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EXECUTIVE SESSION

THURSDAY, AUGUST 4, 1977

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

The Committee met, pursuant to notice, at 9:40 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (Chairman of the Committee) presiding.

Present: Senators Long, Talmadge, Ribicoff, Byrd, Nelson, Hathaway, Matsunaga, Moynihan, Hansen, Roth and Packwood.

The Chairman. Senator Talmadge has suggested an amendment on 7200. Perhaps we could just agree on that, as we previously did on a tentative basis. We would have to check it out and see if those that are not here like the idea. It can always be reconsidered.

Let us hear Senator Talmadge's suggestion.

Senator Talmadge. Mr. Chairman, I offer an amendment because many of the state agencies are concerned about merging the IV-B money, which is the support for adoptions, with Title XXII money.

The amendment was agreed to unanimously. Senator Dole offered an amendment subsequent to that that seemed to muddy

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1 the issue somewhat. Senator Dole has written me a letter: "In  
2 offering my amendment, my primary concern was to insure no  
3 new money would be channelled into foster care maintenance but  
4 rather that it be used to increase or improve child welfare  
5 services.

6 "I am aware that states are already committed to certain  
7 existing foster care responsibilities under IV-B for which they  
8 may be receiving Federal matching dollars. While I wish to  
9 encourage the growth of the child welfare services, I do not  
10 wish my amendment to inadvertently impose a hardship on the  
11 states.

12 "It is for this reason that I support Senator Talmadge's  
13 amendment to allow a limited expenditure for maintenance under  
14 Title IV-B." The present appropriation is \$56.5 million  
15 annually, Mr. Chairman.

16 I would offer that amendment. I think there is no objec-  
17 tion to it.

18 The Chairman. It would cost \$56 million?

19 Senator Talmadge. Yes, what we are appropriating now.

20 Mr. Stern. This would say you could use the \$56.5 mil-  
21 lion if present levels were at the IV-B funds for foster care  
22 but any new funds could not be for foster care maintenance  
23 payments.

24 The Chairman. This does not add additional money.

25 Mr. Stern. No, sir.



1 Senator Talmadge. The authorization now is \$266 million,  
2 Mr. Chairman.

3 The Chairman. All right.

4 If there is no objection, this will be tentatively agreed  
5 to.

6 The thought occurred to me also that it might be well  
7 to put an amendment on this bill moving us to this central  
8 computer type thing that Secretary Califano is rather proud  
9 of.

10 He is suggesting, which in my judgment is long overdue  
11 anyway, to have a check to see whether a person is on the  
12 welfare rolls in more states than one, or more communities  
13 than one.

14 What they are finding out by making a sample test is  
15 in a single state he may be on the welfare rolls and in two or  
16 three different communities. He would fly to Philadelphia,  
17 go down the road to the next county, and apply there and go  
18 on the road again.

19 I would think that a centralized computer is so fundamen-  
20 tal to the struggle against welfare abuse that that ought to  
21 be put in place at the earliest possible money. I would like  
22 to urge that the staff get in touch with these people and see  
23 what their suggestions are and see what we can do.

24 I do not know why we should not be moving forward with  
25 this. Nobody would argue about it.

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1 Senator Talmadge. I agree entirely, Mr. Chairman.

2 Senator Hansen. I agree, to.

3 I hear the rumor is that they got the idea from the  
4 original concept of postcard voter registration.

5 The Chairman. If they had not thought of it before,  
6 that matter stimulated it. I instruct Mr. Stern to see what  
7 can be done about preparing an amendment on those lines. You  
8 can work with our colleagues.

9 Senator Talmadge. Bill Galvin has been working on some-  
10 thing similar to that at my request, Mr. Chairman.

11 The Chairman. I think that will be fine.

12 Senator Talmadge. His recommendation is the system be  
13 able to provide data for all factors in the AFDC eligibility  
14 determination process, checks with other agencies, notifying  
15 the Food Stamp and Medicaid programs whenever an AFDC case  
16 becomes ineligible or the amount of the grant is changed.

17 The system must provide for security of unauthorized  
18 use. Prior approval by HEW of the proposed system, or any  
19 present system, to insure it is capable of meeting the objec-  
20 tives of the management systems will be necessary before any  
21 increased funding will be authorized.

22 HEW will be required to provide technical assistance to  
23 the states for planning, designing, development and installing  
24 in the state automated management information. HEW would also  
25 be required to review and inspect the operation of the system

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1 a continuing basis to insure that it continues to function  
2 so that the proposal remains secure. I think that is an  
3 excellent idea. I notice that you have proposed it.

4 The Chairman. If you have already prepared the amend-  
5 ment --

6 Senator Talmadge. Do you have it prepared, Bill?

7 Mr. Stern. That assumes another suggestion that we made,  
8 that you raise the matching for computers to 90 percent and the  
9 operation to 75 percent, as you do under Medicaid. This would  
10 be on top of that.

11 Do you want to tentatively agree?

12 The Chairman. If there is no objection, why do we not  
13 add the amendment to the bill. That will be one more long  
14 stride towards reform of the welfare program. It is long over-  
15 due.

16 Let me ask you, in connection with that, if it does no  
17 harm, it may do some good. I would like Mr. Galvin to hear  
18 this.

19 If it does no harm and it might do some good, at least  
20 to have the information that is on the voter registration rolls  
21 that is public information as well. I would think that the  
22 city directories and the telephone books, that would be looked  
23 at also, would it not?

24 Mr. Galvin. You would not be looking at that with a  
25 computer, sir. You would be looking at that ordinarily not with



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1 a computer, sir. The idea behind the computer system is that  
2 you could quickly check whatever any other agency had on a  
3 computer, crosscheck it.

4 Also, until we get the computers, we have to do a number  
5 of manual checks, which could use these measures.

6 The Chairman. All right.

7 Would you crosscheck, or could you get the information --  
8 it is supposed to be available to us from the drivers licenses  
9 and the vehicle registration services. Can you get that  
10 information, too?

11 Mr. Galvin. We can do that in many states. We cannot  
12 do that in all states.

13 As I mentioned the other day, some of the states have  
14 a privacy act similar to the Federal government. Under that  
15 privacy act, they do not allow us access.

16 Senator Moynihan was being interested in being able to  
17 check on numbers or wage records under Social Security. I am  
18 interested in the other employment income you were talking  
19 about in the states. Most states have an employment security  
20 agency with all the data in the state.

21 We have been advised that eighteen states do not have  
22 that data, and would have to get Social Security wage data.  
23 They could check on all of the others.

24 The question always comes up, do you want to require  
25 them or do you want to have it as a state option? I would say



1 certainly at the beginning you would want it as a state option  
2 because most states do not have computers.

3 I would say that after a year, by this time they could  
4 all have a system, or a year and a half, if you wanted to go  
5 that far, they could have a system that would be able to  
6 provide the checks, other than manually.

7 Senator Talmadge. There is another parallel item to that,  
8 Mr. Chairman. Some state officials have taken the position that  
9 any provision of that nature prohibits state legislative auditors,  
10 and the General Accounting Office, from having access to the  
11 AFDC files.

12 I think that we ought to modify that section and clarify  
13 it that any governmental agency authorized by law to conduct  
14 an audit for similar activities in connection with the adminis-  
15 tration of the AFDC program is not included in the prohibition.  
16 It would also exclude the Committee on Finance and the Committee  
17 on Ways and Means from that prohibition.

18 If we are going to set up an act where we cannot even  
19 check to see, I think that it precludes any real investigation  
20 and the computer systems from working efficiently. Certainly  
21 the agency is charged with the responsibility of enforcing the  
22 law, and the Committee on Ways and Means and Finance who would  
23 hold hearings and inquiring on this for the purpose of legisla-  
24 tion ought to have the privilege of looking at these records.

25 Senator Hansen. I agree.



1 The Chairman. Without objection.

2 We should try to do something about the present problem  
3 in child support, a growing problem.

4 The lawyers who are defending against child support, we  
5 pay government lawyers to help fathers not do their duty, among  
6 other things. The poverty lawyers on the defense side have  
7 discovered when a father leaves the state, across the state  
8 boundary, if they raise the issue of paternity, that most states  
9 on child support cases simply will not extradite, send the man  
10 back to try a case on child support.

11 I do not know the answer to that. We ought to find an  
12 answer to that, because that is a big impediment now to child  
13 support.

14 If a man leaves the state, if you already had a court  
15 order signed in the state, you could have reached across state  
16 boundaries and have him sent back to a child support case, but  
17 if he is contending that he is not the father, when you raise  
18 the paternity issue, that he is not the father, apparently as  
19 it stands today the states, with very few exceptions, practically  
20 no state will cooperate to send a man back for child support  
21 cases.

22 Are you familiar with that, Mr. Galvin?

23 Mr. Galvin. I am very familiar with it. In many states,  
24 all you have to do is leave the state and you are off the  
25 jurisdiction of any court whatsoever as far as establishing





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paternity.

If you leave the country, you are also out of the jurisdiction of any court for establishing support or paternity, even for establishing support in the case where a man is legally married and is the acknowledged father, you cannot get support.

Being familiar with the problem and what do do about it, we have not gone into it, because this would involve overriding state laws. In the state of Louisiana, for example, this is one of the states where if you leave the state and paternity has not been established, there is nothing you can do about it unless they come back to Louisiana.

Senator Talmadge. May I suggest, Mr. Chairman, that the staff be directed to look into that and see if we can find some solution.

The Chairman. You have a law on the books. Senator Talmadge's amendment made it a crime to leave the state for the purpose of avoiding support of the child. You have a couple of items there. One, there is the matter of intent. One can contend that he left the state for a different reason.

The second point is if paternity has not been established at that point, they can contend, or he can contend, that that is not his child. If you do not have paternity established, you are on the defensive.

There is another thing involved here. Under the due process

1 matter in these various liberal decisions of the court, they  
2 have fixed it up so that in a criminal case you practically can  
3 never come to the end of the case. You try it, you try it  
4 again, try it again, try it some more, so you have to convict  
5 a man three or four times and then take it to the Supreme  
6 Court and back and forth to the Federal courts until somebody  
7 starts a new idea and starts all over again.

8 It would look like if the imagination of a lawyer can  
9 keep a criminal case, a simple felony case, in court for ten  
10 years if he wants to and try the case six or seven times before  
11 it is over with, they have so burdened themselves under the  
12 imaginative leadership of the Supreme Court, they have so  
13 burdened themselves with the use of the trial in felony cases,  
14 now they give an excuse they cannot look at child support  
15 cases because they have so many felonies. If they are going  
16 to try each case fifty times, I can understand why they cannot  
17 get around to looking at child support cases.

18 We might need to provide the funds to set up some special  
19 unit just to look at family matters, provide some funds for  
20 family courts and two-family courts, to help provide adequate  
21 judges to hear the cases. All we want to do is have somebody  
22 who knows something about family law --

23 Senator Talmadge. Under the Nunn amendment, as you know,  
24 in areas where they are trying to make it work, many states  
25 are making money on it including Michigan. We made a provision



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1 of law permanent in this bill.

2 Mr. Galvin. Under the suggestion of providing finances  
3 for the courts, I would suggest it should be a localized  
4 segment of the court.

5 I would have a serious question on whether you could  
6 provide financing to the judges of the court.

7 Senator Talmadge. Do we not give them benefits under the  
8 Nunn amendment to save money?

9 Mr. Galvin. Not to the judges.

10 Senator Talmadge. To the states?

11 The Chairman. I believe we could make payments to the  
12 state, relate it to the number of cases of the judges here,  
13 the number of cases that the judges decide. You can find a  
14 way to aid the states in those activities in the states that  
15 are doing a job.

16 I guess that is one of the things that we would look  
17 into. There is one other aspect of it that we ought to try  
18 to find an answer for before we report this bill.

19 The child support people in the state of Michigan have  
20 done such a good job in reducing those rolls by making fathers  
21 support children that the child support people are not complain-  
22 ing that in welfare offices, these welfare directors that the  
23 counties seem to be compensated based on the number of clients  
24 they have under their jurisdiction.

25 They are sending out emergency calls to their field



1 offices to put anybody on they can find to keep the cases  
2 up by reducing people off the rolls who do not belong  
3 there, if they are going to maintain as many employees as they  
4 have in the district offices and maintain the salaries of  
5 the district directors which seems to go by the number of people  
6 he has under his jurisdiction, and also the number of welfare  
7 clients he has on the rolls, apparently they send out the  
8 emergency call to load the rolls up to try to maintain the  
9 salaries of the employees who are supposed to process the  
10 claims.

11 If that is how it is, I guess we are going to have to  
12 try to coerce the states out of doing that. I wish you would  
13 take a look at that, Mr. Galvin. Inquire into it and see if  
14 it is a problem, because if it is, perhaps the Governor of  
15 the state does not know about it.

16 We have to applaud him for having a child support program,  
17 probably the best in the country. If his people are being  
18 frustrated by people on the other end adding unqualified  
19 people to the rolls faster than the child support people can  
20 take them off, I guess there is something that should be done,  
21 at least to try to encourage those people not to be so zealous  
22 in putting people on the rolls who do not, perhaps, belong on  
23 there at all.

24 Senator Hansen?

25 Senator Hansen. Mr. Chairman, I applaud you for your



1 understanding and concern to take actions which will result  
 2 in judicial action that would address these problems. Of  
 3 course, that is, as I understand it, the basis upon which you  
 4 want to have staff examine into the possibility, as I understood  
 5 you to say, Federal funds, to help the courts.

6 With the same objectives in mind, I certainly subscribe  
 7 to them, I think we ought to also look at present law and see  
 8 if there might be ways in which we could tighten up on the  
 9 other hand, without having to put Federal funds, as I do not  
 10 know what the situation is in any state except Wyoming. But I  
 11 cannot escape the conviction that the state of Wyoming has  
 12 a better opportunity to raise additional revenues than does  
 13 the Federal government.

14 On the other hand, the situation in that state, as it  
 15 is everywhere, if there are Federal funds available, there is  
 16 no doubt about them taking it. I remember the Governor of  
 17 Wyoming back in the early 60's, different counties would come  
 18 in on these grants-in-aid programs. They would have a  
 19 specific problem in mind, the city would or the county would.

20 They would first describe what their problem was,  
 21 specifically what they wanted. Then when they started looking  
 22 at a little catalogue that we put together to try to explain  
 23 in part what some of the government aid programs were, you  
 24 would find that their specificity sort of melted away when  
 25 they discovered that the particular program in which they were

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interested had grants in aid that would put in one Federal dollar for every three state or local dollars, when another one would put in a dollar for dollar.

I would hope that staff might look at that, along with your suggestion of ways in which we might tighten up. I just have the feeling that, when people actually are putting in dollars from local tax rolls for the purpose -- not that their compassion will be less, but they will be more certain to see that the dollars that are spent go to deserving and qualified people.

I think one of the problems with welfare in the past has been the inability of anyone to know who is on welfare. I understand fully what the problems are there and the need for nonpublication of welfare rolls. One of the consequences of that is that it does let a lot of people get on the rolls that I think would not be there if there was an opportunity for closer scrutiny to be made of it.

The Chairman. Senator Talmadge wants to get on to his amendments. I suggest we move to that, the Talmadge Medicare and Medicaid Anti-Fraud and Abuse.

Senator Talmadge. Mr. Chairman, yesterday you directed the staff to prepare a brief summary of the issues that had not been determined by this Committee before. I believe Mr. Constantine has done that. That is in the two-page document in front of you.



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1 Mr. Constantine. Mr. Chairman, you asked us yesterday  
2 to go through the staff document, the longer one, and indicate  
3 those areas where we thought that there were problems with the  
4 House bill or the Senate provisions, apart from that that any  
5 Senator could raise.

6 The Chairman. A two-page document. Where is that?

7 Mr. Constantine. The Senators would raise whatever else  
8 they wanted to raise.

9 The first section which we had suggestions on relates  
10 to provisions on pages 7 and 8 of the staff document and it  
11 deals with the review requirements for PSRO's.

12 The House put in a fairly substantial section on a design  
13 they believe will improve the operation of PSRO program, with  
14 hearings in both committees. Among other things, they had  
15 one provision which required the Secretary to develop  
16 ambulatory care review methodology.

17 Staff recommended deletion of that. There is presently  
18 authority. There is concern that there would be a fair reac-  
19 tion among doctors to the idea of the Secretary developing  
20 methodologies.

21 There is authority under existing law; there is no need  
22 for it. The PSRO's which want to review ambulatory care be  
23 permitted to review it at any time the Secretary finds them  
24 capable of doing it, that is existing law, and further to  
25 clarify that the PSRO's may be reimbursed under assistance



1 agreements rather than elaborate contractual relationships.  
2 That is what the House wants. We are just clarifying it along  
3 those lines.

4 The Chairman. That is in the amendment. It does not have  
5 to be agreed to individually.

6 Mr. Constantine. Yes, sir.

7 The Chairman. What else do you have there?

8 Mr. Constantine. There is some modification. Senator  
9 Dole had an amendment which we certainly agreed with that the  
10 Secretary may not require a PSRO to undertake ambulatory  
11 care review prior to the completion of its conditional period,  
12 trial period.

13 The Chairman. You have no objection to that?

14 Without objection, it is agreed to.

15 Mr. Constantine. On pages 8 to 10, there is a section  
16 relating to the state Medicare programs and PSRO's. Some of  
17 the states are concerned that the PSRO's, the doctors may be  
18 approving care which affects the state's finances adversely  
19 but the Secretary under present law is concerned with that also  
20 because the Federal government is putting up more than half  
21 the money.

22 The House provision had a very elaborate process which  
23 frankly could very well have resulted in interminable delays  
24 back and forth between the states and the PSRO's and HEW, but  
25 what the staff recommends is that the Secretary, taking the





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1 House provisions and modifying it so that the Secretary has  
 2 to make a determination within 30 days of a complaint by the  
 3 state that a PSRO is one, not making proper determinations as  
 4 to medical necessity and quality of care, and it has an adverse  
 5 financial impact, that he has to make that decision within 30  
 6 days so that it will not drag on.

7 He may suspend a PSRO, rather than "shall suspend," if  
 8 he finds that there is a problem. If you say "shall," as the  
 9 House bill does, it can really lead to a very disruptive thing  
 10 where everything comes to a screeching halt simply because there  
 11 is a problem with a given PSRO.

12 The Secretary may be satisfied that they have corrected  
 13 the problem under the House provision, you automatically would  
 14 have to suspend regardless. We recommend making that a "may"  
 15 rather than "shall."

16 Finally, in order to avoid dragging on in the courts for  
 17 years and getting a decision up or down that the Secretary's  
 18 determinations under the provision not be subject to judicial  
 19 review, that you can just go on and on and not have anyone  
 20 doing anything.

21 The Chairman. Without objection, agreed.

22 Mr. Constantine. The next one is simply a change in the  
 23 effective date of the staggered terms of the members of the  
 24 Council from 1979 to 1977. The Administration asked for that  
 25 change, we are in agreement. That is a nominal change in



1 effective date.

2 The Chairman. That is in the amendment itself, is it  
3 not?

4 Mr. Constantine. Yes, sir.

5 The Chairman. It does not have to be agreed to.


6 Mr. Constantine. We are suggesting that you modify the  
7 House provision on the effective date.

8 The Chairman. That is agreed to.

9 Mr. Constantine. On page 13 there is a requirement on the  
10 data PSRO performance that it include specific information on  
11 their formal denials, that is, where did they specifically say  
12 that this person did need surgery or not. The effective-  
13 ness of the PSRO, the staff recommends that it be deleted.  
14 There are other means of doing that other than putting a  
15 traffic cop and quota tickets on it.

16 The real effect is the informal discussions rather than  
17 the informal rejections. Usually the PSRO's are doing a job  
18 through informal discussions rather than handing out tickets.  
19 This gives you a very misleading impression and the information  
20 is otherwise available to the government.

21 The Chairman. Without objection, agreed.



22 Mr. Constantine. The next one, it was a major provision  
23 in the House on confidentiality. There is a lot of concern  
24 with confidentiality of medical records. There were two  
25 different amendments in both Ways and Means and Interstate and

1 Foreign Commerce. Since the inception of the Medicare and  
2 Medicaid program, we have not heard a single case in all of  
3 the millions of cases in Medicare and Medicaid where anyone  
4 has alleged that their confidentiality was violated. That does  
5 not mean that it has not occurred; it just means that it has  
6 not surfaced. No one has alleged that with the PSRO's,  
7 either.

8 The staff recommends that you take that section of the  
9 Interstate and Foreign Commerce amendment that requires the  
10 Secretary to report with recommendations within three months.  
11 They are working on that right now, based upon the Commission  
12 on Privacy's report. We would suggest that you accept that  
13 provision.

14 Senator Hansen. Mr. Chairman, Senator Curtis, who is  
15 attending a conference on the agriculture bill, would like  
16 very much to have an opportunity to be heard on this section.  
17 If we may, I would like to ask that this be laid aside until  
18 he can come.

19 The Chairman. All right. We will discuss that.

20 Senator Hansen. Mr. Chairman, let me observe that I have  
21 been down with the Energy Natural Resources Committee until  
22 about 9:30 when I came up here. I have got to go back down  
23 there. We have some nominations coming up, and I will get  
24 back there as quick as I can.

25 Senator Hathaway. We have to have a Republican here.



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The Chairman. We do not like to act on those without a Republican.

Senator Hansen. Senator Jackson had some nominations that he wanted to report out.

(Pause)

I will stay.

The Chairman. Let us just run through these and see if we can reach a tentative judgment on them.

Mr. Constantine. Yes, sir.

The next one is simply restoring the Senate language, which would give the Comptroller General authority to issue subpoenas under all Social Security Act programs, not just Medicare and Medicaid.

The Chairman. Without objection, agreed.

Mr. Constantine. The next item is an effective date.

The Chairman. Without objection, agreed.

Mr. Constantine. On item 21, the state of Michigan has asked for a modification to essentially parallel the Title IV-D support orders for maintenance support to also include medical support, and they have been able to recover quite a bit of money. One way, with absent parents who have health insurance, and so on. We think it is meritorious.

The Chairman. Without objection, agreed.

Mr. Constantine. On page 24, to speed up state anti-fraud and anti-abuse efforts, the House included a provision

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1 paralleling the New York State, the Attorney General and  
2 Special Prosecutor for Nursing Homes activities, where he also  
3 investigates and prosecutes on a statewide basis. They are  
4 probably doing the best work in the country. They recovered  
5 an estimated \$50 million.

6 We would recommend that the House provision be taken where  
7 they have 90 percent Federal matching for three years.

8 The Chairman. Without objection, agreed.

9 Mr. Constantine. We recommend 100 percent the first  
10 year, 90 percent in '75 as opposed to 90 percent for three  
11 years.

12 The Chairman. Without objection, agreed.

13 Mr. Constantine. The next section is on hospital cost  
14 support. The staff suggests inclusion of additional language  
15 to the provision which has been agreed to by the American  
16 Hospital Association and the Administration to clarify the  
17 ability to effectively compare and report hospital costs.

18 The Chairman. Without objection, agreed.

19 Mr. Constantine. The next one was a major one. This was  
20 the Dole amendment where the Secretary was applying under the  
21 law where he had no choice, reductions in Federal matching to  
22 the states for failure to undertake required independent  
23 medical review activities, and proposed \$140 million in  
24 reductions.

25 Under Senator Dole's amendment, the Committee postponed

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that for 90 days so it could act. This came over from the House.

We would suggest substituting in general for the House provisions, the more moderate approach along the lines that you can see right there, that in noncompliance we waive all requirements for past noncompliance; that future reductions shall only be proportional to the amount of patients not reviewed rather than across the board; that the inclusion of definitional material and qualifications in the House be included; that the Secretary can waive technical noncompliance where something occurs beyond the state's control, as well as Senator Dole's amendment which would facilitate the degree in the states with large rural populations.

We have heard from North Dakota; today, we require an independent review in a nursing home, be a team headed by an M.D.; in the case of an intermediate care facility, it can be a team headed by an M.D. or R.N.

Senator Dole's amendment says it can for nursing homes as well be an R.N. or an M.D., and we would agree with that. That would facilitate the review.

The Chairman. Without objection, agreed.

Senator Hansen. What this does, now it must be by an M.D. plus others, but this would let an R.N. --

Mr. Constantine. Yes, sir, or an M.D., whatever the state is able to come up with.



1 On the other suggested amendments, Senator Dole has  
2 an amendment. There has been a running battle with IRS --  
3 not a running battle, but IRS, on 501(c)(3) status for the  
4 PSRO's. Senator Dole wants to include the PSRO's inasmuch as  
5 they are undertaking mandated Federal activity as organiza-  
6 tions eligible for 501, listed those eligible for 501(c)(3)  
7 status.

8 That would enable a number of them to receive foundation  
9 grants to undertake evaluations of care in the area and so  
10 on.

11 The Chairman. Without objection, the amendment is agreed  
12 to.

13 Mr. Constantine. The balance of the recommendations are  
14 on page 28.

15 The Chairman. These are all the things that we agreed  
16 to before?

17 Mr. Constantine. On 28 and 29. Some of them are,  
18 Senator. There is the Hathaway amendment, for example, on  
19 page 28.

20 The Chairman. Pages 28 and 29. All right.

21 Mr. Constantine. There has been a problem with GAO,  
22 state prosecutors and so on, and the HEW audit, I have found  
23 a great deal of problems in the management of nursing home  
24 patients' fund. Senator Hathaway has recommended an amend-  
25 ment which we strongly agree to that nursing homes be required



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1 to maintain patient funds in a separate account, not for each  
2 patient, but in the aggregate, by identifying each patient.

3 They cannot co-mingle those funds with funds of the  
4 home and the institution.

5 The Chairman. Is there any objection?

6 Without any objection, agreed.

7 Mr. Constantine. Under current PSRO provisions, the  
8 physician cannot review hospital care and service in which  
9 he has active staff privileges under certain circumstances.  
10 This has not proved a problem where we have nondelegated  
11 review.

12 For example, the Colorado doctors go into a hospital and  
13 review, even though it has staff privileges in that hospital,  
14 and there is no problem with it. We suggest that that restric-  
15 tion in present law be deleted. The doctors have asked for  
16 it.

17 The Chairman. Without objection, agreed.

18 Mr. Constantine. Under present law, when you determine  
19 that a patient does not need any further care in the hospital,  
20 we can pay for up to three additional days to arrange for his  
21 discharge.

22 The PSRO's have told us that that, in a number of cases,  
23 leads to keeping patients beyond the point, paying for consider-  
24 ably more care than we have to.

25 We worked out a provision where the three days is

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1 discretionary, rather than mandatory. In an areas where the  
2 PSRO is doing the review, they have the discretion on a case  
3 by case basis.

4 The Chairman. Without objection, agreed.

5 Mr. Constantine. That would give it more flexibility.

6 The next provision would be to enhance the prosecution  
7 of possible fraud under Medicare and Medicaid. There has been  
8 an emormous amount of testimony to the effect that partly  
9 Justice has been lax in prosecuting cases of Medicare and  
10 Medicaid fraud.

11 It requires sophistication in developing the cases. They  
12 are spread thin.

13 Under this provision, which was included essentially in  
14 the Talmadge bill last year, following the formal referral of  
15 a case, a fraud case to the Department of Justice, where the  
16 Department has not instituted formal proceedings within six  
17 months of the referral, the Inspector General of HEW may  
18 prosecute civil fraud cases -- civil fraud, not criminal  
19 fraud. Civil fraud involves preponderance of the evidence  
20 rather than beyond the reasonable doubt.

21 The Department has neutralized the provision. We feel  
22 that it would significantly stimulate the follow-up on the  
23 fraud cases.

24 The Chairman. Without objection, the amendment is agreed  
25 to.



1 Mr. Constantine. In 1973, the Committee approved a  
2 provision which would consolidate program policy and operating  
3 responsibilities for Medicare in the Social Security Adminis-  
4 tration. This was because the fragmentation and divided  
5 responsibilities in the Department, which led to quite a bit  
6 of difficulty in administering the programs.

7 It led to a lot of duplicative activity. The present  
8 reorganization of the Department has divided responsibility,  
9 particularly in the areas of standards and certification,  
10 between the health side and this new Health Care Financing  
11 Administration. As a matter of fact, seeking to use Social  
12 Security Trust Fund monies for positions within the Health  
13 Care Financing Administration.

14 We strongly recommend, in order to assure coordinated  
15 policymaking and accountability, at least if there are going  
16 to be problems, let them be uniform and made in one place,  
17 that the provision which the Committee and Senate had approved  
18 in '73 be approved again and applied to the Health Care  
19 Financing Administration.

20 The Chairman. Without objection, agreed.

21 Mr. Constantine. That is the last of the provisions we  
22 had. The only provision left is that Senator Curtis did want  
23 to discuss the confidentiality again.

24 Senator Hathaway. May I go back to Section 14? It has  
25 been called to my attention that the staff recommendation

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eliminates judicial review.

Mr. Constantine. We have withdrawn that. In this print, Senator, what we have done is go for the House language which was acceptable.

Senator Hathaway. All right.

Senator Roth. On that point, I was interested in that, too, where we have not retained the House language. Let me ask you this question, because this concerns me.

As I read it, it says it could designate a regional or national intermediary. Frankly, as a Delawarean, I am not interested in having that kind of thing assigned to Philadelphia, which is the practice too often. Can that be done?

Mr. Constantine. Yes, sir.

What that is designed to deal with is a situation where you have these rural clinics, which we will be taking up, where you may want to have a regional intermediary, because there may only be two or three rural clinics in the state, or one health agency, where it is impossible to have a different intermediary for efficiency's sake.

That is our understanding of the intent of that.

Senator Roth. I understand that those are the arguments given for putting things in the other states. I do not like it, Mr. Chairman. I think we ought to protect the states in this area.

Senator Hathaway. Only if they cannot get a state one.



1 Mr. Constantine. Only if they can get an effective  
2 intermediary in that area.

3 Senator Roth. Who decides or not whether they can get  
4 an effective intermediary?

5 Mr. Constantine. I do not think you have anything to worry  
6 with that, Senator. They have been doing that from the  
7 beginning of Medicare. We have a lot of effective intermedi-  
8 aries that we never got rid of.

9 These people are really agents of the government under  
10 the law. Someone has to decide, in essence, whether they are  
11 doing a poor job or a good job.

12 If you cannot get rid of a poor performer, we are just  
13 stuck with him. If you want to indicate that regional or  
14 national for purposes -- I cannot think of any regional  
15 intermediaries now who are outside of the state areas.

16 If you want to essentially indicate that that should be  
17 done for purposes of dealing with only a small number of the  
18 type of provider home-health agency, or nursing home, or what  
19 you will, that will not bother us as a modification of that.

20 Senator Roth. Why do we even need them?

21 Mr. Constantine. It may be the region may be a much more  
22 efficient way to go to regionalize the central data processing.  
23 If you want to go regional fees for doctors, if you want to  
24 take that route there, there are all sorts of efficiencies  
25 possible.



1 We do not believe it is really going to happen. It is  
2 possible. We hate to see it precluded.

3 Senator Roth. I believe that the authority should be  
4 left in the Congress. Perhaps there might be some persuasive  
5 reason why it should be done, but it seems to me, when and  
6 if you are going to do it, the case ought to be made here.

7 Mr. Constantine. Yes, sir.

8 Senator Roth. Rather than giving this authority to the  
9 Secretary.

10 Mr. Constantine. The Secretary has authority under  
11 present law.

12 Senator Roth. That is not a reason to change it.

13 The Chairman. Do you want to amend the law to strike  
14 out the provision that says, we will not go beyond the state  
15 as PSRO's?

16 Senator Roth. If they feel that for efficiency reasons  
17 that ought to be done at a later time, I would just suggest  
18 that they come here and make that case.

19 Mr. Constantine. Senator, what you are saying is that  
20 intermediary areas will not be larger than statewide.

21 Senator Roth. I have serious concerns with some of the  
22 experiences in other areas where we move things to Philadel-  
23 phia, yes.

24 The Chairman. You are suggesting that the staff prepare  
25 an amendment that we will agree to, subject to the staff's



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1 preparing it, which would say they will not go outside the  
2 state to the region to try to get some expertise, or somebody  
3 to oversee the PSRO's.

4 All in favor, say aye.

5 (A chorus of ayes.)

6 The Chairman. Opposed no.

7 (No response)

8 The Chairman. The ayes have it.

9 Are there any further amendments to this bill at this  
10 point?

11 I would suggest, in view of the fact that we tentatively  
12 agree to this, subject to Senator Curtis' amendments and any  
13 other amendments the Senators may want to offer hereafter.  
14 I would like for the staff to explain to me the one part that  
15 does bother me.

16 I got the impression when I discussed it that it is not  
17 the same problem when I discussed it with staff and when I  
18 discussed it with people from these private hospitals about  
19 their reimbursement. It just sounds like the same problem  
20 that Mr. Califano explains and Senator Talmadge explains it,  
21 and then when the people from the Private Hospital Association  
22 explained their point of view, as I understand it, they contend  
23 that they are not permitted reimbursement enough to let them  
24 make a fair return on their investment.

25 It seems, in effect, they feel that the interest that they



1 have to pay on borrowed money, that it exceeds the rate of  
2 return that they are permitted in their Medicare and Medicaid  
3 business, and in order to make it up they have to charge the  
4 other patients a higher amount than they charge the Medicare  
5 and Medicaid persons for the same type service in order to make  
6 it back, in order to make a fair return on this money.

7 Would you please explain that, from your point of view,  
8 Mr. Constantine? Do you think that they are adequately com-  
9 pensated here?

10 Obviously, you think they are.

11 Mr. Constantine. When Medicare started, there were very  
12 few for-profit hospitals. We had a lot of for-profit skilled  
13 nursing facilities.

14 It was this Committee in 1966 which said that the problem  
15 was, while we would not give a return on investment, we would  
16 pay interest on the cost of borrowed money. This was to  
17 equalize the difference.

18 The Committee thought, at that time, that it would be  
19 appropriate to pay a return on invested net equity because if  
20 a man had his own money tied up in a facility he would have to  
21 take more of an interest in it than if he could just borrow  
22 the money.

23 The Chairman. Let me get that straight. You said that  
24 we would not pay a return on equity?

25 *Constantine*  
Mr. Stern. Yes, sir. Return on net equity, essentially

1 equivalent to what the cost of borrowing would be.

2 As an example of that, Mr. Chairman --

3 The Chairman. That we would pay an interest on the cost  
4 of borrowed money. That was the starting point?

5 If a doctor had a hospital, we would allow him no return  
6 on investment, but you would allow, the old money on it, you  
7 would allow him enough to make back the interest on the  
8 money?

9 Mr. Constantine. That is right. If he put \$100,000 in  
10 it, at that point we would not give him any return on \$100,000.  
11 If he borrowed the \$100,000 we would pay the interest expense  
12 on \$100,000. It was to equalize the situation.

13 An amendment was offered and approved to pay one and a  
14 half times the average rate of return on Social Security  
15 assets. At the present time, the average rate of return is  
16 approximately 7 percent, so in effect, government is now paying  
17 10 1/2 percent on net equity which is a reasonable return.

18 There were very few for-profit <sup>hospitals,</sup> nursing homes. Since that  
19 time, they have entered the field all over the lot.

20 There is concern about the growth of these hospitals.  
21 They are moving in and in many cases, they do an efficient  
22 job; in other cases, not so efficient.

23 They are competitive. We do not pay any kind of return  
24 for non-profit institutions. It is hard to see, from our  
25 standpoint, how you can go much beyond the 10-1/2 percent



1 guaranteed government return to these people when -- and I  
2 guess this is purely our perspective for example, when a  
3 citizen gets 6 percent on his savings bond when we borrow from  
4 him, <sup>and</sup> when there is no desire generally to attract additional  
5 capital to the hospital field.

6 As a matter of fact, the whole thrust is hospital cost  
7 containment, not bringing new capital in, but to retrench on  
8 it.

9 The more incentives that go in, the more difficult it is  
10 going to be to have the cost constraints.

11 Additionally, these people who entered the field, Senator,  
12 knew what the ground rules were when they went in. They  
13 knew that the government allowed one and a half times. A lot  
14 of people came in anyway. They still make money on Medicare  
15 and Medicaid.

16 We pick up an awful lot of overhead for them. They still  
17 charge the patients for their private rooms, for additional  
18 services, for their telephone and television. There is a lot  
19 of money.

20 I guess we will go along with whatever you want to. We  
21 think that the approach should be to give them incentive  
22 payments rather than a guaranteed return, but where they demon-  
23 strate productivity, that they can build a better mousetrap --  
24 that is the Talmadge bill's thrust, is to let them earn  
25 incentive payments where they do a better job.

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1 The Chairman. When I hear them explain it sounds as though  
2 they are not getting anywhere near the 10-1/2 percent; they  
3 way you explain it, it sounds as if they are being very  
4 adequately rewarded.

5 I do not want to appear to be two-faced, but I suppose  
6 the only way I can be satisfied I understand both sides of  
7 the argument is to have both sides here at the same time, or  
8 both sides in the same room at the same time when they explain  
9 it, so we might be able to narrow it down to the point at  
10 issue.

11 To hear them tell it, they are not getting anything like  
12 10-1/2 percent. To hear you tell it, they are being amply  
13 compensated.

14 Mr. Constantine. I think the difference may be that  
15 I guarantee that they are getting -- the law says one and a  
16 half times the average rate of return on Social Security  
17 investment. That is approximately 10-1/2 percent. I think  
18 what they are telling you is after tax that is not 10-1/2  
19 percent.

20 What we would suggest is you look at effective tax rates  
21 and a lot of other things. If I have the savings bond at  
22 6 percent, that is before tax also.

23 Senator Byrd. You take no risk when you have a savings  
24 bond.

25 Mr. Constantine. That may be. I hope not. There are those



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1 who would argue that these hospitals are not taking very much  
2 risk either. Their payments are guaranteed, in large part,  
3 by the government, by the states. They have revenue district  
4 bonds often to build hospitals. They sell stock not infre-  
5 quently to the doctors in the area. That insures some reason-  
6 able flow of patients. It is kind of a tough area.

7 To go any higher in a public program is difficult. They  
8 have asked us, for example, to include Federal income taxes  
9 as a business expense in calculating their return. We asked  
10 the <sup>Comptroller</sup> Attorney General about that. He is very concerned.

11 Obviously, they want to maximize their return.

12 The Chairman. I see part of the point of controversy:  
13 here, the concept of fair return on investment. I know if  
14 you are talking about the utility regulations, the regulating  
15 railroads, the concept of a fair return on investment, that  
16 means return after taxes, because it may be when you take  
17 the taxes into consideration, in fact, that concept initially  
18 started out at a time when the main tax you had to pay was  
19 property tax rather than income tax, but your return would  
20 still be the return you would have after you got through with  
21 paying all your taxes.

22 Perhaps that is one of the big differences in the  
23 concept of what we are talking about, if not in the Committee,  
24 at least I would try to discuss the matter further with you  
25 and with them to see if we can arrive at some concept that we



1 think is fair.

2 I, for one, am very impressed by the job some are doing;  
3 those I have been familiar with are of extremely high quality.  
4 I am all for a small community, a town of 20,000 to 25,000  
5 people having a very modern hospital that provides the very  
6 best of equipment to give people good care, when they can do  
7 that. I think that is fine.

8 Where you cannot get it done except by turning to the  
9 private market to do it, if they can do a more efficient job,  
10 that is a good thing. We do not have to decide today. We  
11 can get further advice on the subject, and hope to get together  
12 on what seems to be fair under the circumstances.

13 Mr. Stern. Mr. Chairman, the next item is called Rural  
14 Health Clinic Services.

15 ~~Mr.~~ Mr. Mongan. Mr. Chairman, in a moment, I will have a  
16 mimeographed form dated July 26th, entitled rural health  
17 clinics. At the beginning of that mimeograph we go into some  
18 background material about this issue.

19 The Chairman. Are we considering this as an amendment to  
20 the bill?

21 Mr. Mongan. No, sir. This is a bill -- there are two  
22 bills before the Senate. The Ways and Means Subcommittee on  
23 Health has acted on the bill. We have talked with Mr.  
24 Stern about putting this on a tariff bill so we could act  
25 quickly in September on this issue.



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The Chairman. All right.

Mr. Mongan. Basically, the issue involves areas in the country where we have a shortage of physicians. There has been an effort mounted over recent years to develop a new kind of health practitioner, or physician assistant or nurse practitioners, to help out in these areas. Particularly in these rural areas, many of these physicians and practitioners have gone to work in rural health clinics, most of which do not have a full-time doctor. A few do have a full-time physician, but most a part-time physician present.

There are about 600 of these rural clinics around the country and all of them, to a greater or lesser degree, face some financial problems. The biggest difficulty they face is they are unsuccessful in capturing third-party reimbursement either from the private insurers or from Medicare or Medicaid.

We point out that there are other problems these clinics face with respect to state licensure laws, et cetera. One of their most serious problems is their inability to capture third party payments. We review quickly Federal law with respect to these payments. The private insurers are free to do what they want.

While some of them do not pay for these services and are apparently waiting to follow a Medicaid precedent, and Medicare is optional in the states, some 27 states do pay these clinics. The remainder do not.

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1 Under Medicare, they basically do not receive reimburse-  
2 ment. We have fairly tight restrictions on our Medicare  
3 reimbursement. The money can flow to physicians, but only  
4 under very limited circumstances can we pay the physician  
5 assistant or nurse practitioner directly.

6 Now, we have two bills, as I said, before the Senate,  
7 the Clark-Leahy bill, S. 708, and Senator Bentsen put in the  
8 Rostenkowski bill from the House, S. 1877. Both of these  
9 bills would establish a new Part B provider for rural health  
10 clinics, which would be eligible for reimbursement by Medicare  
11 on a cost-related basis.

12 We have a series of issues to bring to the Committee,  
13 about nine or ten involving this particular issue.

14 The first of these is whether or not these clinics should  
15 be limited to rural areas. Both of the bills before the  
16 Committee would limit the clinics to rural areas. Some have  
17 maintained that they could be used in urban areas as well.  
18 The Ways and Means Committee voted to limit it to rural  
19 areas but have a demonstration provision for urban areas.  
20 We would recommend following that Ways and Means action.

21 The Chairman. Is there any discussion?

22 Without objection, agreed.

23 Mr. Mongan. The second issue which arises, then, is  
24 the definition of a rural area. The two bills, Clark-Leahy  
25 and Bentsen, differ somewhat in this respect. The Clark-Leahy



1 seems to have a somewhat more generous definition, the Census  
2 definition of non-urbanized: that means areas of under 50,000  
3 population, then add the physician shortage test.

4 We would recommend the somewhat broader Clark-Leahy  
5 definition.

6 The Chairman. Without objection, agreed.

7 Mr. Mongan. The next issue relates to the method of  
8 reimbursement. Both bills call for cost-related reimbursement  
9 to these clinics. The staff would recommend reimbursement  
10 as outlined in the Bentsen bill. There is a slight difference.  
11 It gives us a little more flexibility in setting up the  
12 system.

13 The Chairman. Without objection, agreed.

14 Mr. Mongan. The next issue is Medicaid coverage. All  
15 of what we have been talking about thus far has been coverage  
16 under Medicare. Neither the Clark-Leahy or Bentsen bill  
17 calls for mandating Medicaid coverage. It was thought at the  
18 staff level that since only about 25 percent of the patients  
19 were Medicare patients, another 20 percent or so were Medicaid  
20 patients, if, in fact, we wanted to insure the survival of  
21 these clinics, we probably ought to mandate Medicaid coverage  
22 in those states that do not cover them, in addition to Medicare  
23 coverage.

24 The Chairman. Without objection, agreed to.

25 Mr. Mongan. The next issue, then, involves, back on

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1 Medicare services, whether or not the Medicare deductible  
2 ought to be applied to these services. Again, the bills  
3 differ in this respect.

4 The Clark-Leahy bill would eliminate the deductible.  
5 The Rostenkowski-Bentsen bill would maintain the deductible.  
6 Those who want to eliminate it say that people would have more  
7 access to the service if the deductible did not exist. Oppo-  
8 nents of this claim that this would be inequitable to people  
9 using all other types of health services. In fact, the  
10 government would be encouraging this particular clinic over and  
11 above the use of other types of services.

12 The staff would recommend maintaining deductibles by  
13 giving the Secretary some authority to, in lieu of a deductible,  
14 put on goal payments which might involve some administrative  
15 simplicity.

16 The Chairman. Without objection, agreed.

17 Mr. Mongan. The next issue is the definition of a  
18 physician extender. The bills differ in a key respect. The  
19 Clark-Leahy bill calls for state licensure, plus passage of  
20 two private examinations, the Nurse Practitioner's Exam or  
21 the Physician Assistant's Exam.

22 The Bentsen bill also calls for state licensure, but in  
23 lieu of the two tests, calls for the practitioners to meet  
24 standards established by the Secretary.

25 Understanding -- and report language would clarify, such





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1 language as the Secretary might indicate, mechanisms similar  
2 to these two tests. The difficulty with using just the two  
3 tests is that there are some type of physician extenders, like  
4 a nurse midwives who do not fall into the category  
5 covered by the two specific examinations.

6 There is an additional difficulty in that it gives the  
7 private organization which charges fees for these tests, as  
8 a delegation of HEW's administrative authority to these two  
9 organizations.

10 We would recommend the Bentsen-Rostenkowski bill which  
11 calls for state licensure plus additional standards as called  
12 for by the Secretary.

13 The Chairman. Without objection, agreed.

14 Mr. Mongan. The next issue relates to the scope of  
15 services covered in these clinics. Again, those bills here  
16 call for limiting coverage to those services currently covered  
17 by the Medicare program.

18 We have a similar issue arise with the Medicare deductible.  
19 Some have said broader service, it should be covered, but  
20 we would recommend, as called for in the two bills, limiting  
21 coverage to currently Medicare-covered items.

22 The Chairman. Without objection, agreed.

23 Mr. Mongan. The next three issues, Mr. Chairman, I think  
24 probably get to be a little more minor. I will go through them  
25 quickly.



1 There is some dispute among these assistants and practi-  
2 tioners as to what they should be called. The original bills  
3 called them physician extenders. As Mr. Constantine points  
4 out, some of them feel that sounds a little like Hamburger  
5 Helper. They did not like that terminology very much.

6 They have asked that we call them primary care practitioners.  
7 We thought that was a little misleading and led to some confu-  
8 sion with physicians themselves.

9 We recommend just drafting the bill in terms of nurse  
10 practitioner and physician assistant, the terms they are  
11 comfortable with under the present situation.

12 The Chairman. Without objection.

13 Mr. Mongan. The next issue is the definition of rural  
14 clinics. Two issues. What laboratory requirement should be  
15 called for, and if there should be an utilization review  
16 requirement. We would recommend the approach of the Department  
17 that there should be laboratory requirements, but not  
18 binding them down to the very specific requirements of a full  
19 clinical laboratory has to meet, giving the Secretary some  
20 discretion.

21 Additionally, with respect to utilization review  
22 requirements, we felt that those should be called for, since  
23 there was a new benefit, and there is some question about  
24 whether or not this would be subject to some abuse. We thought  
25 it would be best going in to have some requirements for



1 review of the service.

2 The Chairman. Without objection, agreed.

3 Mr. Mongan. The final issue involves the relationship  
4 in these clinics between the physician and physician extender.  
5 The first issue is whether or not we should cover these  
6 clinics regardless of whether or not there is a full-time  
7 physician present. Some have said, if there is a full-time  
8 physician, we should just bill fee-for-service. We should  
9 forget this clinic concept.

10 Those who support the clinics feel if they are able to  
11 get a full-time physician, we should not penalize them by making  
12 them change their method of operation. They encourage cover-  
13 ing both full-time and part-time physician clinics. We would  
14 recommend that ourselves, also.

15 The Chairman. Without objection, agreed.

16 Mr. Mongan. We would move on to the final issues, a  
17 series of very minor, but important to the group, relations  
18 between the physicians and the extenders as to who draws up  
19 the orders and who draws up the overall plan of care.

20 We would recommend an amalgam between the two bills  
21 calling for supervision and guidance by the extender, of the  
22 extenders by the physician, preparation by the two parties  
23 together of treatment protocols and written policy as called  
24 for in the Clark-Leahy bill.

25 The Chairman. Without objection, agreed.



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Mr. Mongan. That finishes the issues.

Excuse me, there were two additional amendments, which Senator Dole had. One of them related to rural areas where we did not have any home-health agencies and it would basically call for changing the requirement under present law to be a home-health agency, you have to offer more than one type of service.

You would say in areas where you do not have a home-health agency, but do have one of these clinics, that the clinic could provide home-health services without having to provide this other range of services.

The second amendment of Senator Dole's was to call for a study and report on the advantages and disadvantages of extending this kind of coverage to free-standing mental health centers in urban and rural locations, and Senator Dole has a series of items that he would like to study.

The Chairman. What do you think about these amendments. Do you recommend them?

Mr. Mongan. I would recommend both of them.

The Chairman. Without objection, agreed.

The thought was that we would add this to some House-passed revenue bill, perhaps a tariff bill. We have some of those over here.

Mr. Stern. That is what we suggest you take up next. There are a number of tariff bills.



1 We have a pamphlet --

2 The Chairman. Senator Ribicoff, I suggest you move up  
3 here.

4 Senator Ribicoff. Mr. Chairman, we have held hearings  
5 on these various tariff matters. I have had a discussion with  
6 both the majority and minority staff. We have come to general  
7 agreement between the staffs and the subcommittee, and I think  
8 we have gone along fairly well consistently with the Adminis-  
9 tration's point of view as well.

10 I think Mr. Cassidy is in a position to move rapidly on  
11 these matters, and where there is controversy, I would suggest  
12 Mr. Cassidy point that out.

13 Mr. Cassidy. Mr. Chairman, if you would look at the sheet  
14 which is now in front of you, entitled "Various Tariff Measures  
15 Pending in Committee," all of these bills are described in  
16 considerable detail in the blue book which you have in front  
17 of you; under item 1 of the single xeroxed sheet, there are  
18 19 bills. We have no objections on 18 of these 19 bills,  
19 however, on H.R. 5176, we have been told informally that the  
20 Administration has a problem. They have not communicated with  
21 us formally.

22 We suggest we defer consideration of that.

23 Of the 18 remaining bills I understand that Senator  
24 Byrd may have an amendment to one, H.R. 3259, relating to  
25 duties, the importation of horses, which would amend the

1 effective date so that it would be suspended until June 30,  
2 1980.

3 The Chairman. Why do we not take these first? Why do  
4 you not simply tell us what these bills are?

5 The aircraft loaner engines. Tell us briefly.

6 Mr. Cassidy. I can run through all of the bills, Mr.  
7 Chairman.

8 The first bill on the list is a permanent change in the  
9 law that would permit duty-free entry of aircraft loaner  
10 engines. Aircraft loaner engines are engines which are owned  
11 by U.S. aircraft repair companies. When an airplane breaks  
12 down overseas, they send their engine to the airplane and  
13 take the broken down engine and bring it back to the United  
14 States.

15 The problem is, under current law, each time that the  
16 loaner engine owned by the U.S. company is brought back into  
17 the United States, they must pay a duty over and over.

18 The Chairman. Even though it was manufactured here?

19 Mr. Cassidy. No, these are foreign-made engines, but  
20 U.S. companies which repair these foreign-made engines. They are  
21 facing severe competition from aircraft repair companies in  
22 Canada, the United Kingdom and Hong Kong. Engines that they  
23 are repairing are engines like the Rolls Royce, Patton-  
24 Whitney, things like this.

25 We estimate there are between 100 and 150 entries a year



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1 of engines like this that cost American firms approximately  
2 \$2 million a year. It serves no purpose that we can make  
3 out.

4 The Chairman. It does raise a little money. It raised  
5 \$2.5 million, I see. Is that right?

6 Mr. Cassidy. Right now, we raise \$2 million, right.  
7 Senator Ribicoff. Against that, Mr. Chairman, you would

8 encourage these repairs on loaner engines to be serviced in  
9 England, Hong Kong or other places, depriving people of  
10 jobs. I understand this company has about 700 employees in  
11 New Jersey, as explained by Senator Williams.

12 The Chairman. I have no objection to that. That might  
13 be as good a bill as any to put the amendments to that we  
14 just agreed to with regard to the health care, the doctors  
15 and nurses for rural hospitals. Just add it to that bill.

16 If there is no objection, we will add it.

17 Without objection, the bill will be reported.  
18 What is the next one?

19 Mr. Cassidy. The next one on the list has to do with  
20 intravenous fat emulsions. This is a product that is used  
21 for intravenous feeding in hospitals, not manufactured in the  
22 United States, made in Sweden and is marketed in the United  
23 States by Carter Laboratories in California.

24 We estimate that a temporary suspension of the duty until  
25 June 30, 1980 would result in a loss of Customs Revenues of

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1 approximately \$126,000.

2 The Chairman. Is there any objection?

3 Without objection, the bill will be reported.

4 Senator Packwood. Mr. Chairman, I have no objection, but  
5 at some stage, I would like to add to one of these bills the  
6 change in the liquor tariffs that I have offered from time  
7 to time before and we have passed in this Committee.

8 What we are up against is that Americans can bring in  
9 one quart of liquor duty-free when they come back to this  
10 country and foreigners can bring in five quarts duty-free.

11 What is happening is that duty-free stores are being  
12 set up along the Canadian border. Canadian tourists, or  
13 sometimes working people who work in this country, are bringing  
14 in liquor and selling the four quarts.

15 I have a letter from the Oregon Liquor Commission. We  
16 think it is causing some loss of revenue. We have state liquor  
17 stores in Oregon. Certainly it is a problem in any border  
18 state. It is becoming an increasing problem.

19 This amendment would do nothing but treat foreigners  
20 exactly the same as we now treat Americans. They can bring  
21 in one quart duty-free.

22 I would like to add it to one of these bills as we go  
23 along.

24 Mr. Cassidy. We are familiar with this amendment of Senator  
25 Packwood's. We have no trouble with it.





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The Chairman. Why have we not passed that bill up to now?

Senator Packwood. What happened, we passed it last year on one bill. Then we adjourned before the House took it up.

The Ways and Means Committee actually passed it three years ago. For some reason we did not take it up.

I do not think there has been any objection, even in Ways and Means. There has been no objection in the Senate. We could attach it to one of these.

The Chairman. If there is no objection, why do we not add it to this bill, 1904, the bill before us?

Senator Packwood. That is fine.

The Chairman. Without objection, the amendment will be entered.

Without objection, we will report H.R. 1904.

What is the next one?

Mr. Cassidy. Excuse me, Senator. Your amendment at one time was liquor and cigarettes. Are you just talking about liquor?

Senator Packwood. Just liquor. The cigarettes is not such an overwhelming problem.

Mr. Cassidy. The next bill on the list is H.R. 2849 which deals with Latex rubber mattress blanks. It appears on page 5 of the blue book.



1           These mattress blanks are made from rubber. They are  
2 the basic foam-rubber pad that you make a foam-rubber mattress  
3 out of. They are imported, primarily from Canada. The  
4 value of imports is about \$100,000. There is no domestic  
5 U.S. production. They do compete with a synthetic polyure-  
6 thane mattress blank, however, we understand the polyurethane  
7 mattress blank is considerably cheaper and this would not  
8 have any effect on the U.S. producers of polyurethane mattress

9           This item would reduce the cost of mattress blanks to  
10 domestic producers of completed mattresses, and result in an  
11 annual Customs revenue loss of \$7,500.

12           The Chairman. I would like to suggest that the staff  
13 revert to the system that we used in earlier years, when they  
14 would give us a sample of something so that we could take a  
15 look at it and see what we are talking about. Usually the  
16 people involved do not mind providing a sample of what the  
17 thing is so we can take a look at it and see what it looks  
18 like.

19           Mr. Cassidy. We will do that, Mr. Chairman. This is a  
20 piece of foam rubber the size of a mattress. That is what  
21 we are talking about.

22           The Chairman. Just to see what the difference is  
23 between one product and another.

24           Senator Ribicoff. Except where we have horses.

25           Generally, the Chairman is right. They often come in here

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1 with esoteric names and we have not the slightest idea of  
2 what they are talking about.

3 When you sit through these hearings, you realize that  
4 they are very vague; some of them do not even give you a  
5 picture.

6 The Chairman. Do you recall -- what was that bill that  
7 we used as a rider? We used it as a rider for some other  
8 amendment. I know that the name of the bill had something  
9 to do with Chinese gooseberries. We used that as a rider for  
10 some big bill, as I recall. Maybe that was the welfare  
11 reform bill.

12 By the time we got through fighting over the Chinese  
13 gooseberries bill, we finally saw what a Chinese gooseberry  
14 looked like. It helps to know.

15 Without objection, this bill will be reported.

16 What is the next item?

17 Mr. Cassidy. The next bill is H.R. 2850 which deals with  
18 a very similar product, latex rubber sheets. These are foam  
19 rubber sheets about one inch thick, the size of a mattress,  
20 and they are used with polyurethane to make a foam rubber  
21 mattress, virtually the same product.

22 The Chairman. The same product.

23 Mr. Cassidy. We estimate that there is no domestic  
24 production of this product. We estimate that there is an  
25 annual Customs revenue loss of no less than \$3,000 per year.



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The Chairman. Without objection, the bill will be reported.

Mr. Cassidy. The next bill is described on pages 7 and 8 of the blue book. It would provide the duty-free entry of synthetic tantalum/Columbium concentrate. Tantalum/Columbian concentrate are minerals that are used to make ferrous alloy steels, specialty steels.

Right now, these synthetic concentrates are dutiable at 7.5 percent. The bill would make them duty-free for a temporary period.

There is no known domestic production. The only source of supply is a company in West Germany.

It will result in a Customs revenue loss of approximately \$238,000 annually.

The Chairman. Without objection, the bill will be reported.

Mr. Cassidy. The next bill is H.R. 3093, copying lathes for shoe lasts. This bill would extend a suspension of duties that has been in effect for approximately 20 years and it is on a machine that manufactures wooden shoe lathes, a rather specialized piece of equipment, very expensive, used by the shoe industry.

Most of the imports come from Italy. This, by the way, would not be a temporary extension. We would make a permanent change in the law, and it is an estimated annual Customs

1 revenue loss of \$3,000.

2 The Chairman. Without objection, the bill will be  
3 reported.

4 Mr. Cassidy. The next bill is H.R. 3259, which is  
5 described on page 10 of the blue book. It would provide for  
6 the temporary duty-free entry of certain horses.

7 This bill is also an extension of an existing suspension  
8 of duties. There are a number of problems relating to  
9 horses.

10 One, if you have an American imported horse, you cannot  
11 bring it into the country duty-free for breeding purposes,  
12 where you can bring in virtually any other breed duty-free.

13 Secondly, it is almost impossible for a Customs officer  
14 to determine what the value of a horse is at the border.

15 Thirdly, most horses which are brought into the United  
16 States come from Canada. They are race horses. They are brought  
17 in for what they call claiming races.

18 The way they are entered, you post a temporary bond. If  
19 your horse is bought at the race, you end up paying twice the  
20 duty, because that is what the bond is in the amount of.

21 We have no problem with this. I understand Senator Byrd  
22 would like to amend it to extend the period of effectiveness  
23 from June 30, 1978 to June 30, 1980. We have no trouble with  
24 that.

25 Senator Byrd. It seems to me, Mr. Chairman, since there



1 is no problem with the proposal, everyone seems to favor  
2 extending the suspension, instead of just suspending it for  
3 11 months -- 10 months, I guess it is now -- we might as well  
4 suspend it until June 30, 1980 instead of June 30, 1978.

5 Senator Roth. May I ask a question? Why keep extending  
6 it. Why not make it permanent?

7 Mr. Cassidy. That is an excellent question. We could  
8 recommend a permanent change in the law.

9 The Chairman. Let's see if it creates any problems in  
10 the next four years. If it does not, all right.

11 Mr. Stern. Mr. Chairman, from here on out we would  
12 recommend, if you approve the substance of the bills, that  
13 you simply add them as amendments to the seven bills you  
14 have already agreed to report out, so you would keep the  
15 number of bills available in Committee, even though you  
16 approve the substance of them.

17 The Chairman. Amendments to other bills?

18 Mr. Stern. Yes, sir.

19 The Chairman. All right.

20 Mr. Stern. Beginning with H.R. 3373, anything you  
21 approve from now on --

22 The Chairman. Just add it on the other bills so we  
23 can have some bills to amend to if we want to. That is a good  
24 idea.

25 Mr. Cassidy. The next bill is H.R. 3373, which is



1 described on page 11 of the blue book, extension of the duty  
2 suspension on silk yarns.

3 There is no production of silk yarns in the United States.  
4 This extension has been in effect for a number of years.  
5 The only source of supply that we know of is Japan and the  
6 People's Republic of China, to permit duty free entry.

7 We estimate an annual Customs Revenue loss of approximately  
8 \$17,000.

9 The Chairman. Without objection, agreed to.

10 What bill should we add that to?

11 Mr. Stern. I suggest you leave the rural health care  
12 as the only amendment to the aircraft bill, since that is a  
13 fairly substantial amendment, and just go down the list.

14 You already added one to H.R. 1904. This would be to  
15 H.R. 2849.

16 The Chairman. All right. Without objection, agreed.

17 Mr. Cassidy. The next bill is H.R. 3387, which is  
18 described on page 12 of the blue book. It would permit  
19 temporary duty-free entry of synthetic rutile. Rutile is  
20 a product which is basically used as white pigment in paint,  
21 paper and other products. There was no domestic production  
22 of this product until 1977. There is now one plant in  
23 Alabama, however, they produce the product solely for their  
24 own consumption.

25 Since this is a temporary suspension, we do not believe it

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1 will have any effect on their operation. We estimate that  
2 there will be an annual Customs revenue loss of approximately  
3 \$926,000 per year.

4 The Chairman. Without objection, that bill will be  
5 agreed to as an amendment to H.R. 2850, the latex rubber  
6 sheets.

7 The next one.

8 Mr. Cassidy. The next bill is H.R. 3790, described  
9 on page 13 of the blue book. It would provide for temporary  
10 dutyfree entry of concentrate of poppy straw until June  
11 30, 1980.

12 This is a product which is grown in Turkey, Yugoslavia  
13 and India. It is processed primarily in the Netherlands  
14 France or Hungary.

15 What you get is a brown powder that has a much higher  
16 proportion of what they call anhydrous opium derivatives,  
17 the basic product for morphine and codeine.

18 There is no U.S. production at this time, except for  
19 small amounts used in research. The product is imported  
20 under regulations of the Justice Department. It is closely  
21 regulated.

22 We estimate that it would result in an annual government  
23 revenue loss of approximately \$450,000. Most of this product,  
24 it is processed by three companies into morphine and codeine  
25 and distributed through drug companies like Eli Lilly throughout

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1 the country.

2 The Chairman. Without objection, that amendment will  
3 be agreed to and added as an amendment to H.R. 2982, the  
4 Tantalum/Columbium concentrate bill.

5 Senator Packwood. Mr. Chairman, I just made a phone call  
6 to a member of the Ways and Means Committee on this liquor  
7 tariff and it turns out that they have just passed, in their  
8 Trade Subcommittee a bill -- although it does include cigarettes;  
9 they had some members who were worried about the black market  
10 cigaretts. I have no objection to adding cigarettes, so  
11 foreigners and Americans are treated identically.

12 If the Committee has no objection, the language of  
13 Section 203 of H.R. 8149 would accomplish this purpose.  
14 It would be identical to the language that the Trade Subcom-  
15 mittee has passed.

16 The Chairman. Without objection.

17 Senator Packwood. Section 203 of 8149.

18 The Chairman. That would include cigarettes also?

19 Senator Packwood. Yes.

20 Mr. Cassidy. The next bill is H.R. 3946, described on  
21 page 15 of the blue book and would provide for temporary  
22 duty-free entry of coarse wool and unimproved wool.

23 There is virtually no production of coarse wool in the  
24 United States and actually no production of unimproved wool.  
25 This is a product that is used in making carpets and



1 heavyweight fabrics like blankets, not used in apparel.

2 Virtually all of the wool produced in the United States  
3 and is used primarily in making apparel goods. We know of  
4 no objection to this. We understand it would be an annual  
5 Customs Revenue loss of approximately \$390,000.

6 The Chairman. Without objection, agreed. Without  
7 objection, it will be added as an amendment to H.R. 3093.

8 Mr. Cassidy. The next bill is H.R. 4018. That appears  
9 on page 16 in the blue book. It would provide for temporary  
10 entry of doxorubicin hydrochloride antibiotics.

11 This product is used in treating cancer and is not  
12 produced in the United States. It is imported by Adria  
13 Laboratories in Wilmington from Italy. We estimate it to  
14 be a Customs Revenue loss of approximately a half a million  
15 dollars.

16 The Chairman. Without objection, agreed.

17 Without objection, it will be added to the horse bill.

18 Mr. Cassidy. The next bill is a private relief bill  
19 for the relief of Jack Misner, described on page 18 of the  
20 blue book.

21 This is a matter where a gentleman bought a yacht in the  
22 United States for renovation. He posted a temporary import  
23 bond equal in amount to twice the value that he would have  
24 had to pay while he had the boat repaired.

25 However, under the rules of that bond, the yacht must be



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1 exported from the United States within three years.

2 Due to problems in getting supplies, he was not able to  
3 export the yacht. This bill would, in effect, extend the  
4 period of that bond until September 18, 1977, by which time  
5 we will be able to get his boat out of the yacht yard and  
6 back to England, I think.

7 This would result in no duty loss.

8 The Chairman. Without objection, that will be agreed to.

9 Mr. Cassidy. This is a private relief bill. You may  
10 want to report it out separately.

11 The Chairman. Fine.

12 Mr. Cassidy. There is one other private relief bill.  
13 Maybe we could put the two of them together.

14 The next bill is H.R. 5052 which is described on page  
15 19 of the blue book. It would provide for temporary duty-  
16 free entry of color couplers and color intermediates. These  
17 are chemicals used to make color film and photographic paper.

18 The products are produced in the United States by Kodak  
19 and GAF. They do not sell them; they use them for their own  
20 production.

21 The Minnesota Mining and Manufacturing Company has an  
22 Italian subsidiary. They would like to report the products  
23 into the United States from Italy until such time as the new  
24 plant they are constructing in New York is completed.

25 We estimate that this will result in an annual Customs



1 loss of \$550,000.

2 The Chairman. I do not see it on the list.

3 Mr. Cassidy. H.R. 5052, page 19, color couplers.

4 The Chairman. Is there objection to it?

5 Mr. Cassidy. No.

6 The Chairman. Without objection, it will be agreed to.

7 Without objection -- what bill shall we add that to?

8 Mr. Stern. H.R. 1904.

9 The Chairman. Without objection we will add that to  
10 H.R. 1904.

11 Mr. Cassidy. The next bill is H.R. 5196, described on  
12 page 20 of the blue book. It would provide for permanent  
13 duty-free entry of competition bobsleds and luges. Sleds  
14 are used in Olympic competition. There is presently a 9  
15 percent duty on these imports.

16 There are very few entries during the year, and we  
17 estimate that there would be a negligible revenue lost. They  
18 would be primarily imported from Italy, Switzerland and  
19 Austria by the people who use the sleds.

20 The Chairman. Without objection, agreed.

21 Should we add that to 2692?

22 Mr. Stern. 2849.

23 The Chairman. 2849. All right.

24 Mr. Cassidy. The next bill is H.R. 5176 which is  
25 described on page 20. It would permit temporary duty-free

1 entry of Levulose -- not duty-free entry; permit entry of  
2 Levulose at a rate of duty the same as sugar, which at this  
3 time is 1.98 cents per pound.

4 We understand that the Administration may have some  
5 trouble with this bill, the Food and Drug Administration. We  
6 do not know what the merits of their arguments are. We would  
7 prefer to defer consideration of this until we hear what they  
8 have to say.

9 The Chairman. Without objection, that will be agreed  
10 to.

11 Mr. Cassidy. The next bill, H.R. 5285, which is described  
12 on page 23 of the blue book, and it is a permanent change in  
13 the law that would change the definition of process as it  
14 relates to acrylic sheets.

15 Acrylic sheets, the ones that are of primary concern here,  
16 are clear plastic, inflexible sheets. I think plexiglass  
17 is probably the best known trade name.

18 Senator Ribicoff. Without objection.

19 I think you skipped H.R. 5263.

20 Mr. Cassidy. Mr. Chairman, there are objections on that.  
21 We will go to that.

22 Senator Ribicoff. You might as well take it up right  
23 now.

24 Mr. Cassidy. H.R. 5263 is described on page 21 of the  
25 bluebook. It provides for a continuation of a temporary

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1 suspension of duty on certain bicycle parts. It also changes  
2 the coverage from the previous suspension.

3 The problem here is that assembled, imported bicycles are  
4 dutiable at 5.5 percent while parts that come into this country  
5 are 15 percent.

6 The American manufacturers are forced to rely on foreign  
7 made parts. There is almost no production of bicycle parts  
8 in this country, and they feel that this discrimination in  
9 tariffs puts them at a disadvantage to their foreign competi-  
10 tors.

11 We have no problem with this bill. We estimate that its  
12 average annual Customs revenue loss is \$3.6 million.

13 There was objection during the hearings to one part of  
14 the bill by a U.S. corporation who produces coaster brakes  
15 in Mexico. They would like coaster brakes to be dutiable at  
16 15 percent rather than come duty-free.

17 Senator Ribicoff. I think it should be pointed out to  
18 the Committee that while there was objection at the hearing,  
19 the Bendix Company used to make these brakes in the United  
20 States. They do not now. They moved their plant in 1973 to  
21 Mexico. They are able to undersell their other foreign  
22 competitors in Japan and West Germany. They cannot supply  
23 the American market; they do not have enough production.

24 The bicycle industry is a good industry for the United  
25 States. There is great potential for growth as we are talking



1 about conservation and not using automobiles, and we find that  
2 the competition from foreign bicycles is getting tougher and  
3 tougher, and under the circumstances, we should keep the  
4 bicycle industry in the United States.

5 Of course, with the 5 percent tariff on completed bicycles  
6 and 15 percent on parts that are not made in the United  
7 States, it places the American manufacturer at a decided  
8 disadvantage. The Administration also supports this proposal.

9 Without further comment, and no objection, the bill is  
10 adopted.

11 Mr. Cassidy. We will make that bill an amendment to H.R.  
12 2982, Mr. Chairman.

13 The next bill on the list is H.R. 5289, another private  
14 relief bill, for the relief of Joe Cortina of Tampa, Florida.  
15 Mr. Cortina is a Customs broker. Apparently, he got involved  
16 with a West German musical instrument company who sent  
17 musical instruments to this country which were labelled as  
18 coming from West Germany when, in fact, many of them came from  
19 East Germany.

20 When the gentleman who owned the West Germany company  
21 died, the Customs people assessed an additional duty on Mr.  
22 Cortina of about \$46,000. He has no recourse.

23 He would like to be let off the hook on this one. We  
24 know of no objections from the Treasury.

25 Senator Ribicoff. Is there any objection?



1 Without objection, so ordered.

2 Mr. Cassidy. We can put this as an amendment to the  
3 other private relief bill, which is H.R. 5037 -- no, we will  
4 report this bill out separately.

5 The next bill on the list is H.R. 5322, to provide for  
6 permanent duty-free treatment of istle. Iistle is a vegetable  
7 fiber used in hairbrushes and other brooms, things like that.  
8 It comes almost totally from Mexico.

9 This is an extension of an existing suspension of duty  
10 and most of the imports in Mexico now come in duty-free under  
11 the generalized system of preferences and the main effect of  
12 this bill would end the paperwork burden on imports. They  
13 would not have to file for GSP.

14 We believe that the annual Customs Revenue loss would  
15 be zero.

16 Senator Ribicoff. Without objection, so noted.

17 Mr. Cassidy. That will be an amendment to H.R. 3093.

18 Now, the next bill on the list is H.R. 1550, which if  
19 you will turn back to page 2 of the blue book, this would  
20 permit for temporary duty-free entry of a special kind of  
21 ceramic spark plug insulators. The insulator is the little  
22 white ceramic thing on the top of the spark plug.

23 These insulators covered by this bill are used only in  
24 certain kinds of pump engines used in oil fields, gas fields,  
25 water pipes and things like this. They are produced by two





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companies in the United States that we know of. One is  
Champion Spark Plugs. They do not sell them; they use them  
for their own spark plugs.

There is another company that produces them and sells them  
to U.S. manufacturers.

We estimate that approximately \$420,000 a year in revenue  
loss from this. The Administration opposes this bill because  
there is sufficient U.S. production of this product to meet  
domestic demand. They believe absent any demonstrable need,  
all tariff reductions should be taken in the multi-lateral  
trade negotiations.

Senator Ribicoff. I think, Mr. Chairman, since the  
Administration does have a responsibility in the trade negotia-  
tions that many of these items can be subject to negotiation,  
it would be wise to give the Administration leeway in negoti-  
ations. I go along with the Administration point of view.

The Chairman. I suggest we just hold action on this one.

Mr. Cassidy. The next bill is H.R. 2692, which is  
described on page 4 of the blue book. This would provide for  
temporary duty-free entry of wood excelsior. Wood excelsior  
is shaving off of wood blocks used as a packing material.  
This is a very small trade item. I think that imports to the  
United States accounts for less than one-half of 1 percent  
of domestic consumption.

We do, however, export a quarter of a billion dollars a



1 year of this product. This bill would have an annual Customs  
2 revenue loss of less than \$1,000. The Administration opposes  
3 it because the U.S. manufacturer of this product has asked  
4 that we seek reduction of the Canadian 15 percent duty in the  
5 multi-lateral trade negotiations, and use this as a bargaining  
6 tool.

7 Senator Ribicoff. I would go along on the same basis.  
8 There is not much involved. I cannot understand why they need  
9 anything so small, but they requested it, and I will give  
10 them leeway.

11 The Chairman. Without objection.

12 Mr. Cassidy. The next item is H.R. 4654, described on  
13 page 17 of the blue book. It would provide for temporary  
14 reduction of the rate of duty on imports of unmounted  
15 underwater lenses. The duty now is 14 percent. They would  
16 reduce the duty temporarily to 7 percent.

17 There are domestic producers of underwater unmounted  
18 lenses, similar to the imported product. The only known  
19 importer of this particular lense is the San Diego, California  
20 firm that imports about \$100,000 worth of the lenses each year  
21 from Japan.

22 The annual Customs revenue loss would be approximately  
23 \$7,000. We understand the Administration opposes this bill  
24 because the Japanese have a great interest in reducing our  
25 tariffs on optical products in the multi-lateral trade



1 negotiations. Apparently, the Administration believes that  
2 this is a bargaining chip with the Japanese.

3 Senator Ribicoff. Mr. Chairman, I would go along with the  
4 Administration's request that we pass this over.

5 Mr. Cassidy. We have already taken care of H.R. 5263,  
6 bicycle parts.

7 The next item on the list is a Senate bill, S. 843,  
8 introduced by Senators Anderson and Humphrey. This is identi-  
9 cal to the bill that the Committee approved last year. It  
10 was proposed by Senator Mondale.

11 The Chairman. What page?

12 Mr. Cassidy. 26.

13 What is going on, as you know, the Canadians now restrict  
14 export of crude oil to the United States, and they are slowly  
15 phasing us out. There are a number of northern tier refineries  
16 listed on the top of page 27, which are virtually entirely  
17 dependent upon imports of Canadian crude oil.

18 If the Canadians stop exporting all of those refineries  
19 will have to go out of business. The arrangement which has  
20 been struck with the Canadians is, if we will send them an  
21 amount of oil from some ports, say Buffalo, they will send  
22 an equivalent amount of oil to these northern tier refineries  
23 in the central part of the country.

24 The Administration supports this bill if it is amended  
25 with language we have reviewed. We think it is preferable to



1 the language in the bill.

2 The Customs revenue loss is probably zero, as we can  
3 calculate it, although it depends on your assumptions. In  
4 some models, it could be a revenue increase.

5 Senator Ribicoff. It is really an exchange of American  
6 and Canadian oil, as I understand, for the convenience of  
7 these people in the border states?

8 Mr. Cassidy. That is correct.

9 Senator Ribicoff. If it was not done, the United States  
10 consumer would be the loser.

11 The Chairman. There is no reason that it should not be  
12 done, as I can see it. This is on a small scale.

13 What we ought to be doing with Japan, with regard to the  
14 Alaskan oil, basically if you have some oil at a place where  
15 you have it in surplus and the other fellow has some oil at  
16 a spot where you need some, so you trade. He delivers some  
17 oil to you and you deliver some oil to him and you save the  
18 transportation expense.

19 People in the oil business have been doing it since  
20 Hector was a pup. It is the only logical way to do it.

21 Unfortunately, the American public is not accustomed  
22 to doing business that way. It is like saying if you have  
23 oil in Virginia and I have a refinery in Virginia and I have  
24 some oil in Louisiana and you have a refinery down there, what  
25 is the point in each of us hauling the oil 1,000 miles when all



1 you have to do is say look, I will give you 100 barrels, you  
2 give me 100 barrels, and we will share the transportation  
3 expense.

4 It makes sense.

5 Senator Matsunaga. It makes sense to me, Mr. Chairman.  
6 Who objects to it?

7 Mr. Cassidy. No one objects to it.

8 Senator Ribicoff. The Chairman was calling attention to  
9 a basic problem because there a feeling that we are giving away  
10 short supplies of oil. I do not know if the Subcommittee, or  
11 whatever Committee, ought to have hearings on it.

12 It was pointed out to me that this type of an interchange  
13 would even save the New England states \$1 or \$2 a barrel in  
14 transportation costs, and it is not understood. There is a  
15 lot of emotion involved about giving away a lot of oil and  
16 getting nothing in return.

17 As the Chairman points out, there is a very practical  
18 problem. Whatever Committee has responsibility might hold  
19 hearings on it to acquaint the American public with what is  
20 involved.

21 The Chairman. Maybe we should all hold hearings on it  
22 one of these days. This bill here gives us no problem. There  
23 is no objection to it. We will report this one out.

24 Mr. Cassidy. With the changes that we have worked  
25 out with the Federal Energy Administration?



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The Chairman. Yes.

Mr. Cassidy. This will be an amendment to H.R. 3259.

The Chairman. Without objection.

Mr. Cassidy. The next bill, I believe, is Senator Matsunaga's bill, S. 1519, which is described on page 29 of the blue book. This would provide for temporary duty-free entry of field glasses, opera glasses, prism glasses and microscope used with infrared equipment.

Presently the tariff is 8.5 percent. With Japan, our imports were \$36 million in 1976.

We estimate the annual Customs revenue loss would be approximately \$3 million. The Departments of Commerce, Treasury, State and the Special Trade Representative's Office object to enactment of this bill, because they believe that the Japanese are very interested in this reduction and they should pay for it in the multi-lateral trade negotiations.

Senator Matsunaga. Mr. Chairman, inasmuch as this is only a temporary reduction until 1978, it could still be a chip in the trade negotiations and perhaps after we grant them temporary relief, the relief is so good they will want to keep it and it will be an even bigger bargaining chip during trade negotiations, which will follow December 31, 1978. It will be in 1980, as I understand it.

So that it will be only up to them, and if the Japanese refuse to negotiate on this, automatically it goes back on



1 again.

2 It would be, I think, no loss except there is \$3 million  
3 lost that would be made up by the gain to the consumer, because  
4 we have no industry in the United States which is being  
5 protected by the tariff for the reason that we do not manufac-  
6 ture anything on which we now impose a duty.

7 The American consumer will benefit by it.

8 Senator Ribicoff. The problem we have here -- I am  
9 sympathetic, but evidently State, Treasury and Commerce are  
10 unhappy with this. You are going to have the job of convincing  
11 the House on this. The House turned it down, I believe.

12 Mr. Cassidy. They have not acted on this matter.

13 Senator Ribicoff. They have not acted on it.

14 Senator Matsunaga. It was not even proposed there.

15 Mr. Cassidy. It was not proposed there.

16 Senator Matsunaga. It was not even proposed in the  
17 House.

18 Senator Ribicoff. The two-year extension?

19 Mr. Cassidy. About 18 months.

20 Senator Matsunaga. About 18 months. Just through  
21 December 31, 1978.

22 The Chairman. What I would be concerned about, in this  
23 bill I would be inclined to go along with it for one year.  
24 What I would be concerned about on this one is that whatever  
25 bill you put it on it is likely to get vetoed as well as this



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bill itself, because you have three Departments objecting to it.

Maybe we could put it on one of these bills that we do not much care whether it gets vetoed or not.

Senator Ribicoff. Why do we not put it on a bill where there is no revenue loss and it does not mean anything, or the revenue loss is zero?

There are a few very minor things there, you might put it on that, but I think the Chairman's suggestion is wise. I think for the trade negotiation, you ought to make it one year.

Mr. Strauss is very optimistic that he can bring these trade negotiations off in 1978, so if it is on for one year, I think you have a better chance for it to hold if it is passed, than if you extend it beyond the end of the trade negotiations.

This would give them a chance to discuss it as a bargaining chip in the trade negotiations.

Senator Matsunaga. I will be happy to accept that modification.

The Chairman. All right.

Did we report that underwater lense bill separately?

Mr. Cassidy. No, Mr. Chairman, we did not. We would recommend -- my understanding is it will be a one-year extension, which means until one year from date of enactment, which





1 we will have to make an estimate on. Let's say --

2 The Chairman. Make it until the first of the year.

3 Mr. Cassidy. January 1, 1978, and we would recommend --

4 The Chairman. 1979.

5 Senator Matsunaga. December 31, 1978.

6 The Chairman. Leave it that way. It is a year.


7 Mr. Cassidy. We would recommend that this be amended  
8 to H.R. 1904.

9 The Chairman. Without objection, agreed.

10 Mr. Cassidy. I skipped over one bill. It is described  
11 on page 28 of the blue book. It is S. 1302. It would provide  
12 for temporary duty-free entry of imports of chlorendic acid  
13 presently dutiable at a rate of 1.7 cents a pound plus 12.5  
14 percent ad valorem.

15 This is a chemical that imparts a flame-retardant quality  
16 to certain kinds of plastic that are used in computers and  
17 airplanes, and on this we have been told informally that the  
18 Administration has a problem. I do not know what the merits  
19 of their argument is. I suggest that we defer this until we  
20 can see what they have to say.

21 The Chairman. Without objection, agreed.



22 Senator Byrd. Mr. Chairman, since we are on Senate bills,  
23 could we call up, consider S. 1514, which was introduced by  
24 Senator Allen and Senator Sparkman and Senator Thurmond and  
25 has been considered in a public hearing that was held on it

1 by the Subcommittee on Taxation, July 25?

2 The Chairman. Tell us about it.

3 Senator Byrd. At the hearings, the Treasury Department  
4 voiced no objection to the purpose of the bill, but it did  
5 question some of the language. Since the hearings, the  
6 Treasury Department and the taxpayer have conferred and  
7 agreed with the language which is now before the Committee,  
8 and the Treasury Department has not objected to this measure.

9 There will be no revenue loss or gain to the Federal  
10 Treasury.

11 The problem arises from the inadvertent inequity created  
12 by the Tax Reform Act of 1969. Since 1966, the publishers  
13 of the Spartanburg Herald and Journal, Tuscaloosa News and  
14 the Gadsden Times, have leased the assets which they use  
15 in operating those newspapers from the fully taxable, wholly-  
16 owned subsidiary of the Public Welfare Foundation, a private  
17 foundation.

18 By reason of the Tax Reform Act of 1969, the publishers  
19 technically became disqualified persons as to that private  
20 foundation. The present publishers are disqualified persons  
21 because technically, under the 1969 Tax Reform Act, they are  
22 "substantial contributors" to the Public Welfare Foundation.

23 However, these disqualifying contributions were paid as  
24 a result of a settlement with the Internal Revenue Service  
25 in which IRS questioned rent payments by the operators as

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excessive.

The operators scaled down their rent payments and instead made charitable contributions to the Foundation. Thus, an action clearly permissible at the time that it was performed by reason of enactment of the Tax Reform Act of 1969, results in the present publishers now being subject to ouster from their own businesses by the end of this year.

The original proposal introduced by Senator Allen and Senator Sparkman and Senator Thurmond proposed to carry on the ten year suspension of the operation of the Act, but when the Treasury Department and the taxpayer, at the request of the Treasury Department, and with agreement with the taxpayer, they agreed to change. By changing the wording, it would make it clear it would not affect any other taxpayer in the country as far as they could determine.

For that reason, they eliminated the ten-year extension and in lieu of that, wrote the language in a way that the present operators would not be subject to the self-dealing provision of the Tax Reform Act.

It seems to me that it is clearly a technicality which was not intended by the Tax Reform Act. It would cost the Treasury no money. The Treasury Department does not object to the legislation.

I would urge the Committee to approve it.

The Chairman. Without objection, then, we will approve

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it.

What bill can we put that on?

Mr. Stern. I suggest that you put this as an amendment to H.R. 2849.

Senator Matsunaga. What is that again?

Mr. Stern. The bill that referred to the Latex rubber mattress blanks, H.R. 2849.

The Chairman. Without objection, agreed.

Senator Nelson. Mr. Chairman, S. 1774, the bill to remove the Federal Excise tax on amounts paid as State tax on telephone services, there are -- whatever the number, 18 states, which levy an excise tax on telephone use, but it is levied at the company level. The company then includes the tax in the bill that goes to the user.

Then the Federal government levies a tax on the total bill, including a state tax. However, the state levies the tax directly and, as shown on the bill, they do not tax the tax.

This would simply eliminate the double taxation, the taxation by imposing the Federal excise tax against the state excise tax.

I do not think there is any controversy.

The Chairman. How does Treasury feel about that? What is the Treasury's position on that?

Mr. Chabot. I do not know what the Treasury position is



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1 at the moment. In 1974, Treasury did indicate that it did  
2 not have objections to a bill essentially similar to Senator  
3 Nelson's bill.

4 I would suggest one change that would probably help,  
5 or rather two changes that would probably be important in  
6 administratability of the bill. One, a requirement that these  
7 amounts be separately stated on the bill related to the  
8 customer of the services. This would make it easier for the  
9 customer, for the telephone company, and for the IRS to  
10 determine precisely what amount is being excluded from the  
11 tax base.

12 The second thing that I would suggest, since the taxes  
13 have already been collected with respect to the bills that  
14 were rendered in July, for example, that have already been  
15 paid, since the IRS, in the past, has asked that there be some  
16 lead time that they could change the rules and notify all of  
17 the telephone companies in the country, we think of Bell  
18 Telephone, but really there are several hundred small telephone  
19 companies in the country that have to be notified about these  
20 changes.

21 If the bill were to apply to telephone bills rendered after  
22 September 30, 1977, this, I believe, would give the Treasury  
23 and the Internal Revenue Service enough lead time to notify the  
24 people involved.

25 We have estimated that the revenue loss for the first year,



1 assuming it were delayed as I described, would be \$13 million.  
2 This would go down each year, since the Federal tax is in the  
3 process of being phased out.

4 In fiscal 1982, the revenue loss would be \$2 million.  
5 That would be the end of it.

6 Senator Nelson. Let me say, on the phrase "revenue loss,"  
7 it is a revenue that the Federal government is getting that they  
8 are not entitled to and they do not get it from any other  
9 state. If the state happens to set it out, as several do,  
10 on the bill itself. What they are really doing is double  
11 taxing. It is not a revenue that they are entitled to.

12 Mr. Chabot. I phrased it as a revenue loss simply by  
13 comparison to what would be the case if we did not tax.

14 Senator Nelson. As to that point about requiring the  
15 company to put it on the bill, I would like to check to see  
16 what that means, whether that would work.

17 The Federal government knows what each state's tax is.

18 Mr. Chabot. Yes, but the Federal telephone tax is not  
19 imposed on the telephone company. The telephone company is  
20 required to collect it, but the tax is technically imposed  
21 on the customer, and so there ought to be something on the  
22 bill, since theoretically that telephone tax is not a gross  
23 receipts tax on the telephone company, there ought to be  
24 something on the bill that indicates the basis for excluding  
25 part of what the customer pays.



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1 Senator Nelson. My question is, that would require a  
2 state to change their law, which they figure they cannot do,  
3 because they have other taxes that impact this same way.

4 If it required a change in Wisconsin law it would be of  
5 no use to Wisconsin; it may not be to several other states.

6 Mr. Chabot. I know in Montgomery County in Maryland,  
7 across the District line, there has been, for several years,  
8 a similar tax which is not included in the list you put in  
9 the Congressional Record, but which would also be covered by  
10 your bill. This is a county tax imposed on the telephone  
11 country, but it is separately stated on the bill.

12 Senator Nelson. You would suggest a provision that it is  
13 the obligation of the company to separate the tax so when they  
14 bill the customer -- is that what you are saying?

15 Mr. Chabot. Yes, sir.

16 Senator Nelson. I do not think I have any objection to  
17 that, unless it requires some statutory action by the state.

18 Mr. Chabot. You are suggesting that it would be  
19 difficult for the states to make this change, or to make it  
20 quickly?

21 Senator Nelson. I tried to get the state to change the  
22 law. It said it could not, because they have other statutes  
23 that are applied in the same way. I do not remember the  
24 explanation.

25 If it required a change in the state law, then it would



1 not work.

2 If you are saying it does not require one, all you are  
3 doing is mandating that the telephone company list on the bill  
4 X amount of state tax, and that is the obligation of the  
5 telephone company, that probably creates no problem.

6 The Chairman. Let me ask a question about this. What  
7 states are there that passed a law in such a way that the  
8 Federal tax applies on top of the state taxes?

9 Does Louisiana do that?

10 Senator Packwood. Say that again.

11 Senator Nelson. It is a method by which they levy the  
12 tax. They levy it requiring the company to collect. The  
13 company simply prints it on the bill as part of their total  
14 bill.

15 Then the Federal government comes along and taxes the  
16 total bill, including the state tax, and the IPS agreed, as  
17 a matter of fact, not to enforce it for a number of months to  
18 give states a chance to change the law.

19 The Chairman. I would think if I were the Governor of  
20 Wisconsin I would straighten this fool thing out by levying  
21 it the way most states do, so you would not have any problem.

22 I hope this situation did not arise, Senator, when you  
23 were Governor of Wisconsin.

24 Mr. Chabot. One reason at least some jurisdictions would  
25 do it this way, if you impose the tax on the consumer as the





1 Federal government does, then of course the Federal government,  
2 for example, would not be subject to this tax. If you imposed  
3 the tax, however, on the telephone company, then the telephone  
4 company would be subject to the tax even with regard to the  
5 bills that they charge the Federal government.

6 So in at least some cases this was done deliberately to  
7 end up imposing the tax on entities that would otherwise be  
8 tax-exempt, such as the Federal government.

9 I know this was specifically the case in the Montgomery  
10 County ordinance that I just described.

11 The Chairman. Is that not sort of making a good thing  
12 out of something, when you go and tax the Federal government  
13 and you do not want the Federal government to collect the  
14 tax on what you are taxing the Federal government?

15 It is sort of having your cake and eating it too.

16 Senator Nelson. This only applies to the question of the  
17 Federal government taxing the tax of the state government.  
18 That is what they are doing, taxing the tax of the state  
19 government.

20 The Chairman. You people up there in Wisconsin figured  
21 something out we have not even thought of in Louisiana. You  
22 figured a way to tax the Federal government on its telephones  
23 and, having done that, now the Federal government taxes you  
24 on top of your tax, which is sort of like getting a little  
25 something back, you might say.



1 Senator Nelson. I do not know if that is the case at  
2 all. If we had figured out as much stuff as Louisiana, we  
3 would not pay any taxes at all.

4 This is simply a straightforward proposition of not  
5 permitting the Federal government to tax the state tax. That  
6 is all. That is the only question involved there. I do not  
7 see how it is controversial at all.

8 The Chairman. You figured out a way to tax the Federal  
9 government, itself. You have taxed the tax.

10 Senator Nelson. What tax did we levy on the Federal  
11 government?

12 The Chairman. Look what you have done. You do not have  
13 the right to tax the Federal government, so you tax the  
14 telephone company, and the telephone service that provides the  
15 Federal service, and who is going to pay? The Federal govern-  
16 ment does. While you are not supposed to tax the Federal  
17 government, you are succeeding in doing exactly that, not  
18 what you do, the way that you do it. And now having done that,  
19 you find that the Federal government has a tax on top of your  
20 tax.

21 By the time you get through taxing them, you cannot blame  
22 them for taxing you.

23 Senator Nelson. I do not know that that is the case at  
24 all. I know that is how they levied the tax in 18 states --  
25 Alabama, Florida, Illinois, Iowa, Kansas, Kentucky, Maine,



1 Minnesota, Mississippi, Missouri, Nebraska, New Mexico,  
2 North Dakota, Pennsylvania, South Carolina, South Dakota,  
3 Tennessee and Wisconsin.

4 I do not know of anyone who argues -- in fact, the IRS  
5 did postpone the enforcement of this. They have not been  
6 enforcing it for years. They did postpone for some three, four  
7 or five months last year. I do not think they argue that they  
8 are entitled to a tax.

9 If the answer is to require the telephone company to list  
10 it separately, fine. I will go along with that.

11 The Chairman. Out of deference to my good friend, I, too,  
12 will go along with it. If you want it assessed on this, look  
13 what you have done. You have put a tax on in such a way that  
14 you are taxing the tax-exempts, you are taxing all of the  
15 charitable foundations and even the direct charities, the  
16 Boy Scouts and the Community Chests and the Blood Bank.

17 Senator Nelson. They all pay telephone taxes, not  
18 exempt from telephone taxes.

19 The Chairman. They are tax-exempt organizations. You  
20 are taxing them because you are taxing the telephone company,  
21 making it pass the bill, the tax to them, through the bill.

22 Senator Nelson. Do you exempt a tax-exempt organization  
23 from the telephone tax in your state?

24 Mr. Chabot. From the present Federal telephone tax,  
25 state and local governments are exempted, and tax-exempt



1 educational institutions are exempted.

2 Senator Nelson. From the Federal tax.

3 Mr. Chabot. From the Federal tax.

4 Senator Nelson. I do not think we exempt any of them. I  
5 am not sure about that.

6 Senator Ribicoff. Could you make it a condition that  
7 they exempt the tax on the telephone bills of the Federal  
8 government? That seems very unfair.

9 Let the states amend their law, if necessary. They are  
10 getting a big enough break. It would be very simple for the  
11 state legislature to amend it. I think it is wrong to tax  
12 the Federal government on their telephone bill.

13 Mr. Chabot. In my comments about it, I do not know  
14 what was the motivation in any of the states, Wisconsin or  
15 an other state. I live in Montgomery County, so I do know  
16 that it was very clearly stated by the members of the County  
17 Council that the major reason for their imposing the tax on the  
18 utilities that provides a service, they did the same thing  
19 with the gas and electric companies, was so that that tax  
20 would end up, a proportion of the tax, would end up being  
21 passed on to the Federal government, while if they imposed  
22 the same tax on the customer, then the Federal government would  
23 be exempt.

24 I can testify that that was the motivation in that case.  
25 I cannot testify as to what was the motivation in any other



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state.

Senator Ribicoff. Whether it was the motivation or not, it was wrong to do it. I would go along with Senator Nelson's request, but I think Wisconsin and every other state, including Montgomery County, should not look for angles to tax the Federal government for its service. Heaven knows they get enough from the Federal government by way of grants and other services.

Senator Nelson. Let's just leave this out and check the language and bring this up.

Senator Ribicoff. Have the Committee check it and see if they can work this out to give Senator Nelson what he wants, but do it in such a way to exclude any charge on the Federal government.

The Chairman. A thought just occurred to me. If we do not watch out, we will find a situation where somebody will say the worst thing pretty nicely by taking a situation where the principal payroll is a big military base. If that community were permitted just to levy the tax on the telephone service on the provider of the service, then they would be, in effect, taxing the Federal government for most of the revenue that they would be obtaining.

They might do a cute little trick behind that by exempting certain individuals, and by the time they got through, it would only be Uncle Sam left paying it.

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1 I know the Senator does not have anything like that in  
2 mind.

3 Find out what Treasury thinks about it; let's get their  
4 recommendation up here. If it is appropriate to amend it, to  
5 take the Federal government out of it, we will consider it.

6 Senator Nelson. Let's set it aside; check it out and  
7 check the language of the Committee. I have a bill coming up  
8 on the Floor, ERISA. I have an amendment coming up on the  
9 Floor. I will have to leave.

10 The Chairman. Do we have any amendments that somebody  
11 wants to offer at this point?

12 Senator Packwood. I have a couple of bills that Senator  
13 Hayakawa and Senator Curtis want raised. The staff knows about  
14 it. I do not know what it is, but they asked that it be  
15 brought up in the tariff area.

16 One is on the sheet under 5, Senator Curtis' amendment  
17 relating to tariff treatment of animal feed containing  
18 soybeans and S. Res. 76, EC regulations and dried prunes.

19 I do not know what it is about, but the Sentors wanted  
20 them raised.

21 Does anybody on the staff know what they are about?

22 Mr. Cassidy. We are now, I believe, on items four and  
23 five on the various tariff measures pending in Committee  
24 sheet.

25 Under item 5, Senator Curtis is not here, but I know



1 that he did intend to propose an amendment relating to  
2 tariff classification of certain kinds of animal feed imported  
3 in the United States.

4 This is described in the supplemental sheet that you got  
5 with the blue book, describing tariff bills. It is number 3  
6 and the caption is "Possible Matters for Consideration on  
7 August 4."

8 Senator Curtis' amendment would essentially allow animal  
9 feedstocks in particular that which is imported by the Alum  
10 Manufacturing Company, manufacturers of Alpo Dog Food, to  
11 be brought in from Canada duty-free if the dog food contains  
12 less than 6 percent soybeans.

13 Under current law, you can bring in that kind of animal  
14 feed duty-free if it is less than 6 percent grains, but grains  
15 do not include soybeans.

16 This change, we would estimate, would have a revenue  
17 effect annually, a Customs loss of about \$250,000. The  
18 Committee considered this matter last year and did approve it,  
19 I believe. They did approve it last year, but it never came  
20 up on the Floor of the Senate.

21 We know of no problems on this.

22 The Chairman. Is there any objection by the Administration  
23 on this?

24 Mr. Cassidy. The Administration has never commented on  
25 it. We do not know what they think.

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Mr. Pritts informs me that the Administration did comment last year. They had no problems. I do recall there was one thing we wanted to make sure, that animal feeds containing dairy products were excluded. The amendment, as it now stands, does exclude animal feed containing dairy products.

The Chairman. I would think that we might want to report another one of these bills so we would not have to put so many amendments on any one.

Mr. Stern. H.R. 3373, silk yarn.

The Chairman. The silk yarn bill. We would add that bill to the silk yarn bill.

Without objection, then, we will report that, and that amendment to it.

Mr. Cassidy. The other matters are things that the Senator said they wanted to raise. I can go through them, or you can defer them until the Senators are here to bring them up.

The Chairman. You might as well defer them until the Senators are here, unless there is something urgent, something pressing that somebody wants to bring up at this time.

Senator Moynihan. I have one matter, Mr. Chairman, whenever you are ready.

The Chairman. Go ahead.

Senator Moynihan. Mr. Chairman, this morning on Medicare and Medicaid anti-fraud and abuse amendments, we dealt with the





1 modification requirements for conditionally designated PSRO's.

2 I have a matter here which is basically New York State. I will  
3 say it very briefly, and then explain with more information.

4 New York State has established an on-site inspection  
5 program for hospitals made up of teams of doctors and nurses.  
6 New York was one of the states which certainly distinguished  
7 itself in the degree to which medical care costs went up in the  
8 decade after Medicaid and Medicare were adopted. Starting out  
9 last year, we began the tightening up procedure.

10 We find that this on-site team is working very well.  
11 It looks as if we can project some \$56 million more in savings.  
12 This year, our situation is such that if we do not save money  
13 on Medicaid, we will have to cut medical services. That is  
14 how tight we are, and that is well known.

15 The PSRO's, frankly we are not entirely satisfied about  
16 them and to be very open about it, it is not easy to say --  
17 ideally we would like to see a profession like medicine police  
18 itself, but I am not sure, the experience in Medicare and  
19 Medicaid has not been reassuring in this respect.

20 In any event, while we do not object to the amendments  
21 that were adopted which seem to put the PSRO's in an even  
22 stronger position than they have been, what we would like to  
23 do in New York is to be able to continue with the inspection  
24 arrangements that we have. We think they are tougher.

25 It is a matter with us of either we save this money or

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1 we cut services.

2 What we would like to do is provide the Secretary with  
3 the authority to waive PSRO status for two years where on-site  
4 programs are in operation and give the state time to further  
5 study and report to HEW and the Committee on the effective-  
6 ness of its on-site programs as compared to PSRO.

7 We are asking this for New York and any state that might  
8 want to make the application to the Secretary.

9 The Chairman. What do you think about that, Mr. Constan-  
10 tine?

11 Mr. Constantine. We have tracked the New York situation.  
12 New York was one of the states, as the Senator points out, that  
13 had one of the worst review problems in the country. The PSRO's  
14 in New York are getting off the ground. There is competition  
15 by the Health Department which had done a fairly poor job of  
16 review in the past.

17 The Department has found that the on-site review teams  
18 New York has set up are essentially duplicative. They are  
19 nurse teams. There is dispute as to their findings. They  
20 are competitive with the PSRO's which Senator Bennett calls  
21 the review fiefdom. They do not want to give up what they  
22 were not doing.

23 Their data was inconclusive that New York submitted,  
24 arguable.

25 In New York County, the PSRO was inappropriately approving



1 care where we asked the Medical Director, for example there was  
2 a maternity case where the mother was nursing the child. The  
3 infant became sick. The PSRO approved keeping the mother in  
4 for another two days. The state said that this was a normal  
5 delivery and the mother should have been discharged in the  
6 four days that the state allows.

7 It is those kinds of things as opposed to aggregate  
8 performance by the PSRO where that same PSRO has reduced stays  
9 in hospitals by 25 percent -- I am sorry, the incidence of  
10 tonsilectomies and adenoidectomies by 25 percent; the pre-op-  
11 erative stays from one day to three days. More importantly,  
12 the PSRO is the only case where you can get a comprehensive  
13 picture of the care that the states are only providing a piece  
14 of the action with various national health insurance proposals,  
15 for how long, nobody knows.

16 You get a duplicative review. The state performance is  
17 erratic and inconsistent. They are only looking at a portion  
18 of it in that hospital. The Department has said that is  
19 duplicative and overlapping and frankly that there will be no  
20 matching for New York's on-site review.

21 That has nothing to do with the state doing the review  
22 where the PSRO is not doing it or where the PSRO is doing a  
23 poor job, for the state to come forward and make that case.  
24 That is in the provision here, and the Secretary has to inves-  
25 tigate that and make a decision within 30 days that if the

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PSRO is approving care indiscriminately and not doing its job properly.

This is frankly a duplicative kind of thing, Senator.

Senator Moynihan. May I ask this question? Under the whole provision as it is now proposed and adopted this morning, a state can come in and say the PSRO's are not doing their job correctly?

Mr. Constatine. Yes, sir. We retained the provisions in the House bill so it is consulted in the development of the PSRO's performance criteria. There are four public members on the statewide councils, most of them nominated by the Governor and they can include state and local officials.

This is the procedure now, so if the state says, they are not performing, the Secretary must go in within 30 days and make a finding as to whether the state's allegations were valid or not.

It is a means of correcting. Otherwise, you just wind up with absolutely divided and fragmented responsibility and competition.

The state concerns in New York are fiscal, frankly, in many cases, and understandably so, rather than whether the patient needed the case.

Senator Moynihan. Mr. Chairman, I would like to say that I do not defend anything New York has done in the past. I will stand responsible for what its performance is a year from now.



1 All we are asking is to give the Secretary the power to  
2 agree to let New York do this, if he decides he should.

3 Senator Ribicoff. What is wrong with that, giving the  
4 Secretary the option and the authority? If what you say is  
5 so, then the Secretary will say, I will not have any part of  
6 it; go with the PSRO instead of the on-site inspection.

7 Mr. Constantine. That is the state?

8 Senator Ribicoff. Give him the option --

9 Mr. Constantine. You wind up with two teams. You have  
10 the PSRO handling the review in the hospital for Medicaid  
11 patients plus private patients, private insurers, and others  
12 who have contracted with the PSRO's; for example in Connecti-  
13 cut, the state, by statute, requires the PSRO's to review  
14 all hospitalized patients. You get the state of Connecticut,  
15 you wind up with two organizations falling all over each other  
16 in the same institution.

17 Senator Ribicoff. We do not have two in Connecticut.

18 Mr. Constantine. In New York you would. They would have  
19 PSRO's in hospitals reviewing Medicaid patients, private  
20 patients; nurse coordinators stumbling over the state coordina-  
21 tors.

22 The point was to have a single place for review and the  
23 issue really, which was professional review rather than  
24 employees of the states, by the doctors, and the issue is  
25 whether they are doing a poor job. If they are doing a poor-

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1 job, the bill does provide very specific procedures for an  
2 immediate investigation and termination of them by the  
3 Secretary.

4 If the Secretary finds that they cannot find anybody else  
5 to do the job properly it can use the state and local health  
6 departments. They may be designated PSRO, if the doctors do  
7 not do it.

8 The issue was, if the PSRO program was designed to give  
9 organized medicine, or medicine on an organized basis, an  
10 opportunity to do their review. The point is, if you split  
11 it up before they are given the opportunity, you take it  
12 away, then it basically negates the thrust, the idea of having  
13 them do comprehensive review.

14 Senator Ribicoff. What I do not understand, the state  
15 of New York is so large, they just do not have one PSRO region,  
16 do they? They must have a number.

17 Mr. Constantine. Yes, sir.

18 Senator Ribicoff. What would be wrong with allowing  
19 different types of operations, different types of programs in  
20 different regions? Buffalo might want to do it one way,  
21 Rochester another way.

22 I think that the Senator is asking to give the Secretary  
23 authority over two years, and again, I think what he is  
24 really asking is a demonstration project to see which one does  
25 it the best.



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1 You are not requiring two separate review groups running  
2 down two different tracks at the same time, are you, Senator?

3 Senator Moynihan. Certainly not, Senator.

4 I would like to say that if the Secretary of HEW in his  
5 wisdom says no to a request by the state of New York, they  
6 will not hear anything from this Senator. Let the Secretary  
7 use his judgment, but we are 18 million people in many differ-  
8 ent medical situations, huge, empty, wilderness, crowded  
9 cities.

10 I would like to think that we have the option and the  
11 judgment would be made, a management decision by the Secretary  
12 of HEW. I would not insist upon it, but I would appreciate  
13 it if the Committee would put this option in there.

14 Mr. Constantine. Senator, I do not know if you want to  
15 make it an option or demonstration, but of course, if the  
16 state does it --

17 Senator Moynihan. The option, by which I mean to make  
18 the case for a demonstration project. If the Secretary agrees,  
19 then have one; if he does not agree, that is it.

20 Mr. Constantine. A demonstration in the PSRO area in  
21 New York, or statewide?

22 Senator Moynihan. In an area.

23 Senator Ribicoff. Why do you not get together with some-  
24 one from HEW yourself and someone from the Senator's staff to  
25 try to work this out in such a way that you are not duplicating

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1 and you are not competing, and let us see what happens, because  
2 it is a big state. There must be a fantastic barrier from one  
3 place to another.

4 I do not know if you could work it out that way.

5 Mr. Constantine. It is kind of hard, Senator.

6 Senator Ribicoff. When I hear both of you talking, I do  
7 not think that there is an inconsistent position that you are  
8 taking.

9 Senator Moynihan. I would appreciate that, if that can  
10 be done.

11 Mr. Constantine. We would certainly be willing. We  
12 think it is not inconsistent to have a demonstration in an  
13 area in New York, but not statewide.

14 Senator Moynihan. That is fine.

15 Senator Ribicoff. Chances are that New York City may be  
16 interested in one form and the rest of the state is not.

17 Senator Moynihan. In two years we can come back and say  
18 we have reached some judgments here.

19 Senator Ribicoff. What you have done when you say New  
20 York has a great responsibility, I think you said there is a  
21 possibility that they may lose a substantial sum of money if  
22 they are doing it wrong. I do not think that New York wants  
23 to lose that money. They are going to try to work this out  
24 with the Secretary.

25 Mr. Constantine. One clarification. The other point





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1 would of course be that New York would have a greater stake  
2 in it if it would use its regular matching PSRO review for  
3 Medicare and Medicaid is at 100 percent Federal. If the state  
4 chooses to do its own review, you would have the regular  
5 matching under those circumstances, I would assume.

6 Senator Ribicoff. This is something to take up. I  
7 think Senator Moynihan might want to get on the telephone and  
8 ask the Commissioner of Health of his state to sit down with  
9 you to make sure that the State of New York is not the loser  
10 by this.

11 Senator Moynihan. I think you are wrong. Why do you not  
12 see what you can work out? We have another amendment. We are  
13 not through working on that bill.

14 Mr. Stern. There is another item Senator Curtis wanted  
15 brought up that Senator Packwood brought up earlier, Senate  
16 Resolution 76.

17 Mr. Cassidy. Senate Resolution 76 is also described  
18 in the supplemental sheet entitled, "Possible Matters for  
19 Consideration on August 4," and it appears on the back of  
20 the second page.

21 The resolution is a Sense of the Senate Resolution, which  
22 expresses the sense of the Senate that the President should  
23 take immediate action to seek the removal of regulations that  
24 the European community has imposed that have the effect of  
25 restricting trade in dried prunes and efforts made to restrict

1 exports of walnuts to the European Community. It cites certain  
2 European Community regulations.

3 Also, in Section 3, it says: "The European Community  
4 should be put on notice that if they do something about  
5 walnuts, the United States will take immediate retaliatory  
6 action."

7 Senator Packwood. I am not pushing that, Mr. Chairman,  
8 I just mentioned it.

9 The Chairman. We had better discuss it later on. Senator  
10 Curtis probably would want to explain the situation and what  
11 his concern is about the matter.

12 Mr. Cassidy. One thing, Mr. Chairman. There are a  
13 couple of very minor technical changes that we will need to  
14 make in the tariff bills that we discussed. We would like  
15 authority to do so.

16 The Chairman. Without objection, agreed.

17 Mr. Stern. Mr. Chairman, there are two other items in  
18 the revenue area.

19 The first one is a study that is required by Senate  
20 Resolution 110 that passed earlier this year and it requires  
21 that the Finance Committee report a study in two areas. You  
22 have a sheet that is marked "D" in the upper righthand corner  
23 called "Study Required by Senate Resolution 110."

24 The Chairman. A study about what?

25 Mr. McCongahy. The resolution basically requests that



1 two areas of the tax laws be reviewed, with recommendations  
2 being made by the full Senate.

3 The first area deals with the tax status of the funds  
4 expended by political communities to defray the ordinary and  
5 necessary expenses of a Member, and basically the problem is  
6 that under the tax laws, the political funds or a political  
7 organization, in order to qualify for exempt status, has to  
8 be organized and operated primarily for campaign purposes.

9 The regulations in defining what "primarily" means state  
10 that no more than an insubstantial amount can be spent for  
11 other than campaign purposes, or the fund itself loses its  
12 tax exemption.

13 The Federal Election Campaign Act would allow expenses  
14 from a political fund to be spent for ordinary and necessary  
15 business expenses of a member and likewise, the Senate  
16 Resolution would allow those political funds to be spent for  
17 official office expenses, but the Internal Revenue Code steps  
18 in and says if more than an insubstantial amount is spent,  
19 the fund loses its exemption; as a result of that, contributions  
20 to it would end up being income.

21 One of the recommendations I think that perhaps the  
22 Committee might want to consider would be a recommendation  
23 that would say the political fund is any contributions that  
24 have been subject to the Federal Election Campaign Act, that  
25 there is reporting and there is disclosure of receipts and

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1 expenditures, that it should be permissible for the fund to  
2 be spent for either a campaign purpose called an exempt  
3 purpose or for an ordinary and necessary business purpose,  
4 and only amounts spent for other than those  
5 two purposes, more than insubstantial, then the fund should  
6 lose its exemption.

7 The Chairman. Is that not the same issue we had on the  
8 Floor yesterday? It seems to me that what you are suggesting  
9 here is basically what the Senate agreed to yesterday, that  
10 funds --

11 Senator Packwood. What we are doing is making IRS  
12 apparently conform to the Federal Elections Code and the  
13 Ethics Code.

14 The Chairman. Right. That is just the recommendation  
15 right now, is that right?

16 Mr. McCongahy. That is right.

17 The second area that was required --

18 The Chairman. Without objection, agreed.

19 Something else?

20 Mr. McCongahy. The second item is ordinary business  
21 expenses. Ordinarily there is a rule that the tax home of  
22 a member of Congress is the District he represents. He is  
23 entitled to deduct expenses while he is away from home, away  
24 from his District overnight, but he has a limitation of \$3,000  
25 on the amount of expenses that he can deduct for living



1 expenses.

2 That provision went in in 1952. It has not been changed  
3 since then, and in many cases it seems to be very low and  
4 perhaps inadequate.

5 As the talking paper here indicates, the Consumer Price  
6 Index, if you update it since 1952, would raise that amount  
7 to approximately \$6,800. Businessmen can generally deduct  
8 ordinary and necessary expenses without limitations as long  
9 as they are not extravagant or lavish.

10 There is an administrative rule that says the businessman,  
11 when he is on the road, can deduct \$44 a day without substan-  
12 tiation, and deduct more than that if he wants to substantiate.  
13 In the case of a per diem arrangement or reimbursement  
14 arrangement, businessmen basically if they have a per diem  
15 or reimbursement arrangement can deduct the \$44 a day without  
16 having to substantiate those expenses and deduct more than  
17 that if he wants to substantiate the expenses.

18 There are a number of alternatives that are listed.

19 The Chairman. You have told me the different alternatives,  
20 let me tell you what I think it ought to be. We should do  
21 it the same way a businessman can do. That is, if the IRS is  
22 willing for a businessman that he can deduct \$44 --

23 Mr. McCongahy. Without substantiation.

24 The Chairman. As a Senator, a member of Congress if he  
25 is required to have a home in his state and he is deemed to be



1 away from home when he is here in Washington, we ought to have  
2 the same consideration as a businessman gets, that is \$44 --  
3 he is presumed to have \$44 per diem expenses very day and give  
4 us the same consideration as any businessman. If he can  
5 document that he has more expenses than that, give him the  
6 option to do it.

7 That is what I think makes sense.

8 Mr. Constantine. What do we do with state legislators?  
9 How are they treated?

10 Mr. McCongahy. With state legislatures, we allow the  
11 deduction basically with several limitations. The overall  
12 limitation would be \$5,000 a year. They are not away from  
13 home, generally.

14 The Chairman. Generally speaking, they are not away from  
15 home as much as we are.

16 Senator Matsunaga. I agree with you, Mr. Chairman. That  
17 is one thing that has really bothered me in the fourteen years  
18 that I have been filing my income taxes.

19 The Chairman. It does not bother me. It would treat a  
20 Senator and a member of the House in the same way that you  
21 would treat any businessman. If we recommend that, that is  
22 what I think the rule ought to be. Senators can do whatever  
23 they want to.

24 Senator Packwood. What do we do with these recommenda-  
25 tions, send them back to the Ethics Committee?



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Mr. Stern. You are supposed to develop these in consultation with the Appropriations Committee. We would recommend that staff prepare a draft report that the Chairman would like to transmit with Senator McClellan with a view of filing it as soon as they can take a look at it, filing it as a report.

As far as the other question, at some one point or another you may want to translate these into actual legislative amendments.

The Chairman. We can do that later on, if we want to. Right now we are under a burden to report what we think about the matter, are we not?

Mr. Stern. Yes.

The Chairman. Is there any objection to that approach?

Without objection, that is what we will recommend.

Does that take care of the living away from home matter?

Mr. McCongahy. Yes.

The Chairman. Why do we not quit at that point. It is now 12:15. We have a meeting again tomorrow.

Mr. Stern. Yes, sir, at 10:00 o'clock.

(Thereupon, at 12:15 a.m. the Committee recessed to reconvene at 10:00 a.m. Friday, August 5, 1977.)

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