

Book

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HEARINGS

Before The

COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

Washington, D. C.

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EXECUTIVE SESSION

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THURSDAY, MARCH 20, 1980

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

8 The Committee met, pursuant to notice, at 10:15 a.m. in
9 room 2221, Dirksen Senate Office Building, Hon. Russell B.
10 Long, Chairman of the Committee, presiding.

11 Present: Senators Long, Ribicoff, Byrd, Matsunaga,
12 Moynihan, Boren, Bradley, Dole, Packwood, Roth
13 Durenberger.

14 The Chairman: We have the possibility of considering
15 sugar legislation today, but I would not want to do it unless
16 Senator Matsunaga is here. We could report that out. But
17 otherwise I would suggest that we proceed with the matter of
18 health legislation.

19 We talked yesterday about the possibility of deferring
20 this matter. I have had the opportunity to visit with some of
21 the Senators since that time. I do not know precisely how
22 everybody would vote, but I would hope that we would go on
23 ahead and do what we can with this bill and try to find ways
24 to pay for it in so far as we want to vote some additional
25 service as a part of our final decision.

1 It may be that the committee does not feel that way. If
2 they do not --

3 Senator Dole: First, let me apologize to the Chairman.
4 If there is any element of surprise in our discussion
5 yesterday, that was not the intent.

6 I do not know of anyone on this side who does not --
7 there may be soe, but I think the majority believes in the
8 concept and certainly would not want anything that was said
9 yesterday to indicate that somehow we wanted to discard what
10 we have done in the past twelve months or longer, in some
11 cases.

12 We have had a lot of interest, a lot of input by members
13 and by staff and by the professional staff and by the private
14 sector. We have had the insurance industry in this room. It
15 is all on the table. They have made a great contribution.

16 It may be that rather than suggesting that we just
17 postpone it indefinitely, there might be some merit in
18 continuing the discussion.

19 Looking at some of the areas that we have not addressed
20 in the past several months, but not making any final decision
21 until we know from Mr. Moynihan and Mr. Packwood, that is the
22 Budget Committee, what we are going to have to work with.

23 Senator Packwood: Mr. Chairman?

24 The Chairman: Yes.

25 Senator Packwood: I said that yesterday and Pat was not

1 here, and I would like to echo it. Unless I miss my guess,
2 the Budget Committee is going to send back to this committee,
3 let alone others -- this is just an off-the-top-of-the-head
4 guess -- a request for us to cut \$800 million to \$900 million
5 in programs financed by this committee next year.

6 I do not know. We will start meeting next Wednesday.
7 We will meet all week and finish up on the 2nd or 3rd of
8 April. The Floor may change something but they are not going
9 to change much from what the Budget Committee does.

10 We already have the \$300 million request in in our
11 request to the Budget Committee, so it is under consideration.

12 I just hate to falsely encourage anybody when I think
13 what we are going to be looking at is not starting new
14 programs, but trying to figure out where we can cut \$500
15 billion to \$1.5 billion off existing programs in trying to
16 balance the budget for the next fiscal year.

17 Senator Ribicoff: Mr. Chairman, just a thought. There
18 is no question that this entire session is going to be
19 dominated by an attempt to balance the budget. I think we are
20 going to have to make hard decisions.

21 Catastrophic has been at the forefront at this committee
22 for some years and I think that there is generally a consensus
23 that has developed as to what shape it will take.

24 My thought would be that we go ahead and see if we can
25 agree upon some phased-in health insurance program but, before

1 we do so, taking into account Senator Dole's problem and
2 Senator Packwood's sense of responsibility.

3 Are we willing to face up to another alternative, to find
4 the money for what we vote, so that we do not put ourselves in
5 a position with the Budget Committee of trying to cut other
6 programs and then facing them with the problem of asking for
7 additional sums of money.

8 Are we willing to find the revenues to pay for what we
9 vote?

10 I think that would give this committee a sense of
11 responsibility which it should, above all other committees,
12 exercise.

13 The Chairman: Senator Moynihan?

14 Senator Moynihan: That would be completely my view, Mr.
15 Chairman, to which I would add we are obviously entering into
16 pieces of legislation which increase spending one and two
17 years out. This is a way of avoiding the immediate
18 constraints of the budget ahead. Also, it is a way of
19 bringing programs on an orderly way and bringing fiscal
20 planning into an orderly way.

21 There is no reason that we should act as if we have no
22 idea as this is the way to go to new programs and not to think
23 that we cannot do a certain amount of post-War planning right
24 now.

25 I think it is normal as a practice to enact legislation

1 which phasaes in over a three, four or five year program and
2 not bad government, probably good government, I would think.

3 Senator Ribicoff: I agree with Senator Moynihan. I
4 think one of the greatest contributions we could make in this
5 whole social and economic field is the incremental approach.

6 Instead of committing the country to a multi-billion
7 program nationwide without knowing its consequences, to phase
8 it in, as Pat says, over a period of years, if we find in the
9 first phase that it is not working, we do not load the system
10 up and it may be an orderly way for the future, and also show
11 programs that this Committee phases.

12 And this committee, above all others, has a major
13 responsibility in all of these fields.

14 So I am wondering if we have not two steps facing us,
15 first to find out if there is a consensus of being able to
16 find the money to pay for it. Obviously, it is. Our thinking
17 would be a lot different if we can pay for it and present the
18 Budget Committee with the alternative of a proogram that is
19 going to cost money, that has not been contemplated as to what
20 we have before us, and at the same time, we present them with
21 an alternative that we are going to have X dollars to pay for
22 everything we request.

23 The Chairman: Let me say, Senator Bentsen told me he
24 would favor going ahead with this program provided that we
25 find the money to pay for it. We did discuss the approach

1 that Senator Danforth suggested that you tax something that is
2 not an absolute necessity such as cigarettes or hard liquor to
3 find the money to pay for it.

4 And we do not have the Senator from Kentucky or North
5 Carolina here to complain about that, but that is one of the
6 possibilities that we could do.

7 I would point out that this committee, in my judgment,
8 has been as responsible as any committee in the Senate about
9 fiscal matters because it has been willing to vote to pay for
10 the things that it recommended and even vote to pay for some
11 things that it was not all that excited about, may I say.

12 I hope we go ahead and put our thinking together on what
13 the program ought to be and try to find a way from the fiscal
14 point of view to be in the clear.

15 I would hope, at some point, we may amend that budget law
16 to say this Committee can report out, that we recommend a
17 program along with the tax to pay for it, because I think with
18 the exception of one balanced budget that occurred back many,
19 many years ago, during the early part of the Eisenhower
20 administration, they had a consolidated budget. In order to
21 achieve that balance, they had to lean on the surplus that we
22 were putting in the trust fund by taxes voted by this committee
23 which exceeded the amount that is being paid out of those
24 trust funds, so that this committee has been willing to vote
25 for the money to pay for the things that they recommended and

1 I think we will do it on this occasion.

2 I take it that a majority of our members would very much
3 like to take it. If we report out something, we ought to vote
4 for the tax to pay for it, and that is all right with me.

5 Mr. Durenberger?

6 Senator Durenberger: Mr. Chairman, I guess I share with
7 you a bit of a quandry. I have been very supportive in the
8 last year of your efforts and those of others to provide
9 catastrophic coverage, to limit some of the coverage issues to
10 catastrophic, limiting it to the doable.

11 I am very interested in what I have seen that Senator
12 Moynihan and others have put together by way of coverage
13 issues and I think that that is all very important. It may
14 very well be that there is a so-called developing consensus on
15 the issue of extending coverage, but what we are talking about
16 now is the issue of how to finance that coverage.

17 And it seems to me from my very limited experiences, and
18 as you start talking about changing the tax system, going to
19 cigarettes and liquor, doing all of these other things, you
20 automatically come back to the coverage and you start altering
21 some of your coverage as soon as you get to the financing, and
22 it seems to me preferable to address both issues
23 simultaneously.

24 That is basically why I support an effort to put this off
25 for a couple of weeks until we have a better perspective. I

1 have another perspective. S. 1968, I cannot support any major
2 expansion of coverage unless there is some system reform of
3 the kind suggested in the various competitive proposals, mine
4 just being one.

5 And I would hope the two could be discussed together.

6 The Chairman: Yes, sir.

7 Let me call Mr. Roth.

8 Senator Roth: Mr. Chairman, I have been a long-time
9 supporter of the concept of catastrophic health insurance, but
10 I must confess, for a number of reasons, I have grave concern
11 about moving too rapidly, particularly in view of the problems
12 that we have today with our economy.

13 One of the things that has particularly bothered me, and
14 bothered me in the last mark-up session we had here, was the
15 effect that this proposal would have on small business,
16 particularly employment.

17 As you may be aware, I sent a letter to a number
18 of people, including Senator Talmage as Chairman of the
19 Subcommittee on Health, as well as others, asking that we have
20 hearings on this matter because there have been some very
21 careful studies made which show that this particular program
22 could have a serious impact on youth unemployment.

23 So that one of the things that I would like to suggest is
24 that we go ahead and have hearings on this matter within the
25 next couple of weeks or so, to find out exactly what we are

1 going to do.

2 One of my concerns is that we do not adopt a program
3 again that balloons into some kind of tremendously expensive
4 health program, that we find later very difficult, if not
5 impossible, to bring under control.

6 I think that that is another side of this problem. I
7 will have to admit when we are talking about catastrophic at
8 the \$2,500 or \$3,500 figure, that all health costs after that
9 be covered.

10 I think that we ought to look and make sure that we are
11 not opening up a new program which could mushroom just exactly
12 like the Social Security Services. You remember, when that
13 was adopted in the early 60's, that was only going to cost a
14 few million bucks, and suddenly it was multi-billion dollars
15 and every state in the Union was raiding the Federal Treasury
16 by the back door.

17 So I think, in view of the tremendous problems that we
18 have in the economy, I will have to say this, Mr. Chairman, I
19 am very reluctant at this time to raise taxes on small
20 business. I think that that is just the opposite measure from
21 what we need.

22 As you well know, I sort of like cutting taxes rather
23 than raising taxes. It is more important, it seems to me,
24 that we have to make sure that we have some hearings on these
25 problems that are arising and one of the most important ones,

1 I think is the impact that this catastrophic health insurance
2 would have on unemployment and particularly youth, which is
3 the major concern of this country today.

4 For that reason, I would urge, rather than proceeding
5 with mark-up, that we might try to see if Senator Talmadge, or
6 the Committee as a whole, could hold hearings on the effect
7 that this legislation would have on employment and small
8 business.

9 Senator Ribicoff: Senator Dole?

10 Senator Dole: I wanted the Chairman to be here. Maybe I
11 will just wait. Why do you not go and get your call.

12 Well then, I think that we can -- everybody has
13 concern. It seems to me we can probably accommodate everyone,
14 if we do not make any final decisions now, and we wait for the
15 Budget Committee. But in the meantime, we proceed to discuss
16 some of the issues and we find out what the Budget Committee
17 may allow, and in that interim we permit the staff to put
18 together a shopping list of things that we will have to make
19 some judgments on, and then when we have the package together,
20 I think Bill Ross's suggestion is a good one.

21 Also, at that time, I think it would accommodate Senator
22 Durenberger's concerns about a little more competition in the
23 system.

24 But I would hope that we do not send the wrong signal.
25 When I read about discussions of health care proposals, it is

1 either the Kennedy plan or the Carter plan and I do not have
2 any quarrel with either one of those men. But there are other
3 concepts, and this is another concept, and it has a lot of
4 bipartisan support. It has been around for a long time. It
5 has been modified and probably there will be additional
6 modification.

7 I think perhaps that would be the Chairman's wish. If we
8 could just talk about it, discuss it, if any decisions are
9 made they would be tentative, in the interim.

10 Mr. Constantine and the other members of the staff could
11 put together this shopping list and expect any concerns that
12 Senators Durenberger, Roth, myself, Packwood, Ribicoff and
13 Senator Byrd and others.

14 Would that be all right?

15 Senator Ribicoff: My comment, waiting for the Chairman
16 to come, I do not concede that what would come out of this
17 Committee would be a Kennedy or Carter plan. I think it is
18 the Finance Committee's plan.

19 Senator Dole: It should be ours.

20 Senator Ribicoff: I know what Senator Durenberger is
21 talking about. I think it is a good idea. I will support the
22 Durenberger approach.

23 I think we ought to try that.

24 The only thing that worries me is not to leave it blank
25 for the Budget Committee to be prejudged. I think that it is

1 important that the Budget Committee, before they turn thumbs
2 down, understand that whatever we are going to provide
3 financing. We are not going to harm the balanced budget
4 concept.

5 I think that is the important thing. The message,
6 getting to the Budget Committee.

7 Senator Roth: May I make a comment?

8 I agree with what Abe is saying. We do not want to do
9 anything with respect to the balanced budget this year. I
10 think equally important is the kind of signal we are giving in
11 the down year and I would be bothered very much.

12 We have all used the technique of starting a new program
13 towards the end so that it does not have budgetary impact this
14 year. But if we are really going to do something about
15 getting this economy moving, we are going to have to have a
16 balanced budget.

17 We have that obligation, thanks to Senator Byrd from
18 Virginia, in the coming year. So we do have to look, Mr.
19 Chairman, not only at the impact and whether we can sneak it
20 in under this budget and what we are going to do in the down
21 years. I think it is the mushrooming effect that has me the
22 most nervous.

23 Going back to hearings, I mentioned the need for having
24 hearings, as the impact this would have on small business who
25 are paying higher taxes and what it would do to unemployment,

1 especially employment of young minorities in the cities, and
2 so forth, and I would hope that we would have hearings on
3 that.

4 I think it is also important -- it bothered me a little
5 bit recently -- when we had the discussions of the people we
6 had here commenting on the legislation was, of course, the
7 administration, the industry and the insurance, if all of
8 those people are going to be protected, we really did not have
9 those who were going to be impacted, possibly adversely,
10 testifying.

11 I think it is most important that we get the businesses
12 -- small business, but other businesses as well. I think it
13 is most important that we get some economists in to get their
14 guesstimate as to what the impact on the economy will be
15 generally.

16 Maybe all of this will be resolved.

17 I want to reiterate that. I am supportive of the concept
18 and I would like to see it done, but I want to see it done in
19 such a manner that we do not create a new monster, that we are
20 trying to cap some time in the future.

21 The Chairman: Senator Byrd?

22 Senator Byrd: Thank you, Mr. Chairman.

23 It seems to me if any new program is to be embarked on by
24 this Congress that catastrophic health insurance would be the
25 best one. But, as I see it, we need to keep our eye on the

1 ball.

2 What is the dominant problem facing the United States
3 today? President Carter says it is inflation. The most
4 liberal member of the Senate, his opponent for the Democratic
5 nomination, says it is inflation. I think most people will
6 agree that it is inflation.

7 If it is inflation and if government spending plays an
8 important part in that, and most people think it does, then it
9 seems to me that we are going to have to, the Congress is
10 going to have to, cut sharply the tremendous increase in
11 spending that President Carter has advocated.

12 He proposes to increase spending by \$65 billion and we
13 are going to have to reduce that. We are going to have to
14 reduce it sharply.

15 I do not think we can reduce it sharply by coming up with
16 a new program at this time.

17 If my memory is correct, Mr. Chairman, I believe as long
18 ago as eight or ten years, I cosponsored with you a piece of
19 legislation dealing with catastrophic insurance so I have
20 always been favorable to it, and if we are going to go to any
21 new program, I would prefer this to any other, but I am very
22 doubtful that we ought to go to any program, any new spending
23 program under the present conditions.

24 The Chairman: As I indicated, my feeling is that this is
25 something that people are paying for now but they are just

1 paying for it in ways that break them and absolutely destroy
2 them. There are a lot of things that government does that I
3 would vote to economize on, if I had to vote to economize on
4 them. Most of these recommendations to cut spending I am
5 going to support, and with regard to this program, in so far
6 as we pay money, it seems to me that we ought to be willing to
7 vote a tax to pay for it.

8 That gives me no problem. We have been doing that kind
9 of thing for many years.

10 May I say when I first came here it was all I could do to
11 be elected because we just got through doing that in
12 Louisiana. A lot of benefits, and a lot of people voted to
13 put my Uncle Earl in office not realizing how much taxes that
14 would take and some of them were disappointed when they found
15 out that was not campaign oratory and we meant to do all of
16 those things.

17 After they got adjusted to it, they saw the benefit they
18 were getting and they were very content.

19 I believe that this committee has been, and will continue
20 to be, fiscally responsible. Just to give you an example, I
21 recently attended a meeting where a lot of people of the
22 community met, because there was a preacher in the community,
23 a black man. He had been a great preacher there for many
24 years and a leader in the community.

25 He had real serious health problems and it cost him

1 \$20,000. He was \$20,000 in debt.

2 And we passed a hat among ourselves and had a meeting and
3 raised \$3,000. One of his preacher friends told the people to
4 close the door and proceeded to call some names and call on
5 those that he thought could put up more, to go the extra mile.

6 So we managed to raise \$5,000.

7 Even so, that man was still \$15,000 in debt.

8 Really, it is those kinds of things that, if we spread
9 the burden among people, I think we can just do a lot better.

10 I hope we go on ahead and write our bill up and do
11 whatever we think we can and put the pieces together as best
12 we can and then figure out how we can pay for it. It may be
13 that we cannot do much the first year, but I am satisfied, as
14 far as I am concerned.

15 I hope it is, as far as the majority of this committee is
16 concerned, that anything they vote for they will vote for the
17 taxes to pay for it. As a committee, we can recommend the
18 taxes to pay for it.

19 Yes, sir?

20 Senator Dole: I understand it has been contemplated from
21 the beginning that we finally put a package together, that
22 there would be a period for hearings. Is that correct?

23 Mr. Constantine: When you started with the building
24 block approach to this proposal, you said all the decisions
25 would be tentative. As the committee proceeded, it would

1 re-evaluate, modify that and delete this and when you have a
2 tentative committee bill, you would hold a hearing.

3 It was your intention to hold a hearing on the tentative
4 committee package.

5 Senator Packwood: At that time, to the extent that any
6 of Senator Durenberger's ideas fit into this, will we have an
7 opportunity to have witnesses on that subject?

8 Mr. Constantine: Senator, we have just completed two
9 days of hearings and Senator Durenberger's proposal is before
10 the Committee and certainly the Senator can raise it at any
11 point.

12 Senator Packwood: Will we have witnesses that will give
13 us current information on how many people already have
14 catastrophic coverage as we define it, without any impetus or
15 requirement from the Federal government now?

16 Mr. Constantine: Who presently have any kind of
17 catastrophic coverage, or essentially the kind of catastrophic
18 coverage, or both ways, actually, the kind of catastrophic
19 that the committee defines as adequate, or that is out there
20 today? Yes, sir.

21 There are ample witnesses on that.

22 Senator Ribicoff: I am wondering, Mr. Chairman, as I
23 listen to the discussoin around the table, there seems to be a
24 general consensus if we could not authorize the staff to try
25 to put together various proposals that come from various

1 members of the committee and also present various alternative
2 revenue raising measures to pay for the proposals so that we
3 will have that in front of us, and then we can discuss these
4 together for a tentative bill whenever the Chairman wants to
5 call an Executive Session for discussion.

6 Mr. Constantine: Mr. Chairman, I think that in these
7 papers before you, all the various proposals are described
8 that have been offered by members of the committee and others,
9 as well as the tentative cost estimates that we got from the
10 administration.

11 I think it is all here. It is conceivable that it could
12 be better presented. It is all in the background material
13 that was provided by the committee.

14 Senator Ribicoff: Do you have various revenue raising
15 proposals in front of us?

16 Mr. Constantine: The only one we have in here was when
17 the committee directed us at the budget meeting to come back
18 with a means of possible interim approach that would be
19 feasible in fiscal '81.

20 We have a suggested, tentative approach there that would
21 be financed, if you will forgive us, with a recommended 5 cent
22 increase on the cigarette tax.

23 That is the only revenue raising measure that the staff
24 has suggested for the committee's consideration.

25 The Chairman: You might just as well find it by taxing

1 something else, could you not?

2 Mr. Constantine: Yes, sir. You could tax alcohol,
3 whatever you wanted.

4 Senator Bradley: Jewelry or furs.

5 The Chairman: If there is no objection, why do we not go
6 ahead and discuss these various decisions. If you want to
7 vote on it, I will put the question.

8 I would suggest we go ahead and talk about these items
9 that we have yet to discuss in terms of the pieces that ought
10 to be in the package.

11 Mr. Constantine: I think there are areas that the
12 committee can make progress in the tentative decision-making.

13 The paper entitled, remaining -- it is the only one not
14 lettered -- "Remaining Issues for Committee Consideration" --
15 these are items --

16 The Chairman: I am not sure I am looking at the same
17 thing you are looking at.

18 Mr. Constantine: These are items, Mr. Chairman, dealing
19 primarily with the catastrophic health insurance which are
20 serious elements which were not resolved at the previous
21 meetings of the committee and which we were directed to try to
22 work out in terms of developing suggestions for the Committee
23 in dealing with these.

24 In the areas starting with the coverage for disabled
25 employees, we have worked jointly with the administration and

1 with the health insurance industry to come up with possible
2 approaches for your consideration.

3 The first item was the question of dealing with disabled
4 employees, employees who become disabled while they are
5 employed, and disabled dependents.

6 There was a problem there. Often, because there are
7 variations in private health insurance today as to the extent
8 to which a disabled employee's coverage continues and in the
9 case of Medicare, a disabled worker's coverage does not begin
10 until 24 months following the determination of disability that
11 was adopted in 1972.

12 The 24 month waiting period, as a cost factor.

13 In discussing this matter with the health insurers, the
14 staff would suggest that the catastrophic coverage -- again,
15 these are tentative decisions that you are making -- would be
16 required to continue for 12 months following the cessation of
17 active employment.

18 The payments would continue to be made on the same basis
19 as previously. If the employer was contributing 75 percent
20 and an employee was paying 25 percent, that would continue for
21 that time.

22 The cost of that, it would increase the employer cost by
23 \$500 million in the overall package. The employee costs by
24 \$900 million result in a Federal revenue reduction of \$100
25 million because that is the employer's increased costs and

1 deductions.

2 It would be a uniform policy in the treatment of disabled
3 workers and their dependents.

4 I do not know whether Dr. Mongan has any comment on that?

5 Dr. Mongan: We feel it is a meritorious provision. It
6 does close one of the gaps in coverage and through the kind of
7 mechanism the committee has already chosen to use, so we find
8 merit in it.

9 Senator Ribicoff: Again, I think any decision we have to
10 make has to be tentative to find out when you are all through
11 whether these tentative decisions add up to. Then you have to
12 cull from there, depending on how much money you have got.

13 Mr. Constantine: We had to do it this way. In an
14 earlier decision we felt we did, because where an employee
15 dies, the coverage continues for his family for a year.

16 We did not see too much difference between a death or
17 disability for continuation purposes.

18 Senator Dole: What is the definition of disabled
19 employee?

20 Mr. Constantine: It would be the same definition that
21 the private insurers now use for determining disability.

22 Senator Dole: Is that a broad or limited definition?

23 Mr. Constantine: Let me see if I have one of my broad or
24 limited insurance representatives here.

25 Mr. Schiffer from Connecticut General who has been

1 essentially the spokesman for the health insurance industry, I
2 think, for the commercial health insurance industry, probably
3 can give you that.

4 Mr. Schiffer: The question relates to what is the
5 definition of a disability?

6 Senator Dole: Yes.

7 Mr. Schiffer: The definition normally used in our
8 insurance contracts is the inability to perform in gainful
9 work of any kind. We have some restrictions in some of our
10 longer term disability contracts that deal with a particular
11 ability to perform the particular job you are now performing.
12 That is not normally used in our health insurance contracts.

13 In our health insurance contracts, if you cannot work you
14 are disabled.

15 Senator Dole: Sheila, is that broader than our
16 definition?

17 Ms. Burke: Senator, the current definition in the law
18 has to do with substantial gainful activity and relates to the
19 amount of money an individual can earn on a monthly basis. My
20 understanding is the insurer's do not use that kind of
21 definition. It is basically a purpose definition, how much
22 they think an individual can do and whether they are working
23 at all, so it is less restrictive than the definition in
24 current law for SSI purposes, it is my understanding.

25 Mr. Schiffer: That is correct.

1 Senator Dole: I think that is a point I would like to
2 consider, because it seems to me, to get back to Senator
3 Roth's argument, increasing the burden on employers, that we
4 have a very broad definition of disabled employee, just like
5 we are having in other programs I can mention.

6 We will have the ballooning of those who can qualify for
7 this particular benefit. It is also more generous, as I
8 understand it, than treatment of unemployed, is that correct?

9 Mr. Constantine: That is what they tell us. That is
10 right, in terms of extended coverage.

11 I think Mr. Schiffer might indicate in that liberal
12 definition whether they feel they have had any problems to
13 date, any significant problems.

14 Mr. Schiffer: No, I do not think we have had any
15 significant problems. Certainly as Senator Long has said so
16 often, there is no free ride.

17 In one way or another, I think most of our employees
18 realize they are going to either pay for these kinds of
19 benefits through insurance premiums, through insurance
20 contracts on some pre-paid basis, or pay through the tax
21 system.

22 I think most employers have a sense of responsibility to
23 their employees to continue some kind of coverage during
24 disability.

25 What we have found with a provision like what is being

1 proposed here, in fact, there are a number of contracts in
2 existence that already have this provision and in fact, a
3 number of employees, even without the specific insurance
4 contractual language do in fact continue employees on their
5 own.

6 We think that one of the reasons that the cost is
7 reasonably modest is in fact it represents a practice that is
8 already fairly prevalent in the United States.

9 Senator Dole: Sheila was just saying, you are talking
10 about large contracts, we are talking about we are going to be
11 concerned with small businessmen who are going to have to
12 provide the coverage.

13 Mr. Schiffer: It is probably less true in the small case
14 area, Senator.

15 Mr. Constantine: The question -- this is disability for
16 benefit purpose only, not for cash, and I think the question
17 is, in the catastrophic area ---remember, this is not for
18 basic insurance. This is for catastrophic benefits.

19 I think the concern you have is essentially does this
20 encourage malingering and --

21 Senator Dole: I just raised it because I think it is one
22 of the areas that we need to address to keep the program
23 streamlined from the standpoint of the cost to the employer.

24 We do not want to deprive some disabled worker of
25 benefits. On the other hand, if there is not some concern

1 about the definition of disabled worker, it could happen.

2 Mr. Constantine: We essentially, in discussing this with
3 the health insurers, went over what problems they saw. We
4 discussed that aspect of it, and wherever possible, we tried
5 to follow the private sector approach, if it were not posing a
6 problem today.

7 Senator Dole: Well, does the administration have any
8 problem with that?

9 Dr. Mongan: No. I think we find it to be a meritorious
10 provision. I understand the concern you raise.

11 Jay's rebuttal has some merit.

12 Mr. Constantine: Clarification, not rebuttal.

13 Dr. Mongan: Clarification. It is a little different,
14 say, if you were handing people out \$100 or something of that
15 sort. What you are really talking about is eligibility for
16 catastrophic protection.

17 We can look at the difference between the insurer's
18 definition and the SSI definition and come back to you.

19 The Chairman: At the moment, though, this proposal is
20 that they would continue to be eligible for a year?

21 Mr. Constantine: One year. The same where there is a
22 death.

23 The Chairman: Without objection, then.

24 What is the next point?

25 Mr. Constantine; The next one deals with the question of

1 kidney patients, kidney failures.

2 Now, Mr. Chairman, you were a prime sponsor of the
3 end-stage renal disease benefit in 1972 under Medicare where
4 anyone who developed a kidney failure was deemed disabled for
5 purposes of eligibility for Medicare.

6 The reason at that time -- and Dr. Mongan and I were, I
7 guess, doing some staff work at that time -- was because there
8 was very little coverage in the private sector for these
9 people. It was a question of coming up with the money that
10 made the difference between whether you lived or died.

11 Now, where you are establishing a catastrophic health
12 insurance program where there would normally be coverage for a
13 kidney failures for a period of time, the issue arose as to
14 whether some of this responsibility should now revert back to
15 the private insurers as opposed to being assumed totally by
16 the government.

17 Senator Dole: What is the cost to government now, about
18 \$1 billion?

19 Mr. Constantine: Somewhat less than that.

20 The kidney program costs many of the people. At least
21 half of those costs, Senator, would have been incurred without
22 the kidney problem because those people were eligible under
23 Medicare and disabled anyway.

24 That \$900 million is not totally attributable to that new
25 program.

1 In sitting down the private health insurers and the
2 administration people -- I do not want to misstate -- the
3 essential thing that we suggested was that the primary
4 responsibility during the first year following kidney failure
5 of a worker or his dependent would be the private health
6 insurance for the first 12 months which are costly, but the
7 first 12 months only, with Medicare costs being secondary,
8 filling in the gaps as it would have done otherwise.

9 Now, the effect of that would be to increase the cost.
10 It would reduce Medicare costs by \$200 million and increase
11 employer-employee costs by a like amount.

12 The question is, the issue really was, whether kidney
13 failure is a catastrophic illness, and of course it is. Then
14 the question is, if you have catastrophic coverage generally,
15 should that be assumed, at least in part, by the private
16 sector?

17 In essence, at least during the first year, the same as
18 disability, be a private insurance cost with Medicare filling
19 in the gaps only. It would increase the cost on the private
20 health insurance side and decrease Medicare's cost by \$200
21 million a year.

22 Mike, did you have any comments?

23 The Chairman: That would save you \$200 million on the
24 Federal side?

25 Mr. Constantine: Yes, sir.

1 Senator Dole: It is a transfer?

2 Mr. Constantine: Yes, sir.

3 The question is, actually it was a transfer in a sense
4 that the private coverage generally was inadequate at that
5 time where you are making private coverage mandatorily more
6 adequate. Do you want to transfer that to the private sector.

7 The Chairman: Is there objection? Without any
8 objection, agreed.

9 Mr. Constantine: The committee raised a question with us
10 as to the problem where somebody has a continuing chronic
11 illness of needing a deductible each year -- an individual or
12 family, of meeting that \$500 deductible for a continuing
13 illness.

14 Does a hemophiliac, for example, have to pay the first
15 \$3,500 each year, or should there be some recognition of the
16 chronic illness problem? And the Committee asked us to come
17 back with an approach and we sat down with the insurers and
18 actually what we would suggest, regardless of the individual
19 \$3,500 deductible for a family individual or family where, in
20 any two-year period they have \$5,000 in expenses -- as a
21 matter of fact, you could have \$2,500 one year and \$2,500 the
22 following year, you would trigger into the catastrophic
23 program.

24 It is considerably more liberal, and you continue to get
25 the benefits. Is that right, Mike?

1 Mr. Schiffer: That is correct.

2 The cost of doing that so you deal with a continuing
3 illness problem from one year to the next is estimated at \$100
4 million new for Federal and \$500 million for employers and
5 \$100 million for employee cost.

6 Senator Dole: Before we decide this, let me go back to
7 that kidney section.

8 Are you talking about those who are now in the work
9 force? Would it not be a disincentive to somebody with that
10 problem, disincentive for the employer to hire that person?

11 How do we handle that?

12 Mr. Constantine: I meant to raise that. It is a good
13 question.

14 We talked to the insurers about it and we would like the
15 committee's permission to work that out.

16 If you have an experienced rated employer group and you
17 have someone who develops renal failure or a member of his
18 family, that would jack up your rate. We discussed with them
19 the possibility of moving those people at that point into the
20 state pools for coverage.

21 With the committee's permission, we would like to put in
22 a provision that avoids the disincentive to employment of
23 people who suffer kidney failure.

24 Ms. Burke: Senator, the other question is whether or not
25 it would apply for coverage for individuals who are currently

1 employed and under coverage, if it is a continuation of
2 disincentive because it is a new coverage for a new individual
3 being hired who is in that twelve-month period.

4 The question is whether it is for current employees under
5 current coverage and that that coverage should be continued,
6 or whether it has to start when someone is hired.

7 That is where the disincentive would come, if they would
8 have to pick up that cost rather than the continuation which
9 is also an issue.

10 Mr. Constantine: What Sheila is getting at, if someone
11 has a renal failure and then is looking for a job, the
12 employer disincentive to hire that employee -- and I think if
13 we kick that individual into the pool at the onset, not
14 charging that individual small employer's costs with that, I
15 think we could work that out.

16 Mike?

17 Mr. Schiffer: I think we can in the context of what the
18 tentative decisions have indicated so far, you would have a
19 mandated program. All employers would provide coverage for
20 people.

21 You would provide for normal continuation of coverage
22 with no existing preconditions.

23 Basically it comes down to a problem in this context,
24 what do you do when you start the program, it is the first
25 year of the program. That presents a real problem and I think

1 we certainly can work something out on that.

2 Senator Ribicoff: Mr. Chairman, I think the staff has
3 ignored previous committee actions. We made a decision for
4 lower-income workers and to parallel our previous decisions,
5 it seems to me that the low-income workers ought to be able to
6 take advantage of this position after a deductible of \$3,500
7 or 25 percent of income, whichever is less.

8 You remember, this is for families making \$14,000 per
9 year or less.

10 I do not mind going along, provided that we bring in the
11 objective.

12 Senator Dole: That is the chronically ill.

13 Mr. Constantine: Senator, this does not supplant the
14 other thing. This is in addition to -- for instance, this
15 would operate if someone were above \$14,000 in income.

16 Or actually you would have, for example, under what the
17 committee has approved, if you have a worker with an income of
18 \$12,000, their deductible would be \$3,000, or 25 percent of
19 the \$12,000.

20 If they developed a chronic illness under those
21 circumstances -- unless we do this, they would have to pay
22 \$3,000 each year.

23 Under this thing it would be at any time, in any two-year
24 period, they triggered \$5,000 it would kick in.

25 That is more generous for some of those people. Many of

1 those, even poor, low-income.

2 However, notwithstanding this, Senator, this does not
3 change your earlier decision. For example, if someone had an
4 income of \$8,000, the deductible in that case would be \$2,000.
5 This does not change that at all.

6 This is in addition. They would have a \$2,000 deductible
7 each year.

8 Senator Ribicoff: My feeling, Mr. Chairman, as long as
9 we do not disturb our original decision --

10 Mr. Constantine: This does not do that.

11 Senator Ribicoff: To make sure that I would approve
12 this, subject to Mr. Constantine's discussing with my staff to
13 assure that the language covers our original intention on
14 this, on this the deductible and for the drugs for chronic
15 illness, the drug deductible.

16 Mr. Constantine: Yes, sir. This really was in addition
17 to what the committee has done.

18 Senator Ribicoff: It no way impinges?

19 Mr. Constantine: No, sir, it does.

20 Senator Ribicoff: Or changes it?

21 If that is the case, Mr. Chairman, I would go along, but
22 I would hope you would check that out.

23 The Chairman: Without objection.

24 Senator Dole: Without objection -- is that the chronic
25 illness section?

1 Mr. Constantine: Yes, sir.

2 Senator Dole: On the other, I guess we are going to work
3 out the other one?

4 Mr. Schiffer: We will work out the other one.

5 Senator Dole: As I understand it, you are going to have
6 a sliding scale on the chronic illness deductible?

7 Mr. Constantine: No, sir. What we have got is the
8 committee's previous decisions. You can have families that
9 already fall below that, because what you have done on the 25
10 percent of family, for example, with income of \$28,000 would
11 trigger into catastrophic and \$2,000 in expenses under the 25
12 percent thing.

13 This is a separate deductible to deal with the question
14 of continuing chronic illness which does not replace that
15 other \$2,000 at all. This is in addition to.

16 For example, Senator, a family with \$20,000 would
17 ordinarily have to meet \$3,500 each year. This says at any
18 time, in any two-year period that they have kicked in the
19 \$5,000, even if it is only, say, \$3,000 in one year and \$2,000
20 in the next, they automatically --

21 Senator Dole: Is it related to chronic illness or the
22 family?

23 Mr. Constantine: The individual or the family. We are
24 just using chronic illness as an example because that was a
25 concern that the committee had -- do you want people with a

1 long-term, continuing or even a life-time illness to meet the
2 \$3,500 year in year out.

3 Mike?

4 Mr. Schiffer: You are expressing it correctly.

5 Ms. Burke: The question is whether or not it is an
6 individual or a family deductible. In this case, it could be
7 expenses of the family, as I understand it, that meet the
8 test, not the individual's expenses, not directly relating to
9 an illness, or to one individual's expenses.

10 The family could have four illnesses and kick in a
11 chronic illness deductible.

12 Mr. Schiffer: That is the way it is stated here and that
13 is the way the cost figures are developed.

14 Senator Dole: Can you administer that?

15 Mr. Schiffer: Yes, sir.

16 Senator Dole: It is easier, probably, that way than the
17 other way, I suppose.

18 Mr. Schiffer: Yes.

19 Senator Dole: What about the administration?

20 Dr. Mongan: Again, we generally favor what Senator
21 Ribicoff raised earlier, the idea of giving a special, extra
22 break to those who have chronic, continuing illness but do not
23 quite get to the \$3,500.

24 This provision does that and we are favorably inclined
25 towards it.

1 Senator Ribicoff: You feel what we have done does not
2 change the policy that the committee established?

3 Dr. Mongan: That is correct. It is supplementary to
4 that policy.

5 Mr. Schiffer: When you talk about cost alternatives, if
6 you were to make the deductible apply only to the individual
7 as opposed to the family, you would see a fairly substantial
8 reduction in this price. Maybe that is something we would
9 want to keep in mind, and offer both alternatives.

10 Senator Dole: If it is the chronic illness provision,
11 maybe it should apply to the chronic illness.

12 Mr. Schiffer: If you get down to the individual, you are
13 closer to that concept.

14 Senator Dole: Right. It would be pretty expensive.

15 Mr. Constantine: I think you want to come back to the
16 issue that the Committee originally decided right at the
17 outset as to whether you are going to have the normal practice
18 in the private sector, which is to have an individual
19 deductible, not a family deductible.

20 One of the things you had before you when you started,
21 for example, was a \$3,500 individual, \$5,000 family. The
22 committee, at the beginning, decided it would have a combined
23 deductible -- that is, it would be individual or family of
24 \$3,500 and I think what Mr. Schiffer is raising, the committee
25 has already tentatively agreed that it did not want a family

1 deductible, that it wanted a combined individual-family
2 amount.

3 When you go back to reconsidering your decision you may
4 want to look at the cost of that because it is obviously less
5 expensive.

6 Dr. Mongan: If I could reiterate our support for the
7 committee's earlier decision to use the family deductible.
8 That is the economic unit we want to protect through this
9 program and we think that is the most appropriate way to do
10 it.

11 Mr. Constantine: That is one of the things you can go
12 back to later.

13 Mr. Chairman, the next item, item four on page 2, deals
14 with the exemption of mandatory employer participation. Bob
15 Hoyer worked on that.

16 Do you want to explain that?

17 Mr. Hoyer: As you know, some religious denominations
18 object to insurance because of their religious convictions.
19 This is simply a provision similar to the one we had for the
20 Social Security law.

21 Those people can elect out of the mandated coverage. The
22 employees who state they have those objections would not have
23 to be offered the insurance.

24 The Chairman: Without objection.

25 Senator Dole: There is objection to the mandatory thing

1 period?

2 Mr. Constantine: Yes, sir.

3 Senator Dole: I think there is a general question
4 whether we ought to mandate that in any event, or whether we
5 should, for a period, try a voluntary approach and see what
6 happens the first couple of years.

7 I think that we are going to be forcing people to
8 participate in something they may not even need or cannot
9 afford.

10 Mr. Constantine: Senator Dole, further on in the interim
11 approach, one of the alternatives we have developed for your
12 consideration is voluntary, at least until such time as the
13 mandatory program became effective.

14 The possibility of a voluntary program on the part of
15 small business with tax incentives to have them participate,
16 this really was dealing with your earlier decision to make it
17 mandatory.

18 Senator Dole: I think we should exempt those, and also,
19 as you indicate, Federal workers. I think there is still that
20 basic question that we ought to keep workers.

21 Mr. Constantine: Yes, sir. We will be getting to that
22 subsequently. This is clarifying your earlier decision.

23 The Chairman: This is just to say if we should have some
24 mandatory coverage that these people would be privileged to
25 opt out anyway.

1 Mr. Constantine: Yes, sir.

2 Then we also suggested that originally you wound up
3 bringing Federal employees in for catastrophic reasons and
4 because there are jurisdictional considerations and because
5 the Federal employees' insurance is generally good, we would
6 suggest, at least at this point, not making it mandatory upon
7 Federal.

8 The Chairman: Without objection.

9 Dr. Mongan: Mr. Chairman, if I might express again, we
10 agree with the first part of the suggestion. We think the
11 Committee's previous decision as to Federal employees does
12 make sense. There are some differences, but some things about
13 Federal employees' coverage that do not meet with the
14 committee has gone.

15 Full-time workers are defined as 40 hours instead of 25
16 under Federal employee's coverage and continuation and
17 conversion periods are shorter than what you have tentatively
18 approved.

19 We continue to think there are good, substantive reasons
20 for including Federal employees under this and would hope that
21 the jurisdictional issue could be dealt with, either in
22 conversations between the Committee or another piece of
23 legislation.

24 Mr. Constantine: Mr. Chairman, you could always, to
25 avoid any jurisdictional questions, if it were appropriate for

1 Federal employees, when the bill was considered on the Floor
2 to avoid anything, someone could offer an appropriate Floor
3 amendment at that time, with respect to Federal employees,
4 adding them.

5 The governmental affairs committee, which has
6 jurisdiction.

7 The Chairman: As of now, Federal employees would not be
8 under it. Is that it. They have their own coverage?

9 Mr. Constantine: The Committee's tentative decision was
10 to include them. Obvoiusly there is gong to be a lot of
11 discussion and debate. It does raise jurisdictional questions
12 as to where the bill goes.

13 The Chairman: I get your point. There is a
14 jurisdictional problem invovled here.

15 Mr. Constantine: Yes, sir.

16 Senator Ribicoff: I am not worried about the
17 jurisdictional problem. I never have. If we do the right
18 thing, let's do it without worrying about whether the Finance
19 Committee has it or the Governmental Affairs Committee has it.

20 There is more damn time wasted in the Congress of the
21 United States with jurisdictional fights than the substance of
22 legislation, so as Chairman of the Governmental Affairs
23 Committee, I will waive it if we can do something that is
24 solid and meaningful.

25 Senator Dole: There may be other reasons.

1 Senator Ribicoff: That is another problem.

2 The Chairman: That settles that part of it, all right?

3 Senator Dole: What is the real reason, Jay?

4 Mr. Constantine: Most of our reasons are unreal. We
5 really do not have a position one way or the other other than
6 the jurisdictional question of sliding it to other committees
7 and having it, you know, various Federal employee groups.

8 Senator Ribicoff: What are the arguments for and
9 against?

10 Mr. Constantine: The arguments for it are uniform
11 treatment of employees across the country. Federal employees
12 are employees, just as anybody else.

13 Senator Dole: Does the private sector have any comment
14 on that, the Federal sector?

15 Mr. Schiffer: I do not think we have any comment. We
16 agree with the argument that says certainly your Federal
17 employees ought to be treated as favorably in their health
18 insurance coverage and provisions and so forth as any private
19 sector employee.

20 Senator Dole: Is there a cost factor involved? What is
21 the cost, Jay?

22 What does it cost the government?

23 Mr. Constantine: I think those costs are in the proposal
24 now because of your original decision. Do you have a separate
25 cost on that?

1 Senator Ribicoff: Let me ask, most Federal employees are
2 covered by Blue Cross or Aetna. The Blue Cross and the Aetna,
3 under the Federal policies, do they give the policies that we
4 are trying to do under catastrophic? Are they not covered
5 basically for catastrophic?

6 Mr. Constantine: In the high option programs, they are.

7 Senator Ribicoff: There is a high option program that
8 most Federal employees automatically check off. Does the high
9 option coverage take care of Federal employees the way we are
10 trying to do it here?

11 Mr. Constantine: Very similarly. Not line by line, but
12 it is very close -- in some cases, better.

13 The Chairman: It seems to me if we are going to have
14 coverage and we are going to provide Federal employees, we
15 ought to see that they are protected against the catastrophic
16 situation and we should not have them opt out of it.

17 You agree with that, do you not, Dr. Mongan?

18 Dr. Mongan: Yes, we do.

19 The Chairman: It seems to me at this point we are
20 looking at our own employees, we are speaking for the Federal
21 government in this place. It seems to me we ought to say they
22 are in the program.

23 Senator Dole: If we make it mandatory.

24 The Chairman: Again, in this particular case, let me see
25 -- that is right. What we are talking about is a program

1 where they pay a quarter of the cost, is that not right? They
2 pay a quarter of it?

3 Dr. Mongan: that is correct.

4 The Chairman: Then they do not have to pay the quarter,
5 that is it. They want to stay out of it if they want to. If
6 they pay the quarter they are covered, is that right?

7 Dr. Mongan: That is correct.

8 The Chairman: It seems to me we ought to say as far
9 as the employer is concerned, if the employee is willing to
10 pay the quarter, the employer has to come up with his end of
11 it. In this case, it is the Federal government and we will
12 say yes, we will come up with a part of it.

13 Mr. Constantine: Probably there is little new cost to
14 the Federal government because the overwhelming majority of
15 the Federal employees do have the high option coverage, which
16 I think on an actuarial basis we would all agree is as good
17 or better.

18 Mr. Melmon: I am Richard Melmon, Prudential Insurance.
19 There is a minimal cost to conforming good, existing private
20 insurance plans. The present high option plans enjoyed by
21 Federal employees, there would be a minimum cost to conforming
22 them to the provisions of the catastrophic bill that is being
23 developed.

24 The Chairman: It seems to me, whether the Federal
25 employees take the high option or low option cost, in either

1 event, they ought to be covered for the catastrophic
2 situation.

3 Mr. Constantine: Yes, sir.

4 The Chairman: If there is no objection, then, we will
5 agree to that.

6 They do not have to come into it. They do not have to
7 participate. If they participate, then they will be covered
8 for the catastrophic part of it.

9 Mr. Constantine: That reiterates your earlier decision.
10 your earlier decision, by the way, Mr. Chairman, is voluntary,
11 however, for state and local.

12 The Chairman: Without objection.

13 Ms. Burke: There is a question, Mr. Chairman, if I could
14 clarify it with Dr. Mongan, do the cost estimates include the
15 increased costs to the Federal government? The cost sharing
16 arrangements, as I understand them now, are now 25-75 in most
17 instances. That will increase the cost to the Federal
18 government for their employees and the restrictions in terms
19 of the definition of employee is more restrictive under the
20 mandate. It should increase costs.

21 Dr. Mongan: It does increase costs slightly. They are
22 included in the estimates, although I cannot give you the
23 exact numbers.

24 The Chairman: The next point.

25 Mr. Constantine: The next point, the Committee sked us

1 to work on what penalty procedure for employer failures to
2 comply with the mandatory coverage.

3 Bob, do you want to describe what happens?

4 Mr. Hoyer: There are two issues here. If the employer
5 fails to live up to the requirements of the mandate he would
6 be penalized by an amount equal to one and one-half times the
7 amount that full coverage would cost in his area.

8 This is the easy part. It does not protect the employee
9 who is denied the coverage.

10 We have tried to handle that conceptually saying that the
11 employee is entitled to that catastrophic health insurance
12 that the employer failed to provide and he can either sue the
13 employer if he should require the coverage, go to the
14 hospital, or else he could assign his rights to those benefits
15 in the state insurance pool and then determine whether, in
16 fact, they were entitled to the insurance and, if so, pay the
17 covered health bills and then in turn seek reimbursement
18 from the employer as is the case if the employer is out of
19 business. The pool could seek reimbursement for these
20 expenses by billing the Federal government.

21 Senator Dole: Does it ever end once you are in the pool?

22 Mr. Hoyer: Once the employee is on notice that he does
23 not have health insurance through his employer, normally the
24 employer would be out of business, then I would think he would
25 be on his own. If he does not have another employer by

1 which he would be covered, he would have to go to the pool and
2 seek coverage there or else go to any other private health
3 insurance carriers, if they would underwrite the coverage, and
4 buy it on his own.

5 Senator Dole: Does that address the question, Sheila?

6 Ms. Burke: The question would also be, if the individual
7 were working for an employer that did not go out of business,
8 it would be ad infinitum through their coverage in the pool as
9 long as they sought money from the employer.

10 Mr. Hoyer: That is right. That employer would be paying
11 for his catastrophic health insurance expenses through the
12 courts, in essence.

13 Senator Durenberger: Let me ask about the alternative
14 approach to this that we have incorporated in 1968. That does
15 not insure the same kind of compliance, obviously, that this
16 does, but uses the tax code in order to insure compliance and
17 basically, I think in our bill it says: "If the employer does
18 not provide the mandated coverage that the employee will be
19 taxed on the amount of the employer contribution to whatever
20 plan the employer provides."

21 Is that inappropriate to this issue?

22 Mr. Hoyer: Well, you are shifting the mandate from the
23 employer to the employee. Until that employee has a
24 catastrophic health expense, the issue will probably never
25 come up.

1 The employee may think the employee is paying his
2 premium, or may not know anything about it. So when you
3 finally do find out that the employer is delinquent, probably
4 there would be a substantial past premium due. It could be
5 quite a hardship on the employee.

6 Senator Durenberger: The employee will not know what
7 kind of insurance coverage he or she has.

8 Mr. Hoyer: I would think that the ones working for
9 delinquent employers may not.

10 Mr. Constantine: Senator, they may actually believe they
11 are covered. It is the employer not making the payments.

12 Senator Durenberger: The situation is we are going to
13 have a penalty here in which governments, Federal, state,
14 local, nonprofit organizations -- I do not know how many
15 hundreds of thousands of them there are employing people in
16 this country -- the penalty is they are going to have to come
17 up with dollars to put into a pool and how are we going to
18 enforce that?

19 Mr. Constantine: You do that through the tax code,
20 through the tax code in terms -- what the Committee has agreed
21 on tentatively is to mandate the coverage. Then the question
22 came on employers, what do you do if he does not make the
23 payments, and this was the only procedure that we could come
24 up with that was strong enough to encourage employers to
25 comply with the law.

1 At the same time, because the pool would be providing the
2 coverage to protect the employee with the catastrophic
3 illness, the fund would go into the pool.

4 The next thing we are getting to, Senator, is the
5 description of the pools which are nonprofit. As long as the
6 pool is essentially going to bear the burden of the expense
7 for that employee whose employer did not comply with the law,
8 it would just flow that way.

9 Senator Durenberger: Mr. Chairman, I would appreciate
10 not being able to have to vote on, or object to a decision on
11 this one now because I think there are some alternative
12 penalties.

13 The Chairman: Would you like to hold this over?

14 Senator Durenberger: This particular issue? Yes.

15 The Chairman: What is the next item?

16 Mr. Constantine: The next item we would like to go to is
17 paper B.

18 The Chairman: Oh, you are moving to another paper. I see
19 it.

20 Mr. Constantine: Mr. Chairman, this is the operation and
21 purpose of the state insurance pools is a very vital part of
22 this whole procedure in terms of assuring access to the
23 mandatory coverage for not only the employers who otherwise
24 would have to pay a higher cost on an experience-rated basis
25 but individuals, both employed and self-employed, unemployed,

1 the retired people who are not eligible for Medicare, everyone
2 around who falls through the cracks.

3 Now, we have worked on this with the administration. It
4 is a very detailed description. Then we worked on it with the
5 administration and with the commercial health insurance
6 companies and with Blue Cross and Blue Shield.

7 While some of the parties are not enthusiastic, I think
8 that there is agreement that nothing in here -- at least at
9 this point in time -- is disastrous, that the elements of the
10 pool approach here are consistent with the objectives of
11 assuring access to adequate coverage or the required coverage
12 at a reasonable premium relative to other premiums.

13 Additionally, the pools would not only make the
14 catastrophic coverage available on a catastrophic basis, but
15 make basic coverage available -- that is, the amounts
16 underlying the catastrophic up to the \$3,500 at a reasonable
17 premium to those people who might feel that this was for those
18 who would find this an accessible means without waiting
19 periods, limitations or exclusions, the kinds of things that
20 impair their ability to get adequate private insurance today.

21 The health insurers -- we are all in agreement that this
22 would also be a step forward, in addition to your
23 catastrophic, at no cost in terms of making coverage available
24 to people who have difficulty getting adequate private
25 insurance today. This would be a joint private insurance.

1 Senator Ribicoff: Could we have comments from Dr. Mongan
2 and representatives of the insurance companies concerning this
3 state insurance?

4 Dr. Mongan: Thank you, Senator.

5 I think Jay stated the situation fairly. It is no
6 secret. We did not think the pools were the right way to
7 proceed with respect to residual coverage. I must say,
8 however, we were given an opportunity to make our arguments in
9 November. We made them, and I think we lost fairly and
10 squarely, if you will.

11 Senator Ribicoff: What substitute would you put in?

12 Dr. Mongan: That is where we did, then, given the
13 context of the committee decision to have pools, Jay did
14 invite us to sit down with him and the insurers and they have
15 taken, again, most of our concerns into account.

16 That does not mean we think it is the right way to
17 proceed, but it does mean, as Jay said -- if you want to
18 proceed in this way, we think that you have, it is now
19 structured in a much better fashion than it was when it was
20 first discussed.

21 Senator Ribicoff: Does this arrangement give a potential
22 for protection to everyone in the population?

23 Dr. Mongan: It does do that. We are still left to
24 reiterate our basic concerns. I do not want to slow the train
25 necessarily. It does give the assurance of protection. We do

1 feel -- we are not so certain about our ability to insure
2 equity when we have to deal with pools in 50 different states.
3 There may well be a need for government subsidies of these
4 pools at some point.

5 We think the administration of them may be quite complex
6 as shown by the series of codicils here.

7 I do not want to give the impression that these changes
8 make it good from our point of view, but on the other hand, I
9 would have to say yes, it does meet the major objective that
10 the committee has in mind and the committee has taken our
11 concerns in mind.

12 Senator Ribicoff: Is it your position that the pools
13 will have a larger administrative expense than if you did it
14 on a governmentwide basis?

15 Dr. Mongan: It is our position there is a general bias
16 that the private sector can do things more efficiently than
17 the government can. That may, in fact, be correct in some
18 situations but I think with respect to an issue of this sort
19 where you could do it through one, national uniform program as
20 opposed to having to do it to different types of pools set up
21 in 50 different states that we do feel that there would be
22 economies of scale in doing it the way we originally
23 suggested.

24 Senator Ribicoff: May I have a comment from you
25 gentlemen?

1 Mr. Schiffer: We almost feel we have made the sale and
2 therefore we ought to be quite and go home.

3 Senator Ribicoff: We are looking for information.

4 Mr. Schiffer: As you know, we have a state pool in
5 Connecticut which is operating efficiently and well so we are
6 not talking here about a theoretical kind of concept but it is
7 a proven mechanism for making sure that insurance is available
8 and we think we have worked out all of the details necessary
9 to assure efficient operation, assure that everybody will be
10 covered.

11 We have provisions in here that would allow for some
12 regionalization of the pools so you would not necessarily have
13 a series of 50 state pools.

14 In all likelihood there would be some combination,
15 particularly in the smaller states, and we believe that it is
16 a program that could become operational rather quickly as we
17 discussed this last fall.

18 One of the concerns you had was to make sure that we had
19 something that was not an administrative monster, something
20 that could be put in place reasonably quickly and through the
21 private sector and we think we have taken care of all those
22 kinds of concerns.

23 This is really a viable alternative to a massive
24 government program.

25 Senator Ribicoff: How many years have you been in

1 operation with the pool in Connecticut?

2 Mr. Schiffer: The Connecticut law, I believe, was passed
3 in 1974.

4 Senator Ribicoff: You really have had five to six years
5 of experience with it that now can be used in the other
6 states.

7 Mr. Schiffer: It is less than that. It has been three
8 and a half.

9 Senator Ribicoff: That is pretty good experience.
10 Have you eliminated the difficulties and bugs in that
11 time?

12 Mr. Melmon: It has been operating smoothly. It has been
13 operating to the satisfaction of the insurance department and
14 the administering carrier.

15 We think the insurers in Connecticut feel it is
16 performing its function quite well.

17 Senator Ribicoff: How about the people who come in and
18 use the pool? How do you think they were treated?

19 Mr. Schiffer: We are not aware of dissatisfaction on the
20 part of anyone who has been covered.

21 Senator Ribicoff: You really have had a pilot program
22 for three and a half years on this concept?

23 Mr. Schiffer: Yes.

24 Senator Ribicoff: Have you checked the Connecticut
25 system?

1 Dr. Mongan: We have checked the Connecticut system.
2 Again, I do not want to drag the committee through something
3 we dragged them through once before in November. I guess I
4 should restate for the record that pool experience has
5 basically been in two states, Connecticut and Minnesota.

6 Connecticut has been, from what I understand, somewhat
7 more successful than Minnesota. Minnesota, in fact, has
8 involved government subsidies already in its third and fourth
9 year of operation.

10 I would say, of the two states, we look more favorably on
11 the experience in one of the other. That does not give us too
12 much confidence to build upon.

13 Again, we took you through that.

14 Senator Ribicoff: In the pool arrangement that you are
15 now suggesting or agree to, do you follow the Connecticut plan
16 generally, then?

17 Dr. Mongan: We have tried to do that, yes.

18 Mr. Schiffer: Yes, Senator.

19 Senator Dole: How many people are going to be in a pool,
20 percentagewise?

21 Do we have any estimated numbers?

22 Mr. Melmon: We believe nationwide something less than
23 one-half, than 1 percent of the population. Perhaps 2
24 percent. 800,000 to 900,000 people nationwide.

25 There are 5,000 people presently covered in the

1 Connecticut pool.

2 Senator Dole: I guess the concerns we had -- I think,
3 Ms. Burke -- have those been satisfied, Sheila?

4 Ms. Burke: Yes.

5 Senator Dole: That is a yes?

6 Ms. Burke: That is a yes. For the record, yes.

7 Mr. Constantine: Senator, what is left there is
8 reasonable accountability to the Federal government, so people
9 do not necessarily charge off without some sense of
10 responsibility. Obviously here and there there may be
11 administrative costs, but there is flexibility and we believe
12 that it will meet a lot of needs that are not being met today
13 responsibly.

14 Senator Ribicoff: I would move that proposal on item B,
15 Mr. Chairman.

16 The Chairman: Is there any objection? Without
17 objection, agreed.

18 Now, Senator Heinz is here and I believe he would like to
19 interrogate the witness on a confirmation, so I would suggest,
20 at this point, we turn to that matter, and get Mr. Perales
21 back.

22 I am going to ask Mr. Matsunga to preside. I have to be
23 on the Floor.

24 Senator Dole: I have the same problem. Do you want to
25 ack on the nomination?

1 The Chairman: I think that for today -- if there is any
2 objection on acting on the nomination --

3 Senator Heinz: Could we poll people afterwards? Would
4 you mind?

5 The Chairman: That would be fine.

6 If you want to oppose the nomination, we ceratinly would
7 want to consider it.

8 Senator Heinz: I hope it would not be necessary.

9 The Chairman: Suppose, Senator Matsunaga, you preside.

10 Senator Dole: We are not coming back to catastrophic
11 today?

12 The Chairman: Not today.

13 Thank you very much.

14 Mr. Stern: Mr. Chairman, the committee will be meeting
15 next Tuesday. You could have the hearing part now and bring
16 up the nomination then.

17 The Chairman: We will vote on Tuesday.

18 (Thereupon, at 11:35 p.m. the Committee proceeded to the
19 discussion of other business.)

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