the world, but it is better than what we have right now.

8 Was that a fair statement?

9 Ms. Tobin. Yes, sir.

10 Senator Bradley. You have got to be joking

11 Senator Hatch. What do you mean? I have collected
12 these funds. I know how tough it is, and attorneys are
13 charging between 25 and 40 percent to collect them.

14 Senator Rockefeller. Well, that is wonderful. I
15 thought the States were going to be able to do all these
16 things just superbly, and your whole philosophy is based
17 on that.

18 Senator Hatch. I think they will if you give them
19 some incentives.

20 The Chairman. The time on this amendment has
21 expired. The clerk will call the roll.

22 The Clerk. Mr. Dole.

23 Senator Dole. No, by proxy.

24 The Clerk. Mr. Packwood.

25 Senator Packwood. No, by proxy.

1 The Clerk. Mr. Chafee.
2 Senator Chafee. Aye.
3 The Clerk. Mr. Grassley.
4 Senator Grassley. No.
5 The Clerk. Mr. Hatch.
6 Senator Hatch. No.
7 The Clerk. Mr. Simpson.
8 Senator Simpson. No.
9 The Clerk. Mr. Pressler.
10 Senator Pressler. No.
11 The Clerk. Mr. D'Amato.
12 Senator D'Amato. No.
13 The Clerk. Mr. Murkowski.
14 Senator Murkowski. No.
15 The Clerk. Mr. Nickles.
16 Senator Nickles. No.
17 The Clerk. Mr. Moynihan.
18 Senator Moynihan. Aye.
19 The Clerk. Mr. Baucus.
20 Senator Baucus. Aye.
21 The Clerk. Mr. Bradley.
22 Senator Bradley. Aye.
23 The Clerk. Mr. Pryor.
24 Senator Pryor. Aye.
25 The Clerk. Mr. Rockefeller.

1 Senator Rockefeller. Aye.

2 The Clerk. Mr. Breaux.

3 Senator Breaux. Aye.

4 The Clerk. Mr. Conrad.

5 Senator Conrad. Aye.

6 The Clerk. Mr. Graham.

7 Senator Graham. Aye.

8 The Clerk. Ms. Moseley-Braun.

9 Senator Moseley-Braun. Aye.

10 The Clerk. Mr. Chairman.

11 The Chairman. No.

12 The Clerk. The ayes are 10, the nays are 10.

13 The Chairman. The amendment does not carry.

14 Senator Nickles. Mr. Chairman?

15 The Chairman. Don.

16 Senator Nickles. Mr. Chairman, as I mentioned to

17 Senator Bradley, I am sympathetic to his amendment. I do

18 think it should be offset, and I do not think we have

19 additional savings yet. I do think we will have a week

20 or two, or more, before we get to the floor, which will

21 give us ample time. Hopefully, we can find a better way

22 to do it. I do not think this is the right approach

23 either.

24 Senator Graham. Mr. Chairman?

25 The Chairman. Go ahead, Senator Graham.

1 Senator Graham. I would like to ask, to follow up
2 on the suggestion made by Senator Nickles, who stated
3 that we did not have adequate funds to do the offset,
4 would someone from the staff or elsewhere please indicate
5 where the numbers--which are the numbers that were
6 distributed on the first day by the Congressional Budget
7 Office, and then on the second day by the Finance
8 Committee staff--are in error.

9 Mr. Ramthun. The numbers that you have before you
10 on the Medicaid formula allocation do produce \$182
11 billion in savings. However ----

12 Senator Graham. One hundred eighty-seven point 2
13 billion.

14 Mr. Ramthun. Let me finish the explanation.

15 There is an assumption that the enactment of the
16 welfare bill would produce \$5 billion in savings in
17 Medicaid. Then the enactment of this Medicaid proposal
18 would produce \$182 billion in addition to that.

19 Senator Graham. So we are effectively cutting the
20 Medicaid program \$5 billion more than the House cut the
21 Medicaid program?

22 Mr. Ramthun. No, that is not correct.

23 Senator Graham. What is the House figure that is
24 the equivalent of \$767.6 billion?

25 Mr. Ramthun. It should be roughly the equivalent.

1 I do not have that specific number.

2 Senator Nickles. Mr. Chairman?

3 The Chairman. I would like to comment. I think
4 none of us are satisfied with this question of child
5 support payment. We shall continue our efforts to try to
6 find a better solution to it. I suggest that our staffs
7 work on it from both sides of the aisle.

8 I do want to point out, of course, that the States
9 can collect the fee from the absentee father.

10 Senator Nickles. Mr. Chairman.

11 The Chairman. The Senator from Oklahoma.

12 Senator Nickles. I would just mention to my
13 colleague from Florida that the directions from the
14 Budget Committee are for reconciliation to have savings
15 of \$530 billion, of which Medicaid is part. We have to
16 achieve that goal.

17 So, whether or not we meet our target, a lot of
18 people who have looked at Medicare and Medicaid say that
19 we are over our goal. What the Budget Committee really
20 told us to do was \$530 billion, all of which are
21 components.

22 If we are going to be successful, we need to reach
23 that target.

24 Senator Graham. We decided to cut Medicaid 200
25 percent more than the budget instructions for Medicaid.

1 The Chairman. The Chair would like to ask, are
2 there any more amendments?

3 Senator Breaux. Mr. Chairman?

4 The Chairman. Senator Breaux.

5 Senator Breaux. Mr. Chairman, I have an amendment
6 dealing with vaccines for children.

7 Mr. Chairman, I would just say that we have worked
8 on this amendment for probably about 2 days with the
9 staffs on both sides of the aisle. I think we have an
10 amendment that hopefully would be agreed to.

11 I will just make a very short statement of what the
12 problem is. Currently, the various States can obtain
13 vaccines at a discounted rate in two ways. One would be
14 by using funds from the Public Health Service, Section
15 317 program; and the second manner in which they can
16 provide vaccines for children is through the Vaccines for
17 Children program.

18 The Chairman's Mark repeals the Vaccines for
19 Children program, just repeals it outright. But, at the
20 same time, the Chairman's Mark also requires the States
21 to provide childhood immunizations. So while we are
22 repealing the Vaccines for Children program, the law in
23 this Mark requires us to immunize children.

24 Therefore, the question is, what happens when the
25 Public Health Service's Section 317 program may not have

1 enough money in it in order to allow the States to have
2 the financial wherewithal to do what this Committee is
3 telling them to do, i.e., immunize children within their
4 State borders.

5 What we have put together is an amendment that is
6 not perfect, in my opinion, but is better than what we
7 have in the Mark of the Committee Chair that is pending
8 right now. It would allow the States to use their State
9 Medicaid funds to purchase vaccines through contracts
10 that they negotiate with the Center for Disease Control
11 and Prevention under Section 317 of the Public Health
12 Service Act.

13 These funds would be able to be used for these
14 purchases if the State has expended all of its Section
15 317 grant funds that are available for this purpose. We
16 have had the argument that there is a lot of money left
17 over. And, for some States, that is true. We will
18 require those States to use those funds first. But then,
19 after those funds are expended, the State would be able
20 to use their State match funds to purchase drugs at a
21 negotiated discount price due to volume purchases, for
22 the purposes of vaccinating children who meet the
23 standards under this amendment.

24 And that standard is the second paragraph (B). The
25 total number of vaccine doses purchased does not exceed

1 an amount sufficient to immunize children in targeted
2 low-income families, which we define as families with
3 children below 185 percent of the poverty line. And it
4 also less 75 percent of the number of vaccines that have
5 already been received by the State under the Section 317
6 program.

7 It is a complicated proposal. It is better by far
8 than what we have in the existing Chairman's Mark. It is
9 not everything I think a lot of people would like to see,
10 but it is much better than we have in the Chairman's
11 bill, and I would hope that we can adopt it.

12 The Chairman. I would say to my distinguished
13 friend that we would be willing to accept this amendment,
14 and congratulate him on his proposal.

15 Without objection, it is moved.

16 Senator Moynihan. I move the amendment.

17 The Chairman. Will those in favor signify by
18 saying aye?

19 (A chorus of ayes)

20 The Chairman. Those opposed nay.

21 (No response)

22 The Chairman. The ayes have it. The amendment is
23 carried.

24 Senator Rockefeller. Mr. Chairman?

25 The Chairman. Senator Rockefeller.

1 Senator Rockefeller. Mr. Chairman, Senator Chafee
2 and I have cosponsored a foster care amendment, which I
3 hope is being distributed. I will explain it and
4 withdraw. Senator Chafee and others may wish to comment
5 on it.

6 The Chairman has decided to cut \$1.5 billion from
7 foster care, to get more money from welfare reform. We
8 have to deal with that.

9 I do want to explain my very strong objections to
10 the 10 percent cap on foster care proposed in this Mark,
11 and I urge my colleagues to rethink this issue in the
12 days to come.

13 When the Finance Committee passed welfare reform
14 this spring, we specifically called for retaining current
15 law for Federal programs for abused and neglected
16 children. And it was done with bipartisan support, and
17 with the particular leadership of Senator Chafee.

18 When the full Senate debated welfare reform, we
19 again retained current law. And we specifically included
20 the reauthorization of the Child Abuse Prevention and
21 Treatment Act.

22 Now, because we find out that this budget package
23 must have more money for savings to provide tax cuts for
24 the special few, we are going to renege on our previous
25 decision to retain current law, and take \$1.5 billion

1 from a program to serve our most vulnerable children,
2 those who are neglected and abused.

3 A GAO report released this week states, "Between
4 1983 and 1993, sharp increases in the number of number of
5 foster children, combined with the unprecedented service
6 needs, led to a crisis in foster care. Reports of child
7 abuse and neglect nearly doubled. Demands for child
8 welfare services grew not only because of the number of
9 foster children had increased, but because families and
10 children were more troubled, and needs were greater than
11 in the past."

12 In Los Angeles County, in New York City and
13 Philadelphia, for example, 29 percent of preschool age
14 foster children--29 percent--in 1986 were at risk. This
15 rose to 62 percent in those same cities in 1991. God
16 knows what it is today.

17 Now I will bring this to a close. GAO raises
18 serious questions about a 10 administrative cap on foster
19 care. When people hear the word "administrative cap",
20 they think of bureaucracy. That is sadly wrong in this
21 case; this has to do with the investigation and legal
22 costs, finding out whether the foster child ought to be
23 removed from the home or not, which is extremely
24 sensitive, extremely complicated. It has to do with
25 locating foster parents or others, if the child does have

1 to be removed, or even the costs of remediation within
2 the family if the child stays there.

3 In my view, cutting any foster care is a terrible
4 mistake. But the Majority has decided to do that. Even
5 CBO acknowledges that this kind of cut might "not be
6 advisable, and if States respond by cutting back
7 services, children in need of foster care could be
8 harmed."

9 Again, an administrative cap of 10 percent is
10 dangerous, and is wrong. I simply stipulate that, and I
11 think I have explained it. We should not be taking \$1.5
12 billion out of foster care. It was not part of the
13 original bipartisan deal on welfare reform, and it should
14 not be tolerated in this plan. But it is being. I
15 regret that. I will not press for a vote, and would
16 welcome any comment.

17 Senator Chafee. Mr. Chairman?

18 The Chairman. Yes, Senator Chafee.

19 Senator Chafee. Mr. Chairman, very briefly, when
20 you put these 10 percent caps on the growth of
21 administrative expenses, it penalizes those who have been
22 frugal, and rewards those who have been extravagant
23 because the 10 percent is obviously based on the existing
24 amount of money going toward administrative expenses.

25 I will not belabor this, Mr. Chairman. But I will

1 say that the whole area of foster care is an area that
2 deserves a lot of attention from all of us. Particularly
3 when you talk about administrative expenses, you always
4 think of that word "bureaucrat". But the administrative
5 expenses are used to investigate potential homes where
6 foster children will go, to investigate possible cases of
7 abuse, to try to get the children well placed. It is a
8 very complicated business that I had some experience with
9 when I was Governor of our State.

10 So, Mr. Chairman, I think the cap is not a good
11 idea. I think the suggestion of lowering the Federal
12 match rate was a better one, but I want to congratulate
13 Senator Rockefeller for his long interest in this area.
14 We concluded that we just did not have the votes tonight,
15 and we will try another day.

16 The Chairman. The hour is growing late.

17 As I understand it, the Rockefeller amendment is
18 withdrawn, and we will turn to Senator Graham.

19 Senator Graham. Mr. Chairman, I have a short,
20 specific amendment. It relates to the maintenance
21 effort, requires that real State dollars be used. You
22 will recall that it was not very long ago that we had a
23 series of situations in which States were really
24 manufacturing money by charging hospitals a fictitious
25 fee, and then using that fee to meet their Medicaid payments.

1 According to a study by the Prospective Payment
2 Assessment Commission, between 1991 and 1992, there was a
3 \$12 billion increase in Medicaid spending which was
4 attributable to those kind of activities.

5 The Congress responded; we set new standards as to
6 what donations and taxes would qualify for Federal
7 matching funds. Under present law, this amendment would
8 propose to keep that same language as an assurance that
9 when we talk about State maintenance of effort at the
10 levels we are requiring in this legislation, we are
11 dealing with real money, not fictitious money.

12 The Chairman. Any further comment?

13 (No response)

14 The Chairman. I would recommend acceptance of the
15 amendment.

16 Senator Moynihan. I so move.

17 The Chairman. Those in favor, signify by saying
18 aye.

19 (A chorus of ayes)

20 The Chairman. Opposed, nay.

21 (A chorus of nays)

22 The Chairman. The ayes have it. The amendment is
23 adopted.

24 Senator Chafee. If you want your amendment
25 accepted, bring it up at about 10:45 at night.

1 Senator Grassley. Mr. Chairman?

2 The Chairman. Senator Grassley.

3 Senator Grassley. Before you have final roll call,
4 I have a major problem with this bill that I want to
5 point out to you.

6 Senator Moynihan. Good, good. [Laughter]

7 Senator Grassley. This is as much procedure as it
8 is substance. But let me explain to you what my problem
9 is. My main problem is that Senator Dole is not here.
10 That is the bottom line.

11 But when I lost my BELT amendment, Senator Dole had
12 voted against it. Then I think he had second thoughts
13 because he voluntarily came up to me afterwards and said,
14 we will modify your amendment, I will get a couple more
15 votes, and we will get it passed.

16 So it was worked on over the night. I have language
17 here that is not perfect as far as I am concerned, but at
18 least it would have got the subject matter of our
19 legislation in the document so that it could be perfected
20 between now and the time we have floor action.

21 The way it was presented to me this morning at 11:00
22 a.m., it was satisfactory. I was told at that time, Mr.
23 Chairman, that it would be put in your Mark and be
24 accepted, even though it had to be perfected, and we
25 could work on it later on.

1 Then I came back after debating cargo preference on
2 the floor of the Senate tonight for about an hour. I got
3 back here and found that somebody on the other side of
4 the aisle objected. I did get four out of the nine
5 votes. My amendment lost 10 to 10, and I got four votes
6 from the other side. So I suppose it was one of the five
7 who did not like it.

8 So I am in a position, Mr. Chairman, where it is not
9 in the document, so we do not have anything to perfect.
10 And I do not have Senator Dole here to reconsider it, as
11 he said he was going to do.

12 With the majority of the Committee now feeling that
13 there is a problem here that has to be dealt with, only
14 it is a matter of how exactly to perfect my language to
15 make it work out, I have got to know that we have got to
16 handle this before we go to final passage.

17 I learned this from Senator Chafee, by the way.

18 The Chairman. Well I would say to the
19 distinguished ----

20 Senator Grassley. Well, what I want is for us to
21 wait until Senator Dole returns, so he can come over here
22 and reconsider this, and we can consider the substance of
23 my amendment, because he is on the prevailing side, and I
24 am not on the prevailing side. The other one I know who
25 could do it would be Senator D'Amato.

1 Senator D'Amato. Well, let me say this to you. I
2 would be looking to work out some accommodation. I think
3 we need a date change. I am going to ask staff to take a
4 look at that. But as it is presently written, with that
5 same date, I could not support it.

6 Senator Grassley. Well, we have changed it.

7 Senator D'Amato. If we can get the date change, I
8 would move to reconsider the vote. May I ask staff to
9 ascertain whether we have done that?

10 The Chairman. Would the Senator please repeat his
11 question?

12 Senator Grassley. Yes. If we have changed the
13 impact of the date, I would be willing to help my
14 colleague because I think he makes a point. We could
15 look further to resolve this between now and the time we
16 go to the floor.

17 But that whole point, the date change, do we agree
18 to that?

19 Senator D'Amato. Yes, we agree to that.

20 The Chairman. I would like to say to the
21 distinguished Senator that I suggest that our staffs
22 continue to work on that.

23 Senator Grassley. But, see, you miss the point.
24 You have got to have some language in the document to
25 perfect. You cannot just tell me that you are going to

1 take care of this.

2 Senator Bradley. That is right. [Laughter]

3 Senator Grassley. Because I was told at 11:00
4 o'clock that it would be taken care of.

5 Senator D'Amato. Mr. Chairman, I want to move to
6 reconsider with the date that we have indicated we have
7 agreed to.

8 The Chairman. Changed to what date?

9 Senator D'Amato. That date would be changed to
10 1999.

11 The Chairman. Without objection.

12 Senator Graham. Mr. Chairman, could we see the
13 modifications to the amendment before we adopt it?

14 Senator D'Amato. Yes. I think the year changes
15 from 1997 to 1999.

16 The Chairman. I would like to suggest that we lay
17 this aside for the moment so you can see it, and that we
18 proceed with other amendments so we can complete the
19 business.

20 Senator Bradley. Mr. Chairman, if I could, I
21 wonder if Senator D'Amato, the Senator from New York,
22 knows that the effect of the amendment of the Senator
23 from Iowa is to hit the higher-cost areas of the country
24 more than the lower-cost areas of the country. The
25 higher-cost areas of the country, among others, being

1 those on both sides of the Hudson River.

2 Senator D'Amato. I recognize that. But I also
3 recognize that at some point you have to look for some
4 accommodation. Between now and the time we go to the
5 floor and take action, it would be my hope that we could
6 reconcile any differences because we are going to need
7 everybody's support on this.

8 So I see a little comity, we move this to 1999.
9 This would certainly give us sufficient time, both now
10 and hopefully before 1999, to deal with this problem if
11 one does come about.

12 The Chairman. As I suggested, I would like to lay
13 this aside to give people a chance to look at the
14 proposal, and that we proceed with the few remaining
15 amendments we have.

16 With that, I would like to call on Senator Simpson.

17 Senator Hatch, do you have something?

18 Senator Hatch. Mr. Chairman, I will call up my
19 amendment number 4. This is my amendment on supplemental
20 rebates, which was to have been included in the
21 Chairman's en bloc amendment, and was not by mistake.

22 All it says is that States may not collect a
23 supplemental rebate in addition to the Federal rebate.
24 It does not affect the previously adopted amendments in
25 any way. And I believe this has been cleared on both

1 sides.

2 Senator Pryor. I do not know that ----

3 The Chairman. Senator Pryor?

4 Senator Pryor. Has it been cleared on both sides?

5 Senator Hatch. Yes, it has been.

6 The Chairman. Senator Hatch, you say it has been
7 cleared on both sides?

8 Senator Hatch. It has been.

9 Senator Pryor. Just for the record, may I ask our
10 good friend from Utah exactly what the purpose of the
11 amendment is?

12 Senator Hatch. Well, because States already
13 receive the manufacturer's best price for a drug under
14 the Federal rebate program, States should not be allowed
15 to create supplemental rebate programs.

16 Clarifying that States may not collect supplemental
17 rebates would encourage States to consider prescription
18 drugs within the scope of their overall Medicaid program
19 design, and thus provide health care in a more integrated
20 fashion. This would result in better patient care and
21 help reduce program costs.

22 Senator Pryor. Mr. Chairman, I want to thank my
23 friend for his explanation.

24 I would like to say that I am not going to object to
25 this at this time, but ultimately on the floor, if this

1 is raised, we may raise it again, but I am not going to
2 object to it tonight.

3 Senator Hatch. Well, I move the amendment then.

4 Senator Graham. Mr. Chairman, can I ask a
5 question?

6 The Chairman. Yes.

7 Senator Graham. How does this fit in with the
8 general philosophy of letting States have maximum
9 control?

10 If a State, now that it is in control of the
11 Medicaid program, decides that it feels that it is in its
12 interest to attempt to get, by whatever legitimate
13 method, the best price for a service or product, why are
14 we now saying to States that they cannot do it?

15 Senator Hatch. Well, we are saying that they are
16 getting best price. They are getting what they want.
17 Therefore, we are not going to let them create
18 supplemental rebate programs.

19 Senator Graham. Why? Why are we restricting this?
20 The word "best price" in the law is an art form; it is
21 not necessarily an economic statement. But that is in
22 fact the best price that can be secured.

23 Senator Hatch. Well, the price is being
24 maintained, and this is not necessarily an add on to
25 that.

1 Senator Graham. But why, with all the emphasis we
2 have given to letting the States have maximum latitude in
3 running these programs in this area, what is the public
4 policy that says this is an area where we should prohibit
5 States?

6 Senator Hatch. Well, all I am saying is that my
7 amendment preserves the State's best price policy, which
8 is what the States want. And we just add that, for that,
9 they cannot put an add onto it.

10 Senator Graham. But why?

11 Senator Hatch. Because it is unfair. That is why.

12 The Chairman. To whom?

13 Senator Hatch. It is unfair to research,
14 development, the companies.

15 Senator Graham. You mean it is unfair to the
16 pharmaceutical companies.

17 Senator Hatch. Sure.

18 Senator Graham. Unfair that the State can, by
19 using its creative bargaining and negotiation, get a
20 price which is legal and appropriate?

21 Senator Hatch. Sure. They still have that right,
22 if they want to. They just cannot add a supplemental
23 rebate program to it, that is all.

24 Senator Graham. Mr. Chairman, I would like to have
25 a vote on this amendment.

1 Senator Hatch. All right.

2 The Chairman. I think everybody has had the
3 opportunity. Don?

4 Senator Nickles. Mr. Chairman, I share some of the
5 concerns that Senator Graham expressed. I also question
6 a little bit of the premise of the amendment. Earlier
7 today--correct me if I am wrong, Mr. Chairman, or maybe
8 staff would correct me--but I think we adopted the Pryor
9 amendment that eliminated it, right? Originally, the
10 Chairman's Mark had an end, or a sunset provision to the
11 rebate program.

12 I believe the Pryor amendment was adopted by voice
13 vote, which eliminated the sunset provision. I am not
14 sure I would have agreed, or voted that way, but it
15 passed by a voice vote. I have some reservations about
16 that vote.

17 Senator Hatch. Well, if I could add to that, when
18 that vote passed I was on the floor. I am very concerned
19 about that amendment, or those en bloc amendments. And I
20 was on the floor offering an amendment to the Commerce-
21 Justice appropriations bill, an important amendment.

22 My particular concern is the extension of the direct
23 rebate program beyond the 3 years in the Chairman's Mark.
24 Had I been here, I would have raised objections to that.
25 I would have fought that, and I personally believe it

1 would have been defeated. So I hope it is something we
2 can revisit when the bill is on the floor. I would like
3 to revisit it now if I can.

4 Senator Pryor. Mr. Chairman, if I might, 20
5 seconds.

6 The Chairman. Senator Pryor.

7 Senator Pryor. I stated a moment ago that I was
8 not going to object to this. I did not know that there
9 would be a roll call vote. On the roll call vote, I am
10 going to vote no. And I just wanted my colleagues to
11 know that I am going to vote that way.

12 I really do not understand this amendment, and I
13 think it goes a lot further than a lot of people realize.
14 So I am going to cast a no vote.

15 Senator Rockefeller. Well, I think we understand
16 the amendment. And the amendment is a study in hypocrisy
17 because, as my good friend, the Senator from Utah, has
18 said, we are not going to let them do it--the States,
19 that is.

20 They have spent the entire last two days saying that
21 you cannot tell the States what they cannot do, when it
22 comes to poor children or anybody else. But on this,
23 when maybe a pharmaceutical company is interested, we
24 will tell the States they cannot do something. It is
25 hypocrisy, and we should vote against it.

1 Senator Hatch. Well, I think hypocrisy is just a
2 little bit strong here. The fact of the matter is that
3 the rebate program stays in the bill. I do not agree
4 with what they have done, because it is basically unfair.

5 What this does is it says that you are going to get
6 the best price States, which is what they want, but you
7 are just not going to be able to add another rebate on,
8 which would be unfair, patently unfair. There is nothing
9 hypocritical about that at all. It is a straight up
10 thing, saying let us be fair.

11 The Chairman. The time on the amendment has
12 expired. The question is on the Hatch amendment. The
13 clerk will call the roll.

14 The Clerk. Mr. Dole.

15 Senator Dole. Aye

16 The Clerk. Mr. Packwood.

17 Senator Packwood. Aye, by proxy.

18 The Clerk. Mr. Chafee.

19 Senator Chafee. No.

20 The Clerk. Mr Grassley.

21 Senator Grassley. Aye.

22 The Clerk. Mr. Hatch.

23 Senator Hatch. Aye.

24 The Clerk. Mr. Simpson.

25 Senator Simpson. Aye.

1 The Clerk. Mr. Pressler.
2 Senator Pressler. Aye.
3 The Clerk. Mr. D'Amato.
4 Senator D'Amato. Aye.
5 The Clerk. Mr. Murkowski.
6 Senator Murkowski. Aye.
7 The Clerk. Mr. Nickles.
8 Senator Nickles. No.
9 The Clerk. Mr. Moynihan.
10 Senator Moynihan. No.
11 The Clerk. Mr. Baucus.
12 Senator Baucus. No.
13 The Clerk. Mr. Bradley.
14 Senator Bradley. Aye.
15 The Clerk. Mr. Pryor.
16 Senator Pryor. No.
17 The Clerk. Mr. Rockefeller.
18 Senator Rockefeller. No. No.
19 The Clerk. Mr. Breaux.
20 Senator Breaux. No.
21 The Clerk. Mr. Conrad.
22 Senator Conrad. No.
23 The Clerk. Mr. Graham.
24 Senator Graham. No.
25 The Clerk. Ms. Moseley-Braun.

1 Senator Moseley-Braun. Aye.

2 The Clerk. Mr. Chairman.

3 The Chairman. Aye.

4 The Clerk. The ayes are 11, the nays 9.

5 The Chairman. The amendment is carried.

6 I think the next amendment is Senator Moseley-Braun.

7 Senator Moseley-Braun. Thank you very much, Mr.

8 Chairman.

9 I am not putting this amendment. I am just asking
10 for some consideration or comity, as the Senator from New
11 York mentioned, as we look at the EITC provisions of this
12 bill, especially with regard to the issue of what happens
13 to childless workers in poverty.

14 The Chairman's Mark essentially cuts out for some
15 4.4 million Americans, who make less than \$10,000 a year,
16 the value of the earned income tax credit offset against
17 payroll taxes for them.

18 Those 4.4 million Americans who fall at the poverty
19 level and below were the people who really suffered the
20 most over the last several years. Their tax burden rose.
21 Between 1980 and 1993, their tax burden rose some 38
22 percent, even while the top fifth income people in this
23 country saw a tax decrease of 3 percent during the same
24 period.

25 So to keep workers who earn less than \$10,000, who

1 are still under the poverty level, from being taxed
2 further into poverty, the 1993 bill added the earned
3 income tax credit for them. The Chairman's Mark takes
4 that away. And, again, it will cause these 4.4 million
5 individuals to pay more taxes, more in their tax burden,
6 and it will really, for all intents and purposes,
7 represent our pouring water on the heads of people who
8 are barely keeping afloat right now.

9 I hope that this Committee considers, as we look at
10 the issue of offsets, and the whole earned income tax
11 credit section, whether or not it is good policy to
12 further tax those people who make less than \$10,000 a
13 year, to raise their tax burden, and to keep them from
14 getting what little boost the earned income tax credit
15 provided for them.

16 It will represent an average tax hike for this group
17 of \$173 a year, and up to \$300 a year. So I think it is
18 something that I certainly hope the Members of the
19 Committee will consider as we look at the EITC--what
20 happens to childless workers?

21 Senator Moynihan. Well said.

22 The Chairman. I would say to the distinguished
23 Senator that we certainly shall continue to study and
24 look at this program.

25 Senator Moseley-Braun. thank you.

1 The Chairman. Senator Simpson.

2 Senator Simpson. Yes, Mr. Chairman. I will be
3 brief. I think the amendment is being circulated. I
4 hope this amendment deserves a thoughtful, bipartisan
5 review.

6 The Medicare savings in the Chairman's Mark are
7 necessary to save these programs. That is what we have
8 been trying to do. I commend the Chairman for pursuing
9 them. We do need to make these changes, and they amount
10 to billions.

11 But one reason that the current law course is
12 unsustainable is that Medicare Part B, as currently
13 structured, is by far and away the best deal in town.
14 Number one, you do not have to buy it. Please hear that.
15 Part B is strictly voluntary. Please hear that. It is
16 not part of any contract. So if you hear of the senior
17 groups saying that you are breaking the contract, there
18 was never a contract; it is totally voluntary. Senior
19 groups will express that.

20 It could actually in a sense be called welfare
21 because it is an income transfer from the working level,
22 low-income people. I have heard a lot about the low-
23 income people for the last 2 days, oh have I.

24 That is what Part B premiums are. Thirty percent of
25 the premium is paid by the beneficiary, regardless of

1 their net worth or their income, and the other 70 percent
2 is paid by the people that clean and maintain this
3 building. If there is something right about that, I am
4 missing something.

5 I want you to see this chart, when I say the best
6 deal in town. This is current law. You cannot see it
7 very well, but there it is, a hypothetical wealthy
8 retiree age 70, with an income of \$80,000 a year, assets
9 of \$300,000, excluding the home, paying income tax, State
10 and local taxes. They pay a monthly insurance premium,
11 beginning in 1996, of \$49. a month. It is presently
12 \$46.10 a month. That is what the wealthiest people in
13 America are paying on Part B premiums today--\$46.10.
14 Next year, it will go to \$49. a month.

15 Over here, we have the hypothetical worker, 40 years
16 old, making \$25,000 a year, maybe \$50,000 in assets,
17 exclusive of residence. He pays income tax, State and
18 local tax, old age survivors, the whole works. And he is
19 paying \$124. of the premium for this person. Now I hope
20 you see that as clearly as I hope it is set up.

21 We have a situation here where a wealthy retiree,
22 paying of course something for their own benefits,
23 including income taxes in the past, which certainly has
24 helped them get their own Part B premium, the receive
25 that. But the working stiff pays all those taxes too,

1 plus payroll taxes of 7.65 percent. And here is the real
2 kicker. The wealthy retiree will pay zero for Part A,
3 zero for Medicare Part A. He or she will pay a small
4 copayment and then, as I say, \$49. bucks for voluntary
5 Part B insurance.

6 And what about the working taxpayer in this
7 situation, the one we always speak of? Can he find
8 health insurance for that price? More typically, that
9 individual will pay something on the order of \$125. a
10 month or more, usually \$200. perhaps, for his or her
11 health insurance. The working taxpayers are paying \$106.
12 bucks of the total \$155. monthly Part B premium for the
13 wealthy recipient. And that is the best deal in town.

14 Now take a look at this one, and then I will
15 conclude. This is the chart of the voluntary premiums
16 required if we do a 15 percent affluence test. Now
17 listen closely. Most of these persons would not be
18 greatly affected by the affluence test I am proposing.
19 Here is the chart. It illustrates the very gradual
20 increase in the amount of the voluntary monthly premiums
21 that would be due from the wealthiest 15 percent of
22 Medicare Part B insureds if their amendment were enacted.
23 Here are the cutoff figures. Individuals with incomes
24 between \$40,000 and \$45,000 would be asked to pay \$64. a
25 month instead of \$49. a month, presently \$46.10 a month,

1 and would still receive a subsidy from the taxpayers who,
2 on average, are earning much less than they do in
3 retirement.

4 Look at the list, go on through it, see how much
5 more the seniors in each income range would pay in this
6 solely voluntary program. Seventy-nine bucks a month for
7 incomes between \$45,000 and \$50,000, and on up the list.
8 So, if you are in the area of \$60,000 to \$65,000 income
9 level, you are going to pay \$125. bucks. And the
10 taxpayer, Joe 6-pack, is still paying \$30. bucks of your
11 premium.

12 Finally, when we get up to \$67,000, you are paying
13 it all, which is really a whole great big monthly premium
14 all by itself. It is the sum of \$155. And what do you
15 get for it? Here is what you get for it: Physicians'
16 services, durable medical equipment, orthotics and
17 prosthetics, clinical lab services and ambulance services
18 for \$155. bucks, when you are paying it all.

19 Now that is what the proposal is. The Chairman's
20 Mark would have begun the affluence testing for the top 3
21 to 4 percent, I think leaving an incredible level of
22 taxpayer subsidy for most seniors who at the very top of
23 the income range. So this is not about breaking the
24 contract; it is about fairness. There is a defined cost
25 burden here, and it is not being shared fairly in

1 society.

2 My amendment simply tries to get a greater level of
3 fairness into the payment system for this voluntary
4 program, and it saves \$28 billion over the 7-year period.
5 Those are dollars we have been searching for in these
6 last day. If we cannot do this one, or something similar
7 to it, what can we do? As I say, the fine people who
8 take care of us here in this building are paying 70
9 percent of the Part B premium for former CEO's of
10 corporate America, and that ain't exactly right.

11 Senator Moynihan. Mr. Chairman?

12 The Chairman. Senator Moynihan.

13 Senator Moynihan. Mr. Chairman, I cannot
14 sufficiently express my gratitude to the Senator from
15 Wyoming. It is time we did this. One of the almost
16 secret facts of the American tax system is that we have a
17 flat tax. Two-thirds of Americans pay more in that
18 payroll tax than in income tax, and they pay it on their
19 first dollar of earnings. You go up to a point when you
20 stop paying it, and the people beyond that, as your
21 income rises, you pay nothing.

22 We began Part B as a 50 percent share provision.
23 Then we indexed it and we overindexed it. I would like
24 the Senator from Wyoming to note that this is one of the
25 consequences of overindexing, that we are down to 31

1 percent now, but we would go back to 21 percent or
2 something, if we do not change the law.

3 We could do this. We could pick up billions of
4 dollars, and in conference we might not do as much harm
5 to poor children as some of us think this legislation is
6 doing.

7 I very much support this proposal.

8 Senator D'Amato. Mr. Chairman?

9 The Chairman. Senator D'Amato.

10 Senator D'Amato. Mr. Chairman, I want to commend
11 my colleague from Utah. I also want to suggest a
12 modification. If he will entertain it, I will not move
13 in the form of a modification, but I would like him to
14 consider it. It really begins to move us in the right
15 area, and I think it might do a lot to take out the
16 politics of this and address some common sense because it
17 follows along. It is not quite as radical or shocking to
18 the system. I wonder if I might ask my colleague to bear
19 with me, and take a look at his chart.

20 Where you say less than \$40,000, I would propose
21 that we make that less than \$60,000. And then when you
22 say from \$40,000 to \$45,000, it would obviously be from
23 \$60,000 to \$65,000. Then where you say from \$45,000 to
24 \$50,000, again it would be from \$65,000 to \$70,000. So
25 your levels, instead of going from \$40,000 to \$67,000,

1 where you kick in doing away with the subsidy, would do
2 that starting at \$60,000. And I would propose saying at
3 \$90,000 that a person should pay his full share.

4 Now, obviously, the savings would not be nearly that
5 great, but they would be substantial, and I believe that
6 you have set upon a course that we could sustain and
7 avoid a lot of demagogueries, and avoid a lot of fear.
8 Because there will be groups who traffic in fear. That
9 is how they raise their money. We have seen it in all
10 different kinds of groups.

11 So I am wondering if my friend might consider this
12 as an approach that would be more than just an exercise,
13 but that might even command a majority of this Committee,
14 and almost a bipartisan effort, and thereby use some of
15 these dollars to address some of the shortcomings that we
16 all know exist in this present bill.

17 Senator Chafee. Would this be a couple? You say
18 \$60,000 and what?

19 Senator D'Amato. For a couple, I would propose
20 that we start that at \$85,000 and move it up.

21 Senator Chafee. In other words, instead of \$40,000
22 single, \$58,000 married, you would have \$60,000 single,
23 \$85,000 married?

24 Senator D'Amato. That is correct.

25 Senator Hatch. Mr. Chairman?

1 The Chairman. Senator Hatch.

2 Senator Hatch. Mr. Chairman, I do not disagree
3 with my colleague from Wyoming. We need to start moving
4 in this direction. And I think our distinguished Ranking
5 Minority Member makes a very good case. But I am very
6 concerned about one thing. And I would like my
7 colleagues to at least consider it.

8 If you take a couple each making \$35,000 a year; the
9 husband makes \$35,000, the wife makes \$35,000. Together,
10 they make \$70,000. Under this proposal, they would be
11 paying more because they are over the threshold. If they
12 were to divorce, they would not. So what you have here
13 is a marriage penalty. If the figure is not double what
14 the single earner is, then you have another marriage
15 penalty, and we already have enough of those in the Code
16 that are very, very disturbing to me.

17 So I would suggest, if you could do that doubling,
18 it would be a smart and good thing.

19 Senator Simpson. Mr. Chairman, let me be very
20 clear here.

21 The Chairman. Senator Simpson.

22 Senator Simpson. I have had the slings and arrows
23 of every known group already. I look like Saint
24 Sebastian in those paintings with the arrows sticking out
25 the back and in the front. So it will not help to say

1 what will happen to me with regard to taking on some of
2 the largest senior citizens' groups, who are sometimes
3 larger than the committees' budgets of the United States
4 Senate, but that is another matter.

5 But what is really the case here is that Senator
6 Kerrey and I, and the Entitlements Commission, were
7 recommending means testing or affluence testing to start
8 on Part B at the top 25 percent. And we are still going
9 to propose that at some appropriate time.

10 I have tried to accommodate and come to the 15
11 percent, in trying to hit the top 15 percent of people in
12 America. When you talk about figures like \$70,000 and
13 \$90,000, I hope you will remember--and I believe the
14 figure is correct--that only 6 percent of the people in
15 America make over \$75,000 bucks a year when they are
16 working. The only place it gets distorted is here in
17 Washington, with ourselves, those who lobby us, those who
18 work with us, and there is the distortion.

19 We are talking about big figures, and I am trying to
20 reach the top 15 percent of those people in this measure.
21 We could go to 10 percent. If this fails, we will try 10
22 percent, go to 5 percent. But I am going to do this one,
23 and I would rather get shot out of the saddle than not do
24 it.

25 Senator Pressler. Would the Senator yield for a

1 question?

2 The Chairman. The hour is growing late. I do not
3 want to shut off, but I would ask each one who comments
4 to please keep your comments as short as possible.

5 I think Senator Rockefeller had his hand up next.

6 Senator Rockefeller. Mr. Chairman, everybody seems
7 to be speaking in favor of this. I do not. The chart
8 prior to the one we are now looking at talks about this
9 as the best deal in town.

10 Unfortunately, it is placed within a 7-year budget
11 which I think is the worst deal in town. And, as such, I
12 do not think it should be considered under the ruberick
13 of that budget.

14 I agree that we have to look at these matters. But
15 in a budget which is so clearly designed to save the
16 money, and to get the money in order to have a \$245
17 billion tax cut, I am not sure that the Senator from
18 Wyoming would be able to convince me that the money that
19 would be saved on this, or gained from this, would not
20 end up being used for that purpose.

21 Since I happen to feel--and I think some of my
22 colleagues happen to feel very, strongly about this--it
23 is very hard for me to support this amendment.

24 Senator Pressler. Mr. Chairman?

25 The Chairman. Senator Pressler.

1 Senator Pressler. Mr. Chairman, I have not spoken
2 much here in the interest of time, and I will greatly
3 summarize.

4 We have heard many people in the country say that we
5 in Congress have to do something to save Medicare and
6 Medicaid from going bankrupt. Indeed, those who oppose
7 our resolution have offered much criticism, without
8 offering an alternative plan.

9 I want to commend my colleague from Wyoming because
10 this is a specific way to raise more money. Many people
11 who make greater than \$67,000 a year have told me that
12 they are willing to pay a greater premium, and this would
13 provide guidance.

14 So if we are going to save Medicare and Medicaid,
15 this is a step in that direction.

16 Mr. Chairman, I would ask that I can place the rest
17 of my remarks in the record, in the interest of saving
18 time.

19 [The information appears in the appendix.]

20 The Chairman. Without objection.

21 The Senator from North Dakota.

22 Senator Conrad. Mr. Chairman, could I ask the
23 Senator from Wyoming a question? First of all, I want to
24 say that I agree with the Senator from Wyoming. I think
25 over time, this is a fairness issue as well. It just

1 makes no sense for a working family, maybe a young family
2 earning \$22,000 a year, to be taxed to subsidize the
3 health care of somebody who is well-to-do. It is just
4 not right.

5 So I commend the Senator from Wyoming for offering
6 this. I would ask him, what would be the disposition of
7 the savings?

8 Senator Simpson. The savings would go toward the
9 health insurance account, the health insurance trust
10 fund, Part A.

11 Senator Conrad. But let me ask this. Would the
12 \$270 billion savings ----

13 Senator Simpson. Oh, no. It is not that, Kent.
14 It is \$28 billion over 7 years.

15 Senator Conrad. No, I understand that.

16 Is that added to the \$270 billion? Or would that
17 displace some of the other savings that we have made?

18 Senator Simpson. That is why they saved this until
19 the end, because nobody wanted to see that there would be
20 money laying around that they could try to offset.

21 That was very simple. So that is why it is here at
22 this point, the last of the evening, because it is a
23 savings, or \$28 billion over 7 years at the 15 percent
24 level. If you did it at 10 percent, it would be about
25 \$15.5 billion, and if you did it with the present one in

1 the Chairman's Mark, it is about \$9 billion, if I am not
2 mistaken.

3 So those are the figures I am using. The entire
4 savings would go into the Part A, the Medicare trust
5 fund.

6 Senator Conrad. So it would not be available to
7 offset some of the other cuts that have been made?

8 Senator Simpson. It would simply go to the fund
9 that is going to go broke in the year 2008, now. It was
10 a thrilling thing to learn this morning that it is not
11 going to go broke in 2007; it is going to go broke in
12 2008.

13 I want to say to my friend from North Dakota, you
14 and I do differ on things, but I admire your courage on
15 this one. You have always been right here on this one.
16 But it does not do anything to the little guy. It
17 finally relieves the little guy of taking care of the fat
18 cats in society. It attracts me. And remember, I am not
19 for a tax cut, either for the rich or the poor. So let
20 us keep that up.

21 Of course the media galloped up to me and said, oh,
22 what are you going to do? Is this the end? I said no, I
23 do not go home and suck my thumb, and quit. If they
24 happen to put a tax cut in here, I will be right here
25 helping with this measure, no pain there. But it is

1 called legislating, and it is called compromising. I
2 have done a lot of that. I started at 25 percent, with
3 Bob Kerrey, to hit the top 25 percent of people in
4 America, and now I have come to 15 percent. If this does
5 not work, try 10. If that does not work, try 5, and then
6 go home and try to explain that one with charts to your
7 colleagues, how somebody who swabs the bar at night is
8 paying 70 percent of the premium for some guy who just
9 dropped out of a Fortune 500 company with a golden
10 parachute above his noodle.

11 Senator Murkowski. Mr. Chairman, I would like to
12 make a point relative to ----

13 The Chairman. I do want to say that the time is
14 passing, and it is getting very late--as Senator Dole
15 says, getting very early--so I think it is time we draw
16 this debate to an end.

17 Senator Murkowski. Mr. Chairman, I would like to
18 make a point relative to some history.

19 The Chairman. I would ask that you keep this very,
20 very short.

21 Senator Murkowski. Mr. Chairman, I think the idea
22 of keeping the threshold high, \$75,000 for singles, and
23 \$100,000 for married couples has merit because we have
24 all had the experience with catastrophic.

25 Remember 1989. At that time, I think two-thirds of

1 the people paid zero for the extra coverage, and only 5
2 percent paid the maximum of \$800 supplemental premium.
3 The rest paid \$285. But in catastrophic, the 5 percent
4 were able to convince everyone else that they would all
5 be paying \$800, and we folded under the pressure. And I
6 think we folded in what, less than a year?

7 Now I think we have the same exposure. Even though
8 Part B is voluntary, 99 percent of the elderly take
9 Part B. Sure, the high-income can not take Part B, but
10 then what are they going to do? They do not have any
11 insurance then. They are used to paying a third of the
12 cost of Part B. When you raise the costs from \$660 or
13 thereabouts, to almost \$2,100, they are going to be
14 beating down the doors because they simply are going to
15 have to pay that cost or it is going to cost a lot more
16 than what they have been paying.

17 So I would encourage some caution here. Keep it
18 high for the singles and the \$100,000 married couples
19 because we do not want to turn it back. We want to learn
20 something from that experience.

21 Senator Baucus. Mr. Chairman?

22 The Chairman. Senator Baucus.

23 Senator Baucus. Mr. Chairman, I would just like to
24 follow up on the question Senator Conrad asked. I want
25 to clarify the Senator from Wyoming's answer.

1 As I understand it, the \$28.4 billion will not be
2 subtracted from the \$270 billion called for in Medicare
3 cuts?

4 Senator Simpson. I am saying that the proceeds or
5 savings from this measure, \$28 billion, will go into
6 Part A, which is the health care insurance, the Medicare
7 health insurance trust fund. That is what I am saying.

8 Senator Baucus. I understand that. But my
9 question is, will this have the effect, or not, of
10 reducing the cuts we would otherwise make in Medicare
11 under the resolution?

12 Senator Simpson. I would think so, yes.

13 Senator Nickles. No, Senator. We are going to
14 keep it in a lock box.

15 I think what the net impact of it would be, it would
16 be adding \$28 billion on top of the \$71 billion that we
17 have already put in through other increased beneficiary
18 costs, reduces the subsidy that the Government pays, and
19 then the Government would make this payment into Part A,
20 therefore increasing its solvency.

21 The Chairman's Mark originally said it would be
22 solvent to the year 2009. We passed an amendment called
23 the lock box that would probably increase that a couple
24 of years. This amendment would probably extend that life
25 at least another year.

1 Senator Conrad. Could I just get an answer, Mr.
2 Chairman? Does this mean we would have \$298 billion of
3 savings out of Medicare?

4 The Chairman. Senator Simpson?

5 Senator Simpson. No, go ahead. You are doing the
6 accounting. I would like to hear how it is going. I may
7 have misspoken a time or two, so tell them what it is.

8 I mean, somebody ain't making the money they got,
9 and we are getting more revenue from people where we
10 never got it before. So I do not know that it disappears
11 into a giant hole. It goes to savings, and you can score
12 it.

13 I have been here on this Committee for so much time
14 now that scoring is a word I have never been able to ever
15 determine again what it means, and who gets it.

16 So I know what I am up to; you know what I am up to.
17 It is a revenue raiser in its own sense, but it is not a
18 tax because it is an increase in the premium, and that
19 has been scored already as not being a tax. It is an
20 increase in premiums.

21 The Chairman. Does the Senator want to move the
22 question?

23 Senator Simpson. Yes, I would. But let me just
24 say this to my friend, Senator Murkowski.

25 If we are going to get into the position where we

1 were with catastrophic health care, where we allowed the
2 top 5 percent of the most wealthy people in America to
3 destroy that catastrophic health care bill--and we did
4 that--if that was in another time, in another era, then
5 let us find out because it seems to me that if you cannot
6 get through this one, which is not mandatory, and is all
7 voluntary, then we have some serious confrontation
8 coming, and problems.

9 Senator Murkowski. Mr. Chairman? I am ready to
10 vote.

11 The Chairman. Senator Simpson has the floor.

12 Senator Simpson. No, I am not going to amend. If
13 someone wants to amend, let it get shot out of the
14 saddle. Let us do it.

15 The Chairman. Do you want to move the question?

16 Senator Simpson. I will indeed.

17 Senator D'Amato. Mr. Chairman, one question.

18 The Chairman. I think we have debated this long
19 enough. It is time that we move on. I ask that the
20 clerk call the roll.

21 Senator D'Amato. Mr. Chairman, if I might, Mr.
22 Chairman.

23 This is too important an issue, and the Senator from
24 Wyoming has done an incredible job of bringing us to a
25 point where I think we can achieve this.

1 Well, let me say this to you. I am going to vote in
2 opposition to this with the hope that the Senator comes
3 back with his other proposal which he has, which is well
4 thought out, which is the 10 percent formula.

5 The Chairman. Well, rather than debate, I want to
6 move on.

7 Senator D'Amato. Well, I just want to share that
8 with the Chairman, and with my friend from Wyoming.

9 The Chairman. I understand. I want to move ahead,
10 so the clerk please call the roll.

11 The Clerk. Mr. Dole.

12 Senator Dole. No.

13 The Clerk. Mr. Packwood.

14 Senator Packwood. Aye, by proxy.

15 The Clerk. Mr. Chafee.

16 Senator Chafee. Aye.

17 The Clerk. Mr. Grassley.

18 Senator Grassley. No.

19 The Clerk. Mr. Hatch.

20 Senator Hatch. No.

21 The Clerk. Mr. Simpson.

22 Senator Simpson. Aye.

23 The Clerk. Mr. Pressler.

24 Senator Pressler. Aye.

25 The Clerk. Mr. D'Amato.

1 Senator D'Amato. No.
2 The Clerk. Mr. Murkowski.
3 Senator Murkowski. No.
4 The Clerk. Mr. Nickles.
5 Senator Nickles. Aye.
6 The Clerk. Mr. Moynihan.
7 Senator Moynihan. Aye.
8 The Clerk. Mr. Baucus.
9 Senator Baucus. No.
10 The Clerk. Mr. Bradley.
11 Senator Bradley. No.
12 The Clerk. Mr. Pryor.
13 Senator Pryor. No.
14 The Clerk. Mr. Rockefeller.
15 Senator Rockefeller. No.
16 The Clerk. Mr. Breaux.
17 Senator Breaux. No.
18 The Clerk. Mr. Conrad.
19 Senator Conrad. Aye.
20 The Clerk. Mr. Graham.
21 Senator Graham. No.
22 The Clerk. Ms. Moseley-Braun.
23 Senator Moseley-Braun. No.
24 The Clerk. Mr. Chairman.
25 The Chairman. No.

1 The Clerk. The ayes are 7, the nays 13.

2 The Chairman. The amendment does not carry.

3 Senator D'Amato. Mr. Chairman?

4 The Chairman. The Senator from New York.

5 Senator D'Amato. Mr. Chairman, I would like to
6 offer an amendment, which we will call the 10 percent
7 amendment, which is really the Simpson amendment. It
8 does the same thing the Senator has proposed, except that
9 it raises the levels.

10 May I have that fact sheet? I have given my one
11 sheet to Senator Bradley. It starts the beneficiary
12 share of \$49.00 at \$50,000, and it moves up to \$100,000
13 before everything is phased out. And for couples, it
14 starts at \$75,000, and you pay your full load when you
15 are at \$150,000. And retired couples making \$150,000
16 should pay everything, and no one else should be
17 subsidizing them.

18 I think it begins to move us in the right direction,
19 so I would offer that amendment on behalf of Senator
20 Bradley and, obviously, Senator Simpson.

21 Senator Pryor. Would the Senator yield for a
22 question?

23 The Chairman. I would say that we have debated
24 this issue long enough. I would urge that we move ahead.
25 Senator Bradley. Let the record show that the

1 Senator is offering it on his own behalf.
2 Senator D'Amato. Oh, all right.
3 The Chairman. The clerk will call the roll.
4 The Clerk. Mr. Dole.
5 Senator Dole. Aye.
6 The Clerk. Mr. Packwood.
7 Senator Packwood. Aye, by proxy.
8 The Clerk. Mr. Chafee.
9 Senator Chafee. Aye.
10 The Clerk. Mr. Grassley.
11 Senator Grassley. Aye.
12 The Clerk. Mr. Hatch.
13 Senator Hatch. Aye.
14 The Clerk. Mr. Simpson.
15 Senator Simpson. Aye.
16 The Clerk. Mr. Pressler.
17 Senator Pressler. Aye.
18 The Clerk. Mr. D'Amato.
19 Senator D'Amato. Aye.
20 The Clerk. Mr. Murkowski.
21 Senator Murkowski. Aye.
22 The Clerk. Mr. Nickles.
23 Senator Nickles. Aye.
24 The Clerk. Mr. Moynihan.
25 Senator Moynihan. Aye.

1 The Clerk. Mr. Baucus.
2 Senator Baucus. No.
3 The Clerk. Mr. Bradley.
4 Senator Bradley. Aye.
5 The Clerk. Mr. Pryor.
6 Senator Pryor. No.
7 The Clerk. Mr. Rockefeller.
8 Senator Rockefeller. No.
9 The Clerk. Mr. Breaux.
10 Senator Breaux. Aye.
11 The Clerk. Mr. Conrad.
12 Senator Conrad. Aye.
13 The Clerk. Mr. Graham.
14 Senator Graham. No.
15 The Clerk. Ms Moseley-Braun.
16 Senator Moseley-Braun. Aye.
17 The Chairman. Mr. Chairman.
18 The Chairman. No.
19 The Clerk. The ayes are 15, the nays 5.
20 The Chairman. The amendment carries.
21 Senator Simpson. Thank you very much. Take a
22 crumb when you cannot get a loaf.
23 The Chairman. Mr. Grassley, I think we set aside
24 an amendment of yours.
25 Senator Grassley. I think my amendment as been

1 distributed as modified. It is the one that deals with
2 the BELT amendment, the budget expenditure limit tool.

3 I am not going to go into the substance of why I
4 offered the amendment yesterday. It was defeated 10 to
5 10. I do want to explain the modification though,
6 because I tried to address the concerns that some raised
7 last night, and so I offer this version.

8 I have modified my amendment to state that the
9 Secretary will have the discretion to prorate payment
10 reductions against a greater or lesser reduction for
11 those market areas. This would give the Secretary the
12 opportunity to take into consideration concerns like
13 those expressed by Senator Moynihan last night.

14 We debated this last night, so I think the Members
15 and staff should understand what I am trying to do with
16 the amendment. Basically, the difference is that the
17 amendment I offered last night would have required an
18 automatic sequester on the markets that grow faster than
19 the permitted over all spending in the traditional
20 Medicare programs.

21 This version that I have before us this evening
22 introduces Secretarial judgment into the equation, so
23 that the sequester would still occur if the targets for
24 aggregate growth are exceeded. But the Secretary could
25 vary the reduction by market area if he or she believed

1 it necessary and equitable.

2 As I indicated, I had six Republicans and four
3 Democrats. Yesterday I had Mr. Pryor, Mr. Baucus, Mr.
4 Rockefeller and Mr. Conrad vote with me.

5 Senator Dole. Mr. Chairman?

6 The Chairman. Senator Dole.

7 Senator Dole. I was on the preventing side. I
8 move that we reconsider the vote.

9 Senator Graham. Mr. Chairman, could I ask the
10 sponsor a question?

11 The Chairman. Yes. Senator Graham.

12 Senator Graham. Is the assumption here that this
13 would be an aggregate spending level? That is, if
14 County X in Ohio had a particular spending target, and
15 exceeded that spending target, that within that county
16 this system would allow for a differential in the amount
17 of cutbacks?

18 Senator Grassley. The answer is yes. But
19 remember, it is triggered when the entire country exceeds
20 the aggregate goals for that year.

21 Senator Graham. My concern is that there is an
22 assumption that the reason for aggregate growth has to do
23 with inappropriate, excessive, or too elegant medical
24 practices.

25 The most significant factor in many areas

1 contributing to that is the demographics of the
2 population. If you have a population that has a
3 substantially higher than national average, say over the
4 age of 80, you are going to tend to have higher medical
5 costs. It does not seem as if it would be fair in that
6 kind of a situation to then have a greater reduction
7 applied in that particular county.

8 Senator Grassley. I hope that my discretion to the
9 Secretary will answer some of your concerns--maybe not
10 all of them, but some of them, and it is meant to do
11 that.

12 The Chairman. I move the question, the question to
13 reconsider the vote on the Grassley amendment, as
14 amended.

15 Senator Graham. Well, it looks like the only thing
16 the Secretary can take into account is the per-capita
17 spending variation across market areas.

18 The Chairman. The clerk will call the roll.

19 Senator Chafee. Is this on the reconsideration?

20 Senator Dole. Well, this on the amendment, as
21 modified.

22 The Clerk. Mr. Dole.

23 Senator Dole. Aye.

24 The Clerk. Mr. Packwood.

25 Senator Packwood. Aye, by proxy.

1 The Clerk. Mr. Chafee.
2 Senator Chafee. No.
3 The Clerk. Mr. Grassley.
4 Senator Grassley. Aye.
5 The Clerk. Mr. Hatch.
6 Senator Hatch. Aye.
7 The Clerk. Mr. Simpson.
8 Senator Simpson. Aye.
9 The Clerk. Mr. Pressler.
10 Senator Pressler. Aye.
11 The Clerk. Mr. D'Amato.
12 Senator D'Amato. In the interest of fair play,
13 aye.
14 The Clerk. Mr. Murkowski.
15 Senator Murkowski. Aye.
16 The Clerk. Mr. Nickles.
17 Senator Nickles. Aye.
18 The Clerk. Mr. Moynihan.
19 Senator Moynihan. No.
20 The Clerk. Mr. Baucus.
21 Senator Baucus. Aye.
22 The Clerk. Mr. Bradley.
23 Senator Bradley. No.
24 The Clerk. Mr. Pryor.
25 Senator Pryor. Aye.

1 The Clerk. Mr. Rockefeller.
2 Senator Rockefeller. Aye.
3 The Clerk. Mr. Breaux.
4 Senator Breaux. Aye.
5 The Clerk. Mr. Conrad.
6 Senator Conrad. Aye.
7 The Clerk. Mr. Graham.
8 Senator Graham. No.
9 The Clerk. Ms. Moseley-Braun.
10 Senator Moseley-Braun. No.
11 The Clerk. Mr. Chairman.
12 The Chairman. Aye.
13 The Clerk. The ayes are 15, the nays 5.
14 The Chairman. The amendment is carried.
15 Senator Moynihan. Mr. Chairman?
16 The Chairman. Yes. Senator Moynihan.
17 Senator Moynihan. Just to say, sir, that at one
18 point this evening, we had in mind to offer an amendment
19 to deal with the overstatement of the cost of living that
20 is implicit in the use of the consumer price index as a
21 proxy.
22 As I said to the Senator from Wyoming, part of the
23 way in which the original 50 percent share of Medicare
24 Part B had declined to 21 percent was the use of this
25 proxy.

1 These are really large amounts of money involved.
2 We could get \$400 billion in 7 years, \$600 billion in 10
3 years, \$1 trillion in 13.

4 I am not going to offer it at this hour, but I would
5 like to say that Senator Kerrey, the Senator from
6 Wyoming, Senator Simpson, and I will bring this subject
7 to the floor. There will be many opportunities to
8 discuss it and to vote on it on the floor.

9 Senator Dole. Could you save some for the next
10 administration?

11 Senator Moynihan. Well, if you will accept it
12 right now, think of how much more pleasant it will be.

13 Senator Dole. That is right.

14 Senator Moynihan. Mr. Chairman, if it would just
15 be possible to offer a sense of the Senate that we ought
16 to address this subject, I would very much appreciate
17 just that much endorsement.

18 Is that possible?

19 Senator Dole. That is possible.

20 The Chairman. Well, I would be happy to say to
21 Senator Moynihan that we would be happy to accept his
22 sense of the Senate resolution.

23 Senator Moynihan. What is going on here?

24 Senator Nickles. We might accept your amendment.

25 Senator Simpson. Is that the sense of the Senate

1 resolution, Mr. Chairman?

2 The Chairman. Yes.

3 Senator Simpson. That is a good one. Yes.

4 [Laughter]

5 The Chairman. I would like to move forward on the
6 Chairman's wrap-up amendment.

7 Senator Nickles. Mr. Chairman?

8 The Chairman. I would like to proceed with this
9 first, if we could.

10 Senator Nickles. One additional amendment first?

11 The Chairman. Yes, I understood. But we want to
12 deal with the wrap-up amendment.

13 First of all, based on the Treasury's concern that
14 the administration of the Medicare medical savings
15 account is unworkable, I have revised the Chairman's Mark
16 to simplify the taxation of accounts withdrawal.

17 The modification imposes a 10 percent penalty on
18 non-medical withdrawals, and permits tax-free earnings on
19 the account.

20 I have added two hospital capital provisions that
21 have no cost effects on the Chairman's Mark. The first
22 directs the Secretary to pay hospitals with property-tax-
23 related costs. The second gives hospitals with major
24 capital projects over the next 7 years certain Medicare
25 payments.

1 I have changed the hospital, nursing home, home care
2 and hospice services' annual inflation update provision
3 to assure a minimum inflation update each year.

4 In the event that the Congressional Budget Office
5 hospital market basket projections have been overstated,
6 the following minimum annual updates would take effect
7 for the following fiscal years: 1996 - 1.3 percent;
8 1997 - 1.2 percent; 1998 to 2002 - 1.1 percent.

9 I have modified the Chairman's Mark to address
10 certain concerns raised about whether child support
11 should be included for purposes of determining
12 eligibility for the earned income tax credit. Up to \$500
13 per month, for a total of \$6,000 per year, of child
14 support received would be excluded from adjusted gross
15 income for EITC eligibility.

16 This modification would be offset by increasing the
17 phase-out rates to 0.86 percent for families with one
18 child, and 0.66 percent for families with two or more
19 children.

20 Finally, I have modified the child support
21 collection fee so that non-AFDC families with incomes
22 below poverty may not be charged the 10 percent
23 collection fee.

24 Senator Moynihan. Mr. Chairman, may I just ask
25 that when the report is filed, I think you do not mention

1 that on page 20, the earnings on contributions to the
2 medical savings accounts would not be includible in gross
3 income for purposes of taxation.

4 There will be a cost to that, and it is a rather
5 remarkable innovation in the Tax Code. But could we have
6 a CBO report at that time?

7 The Chairman. According to CBO ----

8 Senator Moynihan. Joint Tax.

9 Mr. Kies. Mr. Moynihan, the overall effect of all
10 the changes that have been made to the Medicare MSA would
11 be to make the entire provision negligible in terms of
12 revenue cost, due to the interaction of all the other
13 provisions of the MSA program.

14 Senator Moynihan. I think we should know why
15 exempting earnings from income taxes leaves it
16 negligible. Is that because there will be a negligible
17 number of savings accounts?

18 Mr. Kies. No, Mr. Moynihan. It is because the
19 current baseline of all the money that is currently spent
20 on Medicare is Governmental money, so none of it produces
21 in the current baseline any interest income. So the
22 money that would be put into the MSA accounts is not part
23 of any current baseline that produces current taxation.
24 And scoring is against the current baseline.

25 Further, there would be relatively small amounts of

1 interest income in any event, because our projections are
2 that most of the money in the account--or much of the
3 money--will be spent for current medical expenses, so it
4 is a relatively small amount in any event.

5 Senator Moynihan. Perhaps you could tell us what
6 that relatively small amount is in the report language.

7 Mr. Kies. Well, we do not have the percentage ----

8 Senator Moynihan. I am not asking you to do it
9 tonight.

10 The Chairman. In the report, I think he requested.

11 Mr. Kies. Yes, sir.

12 Senator Bradley. Mr. Chairman?

13 The Chairman. Yes.

14 Senator Bradley. Mr. Chairman, before you move
15 your amendment, I just want to clarify. I think you have
16 done something good here on child support. As I read it,
17 you have eliminated the double taxation of child support,
18 meaning that it no longer will be counted as income for
19 the EITC threshold. And I think that is a positive step
20 in the right direction.

21 However, you paid for it by lowering the income
22 level at which the phase-out rate will begin from \$12,100
23 to \$11,600. So, like everything, you get some good
24 things and, unfortunately, you pay for it in a way that
25 hits lower-income. As I read this, that is what that

1 says.

2 The Chairman. Mr. Kies, would you address that?

3 Mr. Kies. I believe, Senator Roth, that way in
4 which it has been paid for is to increase the percentage
5 phase-out so it does not raise or lower the point at
6 which the phase-out begins, but rather it just slightly
7 modifies the rate of phase-out.

8 But the point at which phase-out begins is the same
9 as in the original proposal.

10 Senator Bradley. Oh, I see. So it is still at
11 \$11,600? But you lose faster?

12 Mr. Kies. That is correct.

13 Senator Bradley. So the slightly higher income you
14 go, the less you would get?

15 Mr. Kies. The phase-out rate, instead of .62, is
16 .66.

17 Senator Bradley. Right. So if you are making
18 \$24,000, you would get less of the EITC under this
19 proposal than you would before.

20 Mr. Kies. A slight adjustment. That is correct.

21 Senator Bradley. All right.

22 The Chairman. We would like to proceed, if we
23 could, with a voice vote. Those in favor of the
24 amendment ----

25 Senator Graham. Mr. Chairman, could I ask a

1 question?

2 The Chairman. Yes, Senator Graham.

3 Senator Graham. What is the issue to be dealt with
4 in the modification of the capital exceptions process?

5 Mr. Kies. Senator Graham, that is not a Joint
6 Committee item. I think that is a matter for one of the
7 health care staff.

8 The Chairman. Susan, would you please comment?

9 Ms. Nestor. There is a current capital exceptions
10 process in regulation. This would put it in law, and
11 allow for some additional hospitals to qualify.

12 We are in the middle of a transition process in our
13 capital payments. There are a number of sort of wrinkles
14 in that transition. This will allow a number of
15 hospitals who have capital projects that are just now
16 beginning, to get some special payments for those
17 projects between now and 2002.

18 This is a no cost item. It is a budget neutral item
19 in the Chairman's Mark.

20 The Chairman. I would like to proceed with the ---

21 Senator Bradley. Mr. Chairman, I would just like
22 to clarify this fact because Mr. Kies said there would be
23 no change from the current level phase-out.

24 In the amendment in the Chairman's Mark, it makes
25 reference to page 82 of the Chairman's Mark, and it says,

1 "To reflect this offset, these amounts should be
2 substituted in the description of the ETIC phase-out on
3 page 82."

4 Page 82 says \$12,100. This says \$11,600. So you
5 have dropped the amount of the phase-out. No?

6 Mr. Kies. Senator, I believe there has got to be a
7 mistake in one of those two documents.

8 Senator Bradley. Yes, I agree.

9 Mr. Kies. Because the point at which the phase-out
10 begins is the same. I think perhaps it is the period
11 over which the phase-out occurs. Those are the dollar
12 numbers that you are referring to. Those are not the
13 beginning points of the phase-out, but rather the range
14 over which the phase-out occurs.

15 Senator Bradley. All right.

16 Senator Conrad. Mr. Chairman, might I just
17 inquire?

18 The Chairman. Yes.

19 Senator Conrad. On page 2, there is a reference
20 there, "The Secretary shall separate out capital-related
21 property tax costs." And it goes on.

22 Is the effect of that to transfer money from
23 nonprofit hospitals to for-profit hospitals?

24 Ms. Nestor. Actually, Senator, there are for-
25 profit and nonprofit hospitals that would benefit from

1 this payment.

2 When we originally put the rates together to pay
3 capital, we assumed the property tax costs in those
4 rates. We are moving into a transition where we are
5 going to pay a Federal rate to each hospital.

6 So what this would do is ask the Secretary to take
7 out those property tax costs, and just put the add on to
8 those hospitals that have had those costs.

9 So, again, that is budget neutral.

10 Senator Conrad. But, just as a factual matter,
11 would that not be disproportionately not-for-profit
12 hospitals versus for-profit hospitals, in terms of a
13 property tax?

14 Ms. Nestor. According to the information I have,
15 there are 700 for-profit hospitals and 550 nonprofit that
16 would benefit from this provision. So there are slightly
17 more for-profit.

18 Senator Conrad. Thank you for the answer.

19 Ms. Nestor. Thank you.

20 The Chairman. Those in favor of the amendment,
21 please signify by saying aye.

22 (A chorus of ayes)

23 The Chairman. Opposed, nay.

24 Senator Bradley. No.

25 The Chairman. The ayes have it. The amendment is

1 adopted.

2 Senator Nickles. Mr. Chairman?

3 The Chairman. Yes, Don?

4 Senator Nickles. Mr. Chairman, earlier in the day,
5 right after we came back from one of the breaks or
6 something, we adopted Senator Pryor's amendment--and I
7 respect him--that would change the Chairman's Mark
8 dealing with the drug rebate program.

9 I believe there was a 3-year sunset in the
10 Chairman's Mark on the Federal mandated drug rebate
11 program. I believe Senator Pryor's amendment eliminated
12 that sunset. In other words, the program would continue
13 on for some period of time with, I guess, no sunset
14 whatsoever.

15 That amendment was adopted by voice vote. I would
16 like for us to vote on it. I think it is a very
17 important amendment, and I compliment my friend from
18 Arkansas for his interest in the amendment. But it is a
19 very important amendment. I think a lot of people feel
20 fairly strongly about it, and would like to at least vote
21 on it, because it is a very important amendment.

22 I voted against Senator Hatch's amendment because it
23 would prohibit States from having a rebate program. I do
24 not think that we should prohibit them, but I think there
25 is some legitimacy to the idea that we should not have a

1 Federal rebate program and a State rebate program.

2 A lot of us have questions about this because it
3 imposes price controls; it distorts the market, and we
4 have a lot of serious questions.

5 So I informed Senator Pryor that I would at least
6 like to have a vote on it. I am not sure how the votes
7 would come.

8 Senator Moynihan. Mr. Chairman, I would have to
9 say that I wish this would not happen. We have dealt
10 with this amendment, we have had a vote, the floor is
11 available to anyone who wants to reopen the subject.

12 Senator Nickles. I am not sure that it would be,
13 Pat. If we had an option on the floor, that would be all
14 right, but here is the dilemma. Since it is in a
15 reconciliation bill, and it was stricken from it, I am
16 not positive that it would be in order.

17 Senator Grassley. Let me explain why I resent what
18 you are doing. I was wandering around out in the crowd
19 between votes, and I heard somebody from the
20 pharmaceutical industry say, we just want a vote; we want
21 to know where people are. That is not the way we do
22 business here.

23 Senator Nickles. Well, I have not heard anybody
24 say that.

25 Senator Grassley. I told you what I heard. Are

1 you questioning what I heard?

2 Senator Nickles. No. I said I have not heard
3 somebody tell me that.

4 Senator Grassley. That is why I resent this move
5 that have been going on, on this side of the aisle, to
6 get a vote on this. This will have to be handled on the
7 floor. We can do it then. We can have a full debate; we
8 will not be trying to put people on the spot, and just
9 play games. It will be the real show out there out there
10 on the floor of the Senate.

11 Senator Nickles. Senator Grassley, I was not
12 trying to play games. I was just trying to see ----

13 Senator Bradley. The Senator wants a vote, right?

14 Senator Nickles. We had some ----

15 Senator Bradley. Does the Senator want a vote?

16 Senator Nickles. I do not think we even had a
17 voice vote on it. I think it was just an amendment that
18 was agreed to.

19 Senator Bradley. Does the Senator want to vote
20 now? I mean, that is the issue. It is up to the
21 Senator. Do you want a vote or not?

22 Senator Nickles. That was my request, but I want
23 to reassure my colleague from Iowa. I was not playing
24 any games. I might ask the Chairman. I do not think
25 there was a vote on it. I think it was just an amendment

1 that was agreed upon.

2 The Chairman. No. It was accepted. That is
3 correct. Does the Senator want a vote?

4 Senator Nickles. I would, but I want to reassure
5 my colleague from Iowa that I am not playing games.

6 Senator Grassley. You can keep reassuring. You
7 are not going to reassure me. I know what I heard, and I
8 know how things work around this town. And that is
9 exactly what the game is.

10 Senator Nickles. Well, part of my dilemma is that,
11 if we want to have a sunset, in the Chairman's Mark there
12 was a sunset provision. This is a reconciliation bill.
13 It is very difficult to amend a reconciliation bill on
14 the floor.

15 Senator Moynihan. I believe a motion to strike is
16 always in order. I do not assert that, but I believe it
17 is true.

18 Senator Nickles. The Senator from New York is
19 right. But the Senator from Arkansas' amendment has
20 already stricken the sunset provision. Therefore, I do
21 not think I would have a motion to strike, or else I
22 would be happy to do that.

23 The Chairman. I would urge the Senator not to push
24 on a vote on this matter. Let it proceed to the floor.

25 Senator Nickles. I will follow the Chairman's

1 wishes then.

2 Senator Dole. Mr. Chairman?

3 The Chairman. Yes, Senator Dole.

4 Senator Dole. Mr. Chairman, I am concerned about
5 the short-term impact of the transition to the new
6 Medicare payment amounts. In our desire to reduce the
7 existing disparities between high-cost and low-cost
8 areas, we must not cause excessive market disruption.

9 I wonder if we might direct the staff to examine
10 ways to modify the transition, keeping in mind our budget
11 requirements, so that we could review these suggestions
12 before we have floor consideration.

13 The Chairman. I would urge the staff to do that.

14 Senator Moynihan. Good.

15 Senator Dole. And, in addition, as I think you
16 know, the staff has been reviewing the Medicaid formula
17 for the last couple of days. I assume they would have
18 that authority working with staff on each side between
19 now and the time this matter goes to the Budget
20 Committee.

21 Finally, it was reported in the New York Times that
22 the medical savings account would cost about \$2.9 billion
23 in revenue. I have not been satisfied to that extent. I
24 wish the staff would take a close look at that. If, in
25 fact, that is the case, I think we need to take a closer

1 look at medical savings accounts.

2 Senator Moynihan. I do think those are CBO
3 numbers.

4 Senator Grassley. Mr. Chairman?

5 The Chairman. Senator Simpson would like to be a
6 cosponsor of the Moynihan sense of the Senate on CPI, and
7 we so direct.

8 Senator Grassley. Mr. Chairman, I would like to
9 ask Senator Dole what it is on the transition payments
10 that you is concerned about?

11 Senator Dole. Well, we are concerned that we are
12 in a low-cost area, just as Iowa is in a low-cost area.
13 We are concerned about any excessive market disruption.
14 There may not be any. I just want the staff to review it
15 and assure me that any big disparities between high-cost
16 and low-cost areas is not going to cause a market
17 disruption.

18 Senator Grassley. Well, it is 12:10 a.m.

19 Senator Baucus. Mr. Chairman?

20 The Chairman. Yes, Senator Baucus.

21 Senator Baucus. Mr. Chairman, earlier today I was
22 absent when Senator Rockefeller offered his amendment
23 number 12. My proxy was cast on my behalf against the
24 Rockefeller amendment. The vote was 8 to 12. The
25 Rockefeller amendment lost. I would like to change my

1 vote, so it would be 9 to 11.

2 The Chairman. Without objection, it is so ordered.

3 Well, as I say, it is 12:10 a.m. I think the magic
4 time is here.

5 I move to a final vote to report the Committee's
6 recommendation to the Budget Committee.

7 The clerk will call the roll.

8 The Clerk. Mr. Dole.

9 Senator Dole. Aye.

10 The Clerk. Mr. Packwood.

11 Senator Packwood. Aye, by proxy.

12 The Clerk. Mr. Chafee.

13 Senator Chafee. Aye.

14 The Clerk. Mr. Grassley.

15 Senator Grassley. Aye.

16 The Clerk. Mr. Hatch.

17 Senator Hatch. Aye.

18 The Clerk. Mr. Simpson.

19 Senator Simpson. Aye.

20 The Clerk. Mr. Pressler.

21 Senator Pressler. Aye.

22 The Clerk. Mr. D'Amato.

23 Senator D'Amato. Aye.

24 The Clerk. Mr. Murkowski.

25 Senator Murkowski. Aye.

1 The Clerk. Mr. Nickles.
2 Senator Nickles. Aye.
3 The Clerk. Mr. Moynihan.
4 Senator Moynihan. No.
5 The Clerk. Mr. Baucus.
6 Senator Baucus. No.
7 The Clerk. Mr. Bradley.
8 Senator Bradley. No.
9 The Clerk. Mr. Pryor.
10 Senator Pryor. No.
11 The Clerk. Mr. Rockefeller.
12 Senator Rockefeller. No.
13 The Clerk. Mr. Breaux.
14 Senator Breaux. No.
15 The Clerk. Mr. Conrad.
16 Senator Conrad. No.
17 The Clerk. Mr. Graham.
18 Senator Graham. No.
19 The Clerk. Ms. Moseley-Braun.
20 Senator Moseley-Braun. No.
21 The Clerk. Mr. Chairman.
22 The Chairman. Aye.
23 The Clerk. The ayes are 11, the nays 9.
24 Senator Moynihan. Mr. Chairman, I would like to
25 congratulate you. It is your first big bill; you came

1 out right on the money.

2 [Applause]

3 The Chairman. This is indeed an historic occasion.
4 Senator Dole kept our commitment. I believe this
5 legislation will strengthen and preserve Medicaid and
6 Medicare. It will help balance the budget. I want to
7 thank my colleagues for their cooperation. We look
8 forward to continuing to work with you as it progresses.

9 The Committee is in recess.

10 [Whereupon, at 12:13 a.m., the meeting was
11 concluded.]

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