Keep Here

ORIGINAL

EXECUTIVE COMMITTEE MEETING ON LEGISLATION TO REDUCE THE FEDERAL DEFICIT FOR FISCAL YEARS 1987, 1988 AND 1999, PURSUANT TO INSTRUCTIONS RECEIVED UNDER S. CON. RES. 120, AND TO CONFIRM WILLIAM F. NELSON TO BE CHIEF COUNSEL OF THE INTERNAL REVENUE SERVICE

TUESDAY, JULY 22, 1986

U.S. Senate

Committee on Finance

Washington, D.C.

The committee met, pursuant to notice, at 2:22 p.m. in Room SD-215, Dirksen Senate Office Building, the Honorable Bob Packwood (chairman) presiding.

Present: Senators Packwood, Dole, Danforth, Chafee, Heinz, Wallop, Durenberger, Armstrong, Symms, Grassley, Long, Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley, Mitchell and Pryor.

Also present: O. Don Chapoton, Deputy Assistant Secretary for Tax Policy and Dennis Ross, Tax Legislative Counsel, Department of the Treasury; Glen Hackbarth, Deputy Administrator, Health Care Financing Administration.

Also present: Bill Diefenderfer, Chief of Staff; Ed Mihalski, Deputy Chief os Taff; John Colvin, Chief Counsel; Randy Weiss, Deputy Chief of Staff, Joint Committee on Taxation; Frank Cantrel, Tax Counsel; Bill Wilkins, Chief Counsel, Minority; Bruce Kelly, Health Counsel, Minority; and Susan Taylor, Administrative Director.

The Chairman. Let's get started, in the hopes we can go through the list of suggestions. I would like to finish today if we can; otherwise, we are set to come tomorrow. And when we have a quorum here, do we have enough notice to send Mr. Nelson out if we have a quorum? All right. We can send him out when we have a quorum.

I also would like, and I know of no objection--we just had the hearing on William Nelson to be Chief Counsel of the IRS. I would like to send him out today when we have a quorum. Good man.

Let's get started. We have to, under the reconciliation order, reduce outlays over three years by $4.1 billion and increase revenues by $8.3 billion.

And for our purposes here today, if we adopt any item which increases spending in our reconciliation package, we have got to offset the spending with additional savings or revenues.

I have asked the staff to put together a package. In some cases, they have talked with a number of your staff. There is some concensus; there is some objection. My mind is quite frankly open as to how we meet the totals, but meet them we must.

So, if the staff wants to start down the proposed list, then we will see where we come out.

Mr. Mihalski. Yes, sir. All members should have a

package which is six pages, which starts with the beginning pages, the instructions to the committee; and then the second page is a detailed list of proposals and savings amounts associated with them, and there are two pages of that. And that is what I will be going down.

The Chairman. All right.

Mr. Mihalski. The first proposal is to provide a rate of increase--an increase in the rates--for hospitals under the prospective payment system, and other hospitals under Medicare, to allow their rates to go up--their payments to go up--by 1.5 percent.

That is in contrast to the Administration's proposal in regulation to allow an increase of one-half of a percent --a half a percent--and the Prospective Payment Assessment Commission's recommendation of anywhere from 1.9 to 2.2 percent.

The second proposal deals with reform of capital payments for Medicare hospitals. Currently, those hospitals are paid on a cost reimbursed basis, and those costs are passed through to the Medicare program.

This proposal is a modification of a Durenberger bill which basically would allow a transition period. Over a 10-year transition period, we would move from hospital specific costs, that is the current payment method, to a method where the prospective payment rates for hospitals

would include the costs of capital; and there would be no distinguishing them between capital versus noncapital payments after a 10-year period.

That particular proposal also includes an outlayer policy which would allow hospitals which have capital costs in excess of twice the average to be paid an additional amount which would be equal to 80 percent of those costs which are above twice the average.

The third proposal then is the secondary payer, as it is listed here. The secondary payer proposal is an extension of the logic behind the working aged provisions that this committee has adopted in the past.

What it requires is that any employer must offer to his disabled workers the same kind of coverage--health coverage--that he offers to all of his other workers.

Those disabled workers can then elect to that coverage --the Medicare beneficiaries--can elect that coverage as primary so that Medicare then is secondary to the employer's group plan.

The enforcement mechanism for this provision is one which involves imposing an excise tax on any employer who does not comply, equal to 25 percent of his group plan cost.

The Chairman. Say that again.

Mr. Mihalski. The way we enforce this is to apply an excise tax on every employer who doesn't comply, equal to

25 percent of the cost of his group health plan--his cost that he is paying for his health insurance for his employees.

The Chairman. Let me stop you just a minute. We have a quorum here now. Is there any objection to the committee reporting William F. Nelson to be the Chief Counsel of the Internal Revenue Service?

We just had a hearing on him. His FBI report is exemplary from all of the comments on him--friends, clients, associates, teachers, everybody. Is there any objection to reporting him out?

(No response)

The Chairman. Without objection.

Mr. Mihalski. The next provision on the list is on line 6. It is listed as inherent reasonableness. This is an adaptation of some regulations of the Administration which would allow the Secretary to modify the amounts that are paid physicians to bring them in line with what would be considered inherently reasonable levels.

For example, in certain types of surgery that were initially very expensive, and there were very few surgeons who did these particular operations, over time now are done in a very rapid order, and most doctors can do them. But the prices that the doctors charge have not declined to reflect that kind of technology.

The Chairman. I have heard of a lot of euphonisms to

try to cover something and make it appear acceptable, but inherent reasonableness is about the best you can find, I think.

Mr. Mihalski. We simply adopted the Administration's language, Senator.

(Laughter)

Senator Durenberger. Mr. Chairman, it is true that we are actually trying to make their reasonableness more inherently reasonable with some modifications to the route that they have been on.

Mr. Mihalski. That is correct. We go beyond and would adopt slightly different rules than what are in the regulations.

On line 7, the Medicare economic index is a proposal to change the limiting factor, or the index that is applied to the increase in certain components of physician fees.

As you know, the way we pay physicians is very complicated, where we pay them the lowest of their actual charge, the charge they might customarily make, and then a charge that is supposed to represent what physicians in the same locality charge.

This index is applied to that charge that represents what physicians in the same locality charge. In the past, it has included in it as an index a reflection of the costs of operating a doctor's practice, his office.

And because the Bureau of Labor Statistics has changed the CPI component where they now reflect different elements of how you measure home ownership and office costs, this would reflect those same changes in this index and do it retroactively and then phase it in over two years, as opposed to the Administration proposal to do it all at once.

The next proposals, on lines 8 and 9, have to do with the end stage renal disease program, which is a program for patients with kidney failure.

Line 8 would reduce the amount we pay physicians who treat those patients. The proposal was the Administration's proposal and the General Accounting Office, after a study of the data behind the proposal and taking an independent look at what doctors are doing, agrees that the reduction is reasonable.

On line 9, the ESRD facility rates, this is an amount that is paid the facilities that actually provide the dialysis service.

This particular reduction is a one dollar reduction in the rates as opposed to an $11.00 reduction in the rates that the Administration has proposed by regulation.

There are many people who feel that we do not know enough about whether the reduction is reasonable or not --that is, the Administration's reduction is reasonable or not--and since we have a problem with putting a straight

moratorium on the implementation of the regs because that would be an extraneous matter under our current markup procedures, what we have done is simply reduce those rates then by $1.00, in effect trying to protect those ESRD facilities until we can get better data from the General Accounting Office, which we will request and get hopefully next year.

Item number 10 is an ambulatory surgery reform that again is based on a bill that Senator Durenberger introduced.

Basically, what we do is pay for ambulatory surgery which is provided in hospital outpatient departments, and we pay the lower of two amounts--either their costs, which is what they are being paid now, or the prospective rates that the Secretary has established for ambulatory surgical centers, which are independent units that are often sitting out in the neighborhood away from the hospital.

And over time, then, there would be adjustments in those rates so that the outpatient departments and the ambulatory surgical centers will be paid basically on the same basis. They would receive the same amounts for the same kinds of surgery.

The other piece of this proposal removes the waiver that the Congress currently has on imposing the 20 percent deductible under Part B on the services that are received through the ambulatory surgical centers and these hospital

outpatient departments, so that the playing field is even.

The waiver was put in place to try and get people to go to ambulatory surgical centers. There now is of course a big shift toward outpatient ambulatory surgery, and so that particular kind of incentive is no longer required.

Item number 11 is the periodic interim payment elimination. Currently, the Medicare program pays some hospitals--those who elect--payments which are made every two weeks, and the idea is that we even out the cash flow to these hospitals.

The proposal, it was felt, made good sense when we were paying hospitals on a cost reimbursed basis and nobody knew what their costs were; and indeed you did not have final settlement on their costs until after the year was complete.

This proposal would eliminate this PIP mechanism for any hospital that is on a prospective payment because, under prospective payment, hospitals now get paid every time they discharge a patient and submit a claim to the program.

However, to try and mitigate the effects of removing and getting rid of this every two week payment, we certainly want those claims as they come in from the hospitals to be paid promptly.

So, the proposal also includes a prompt payment element which will require the Secretary to pay 95 percent of all those claims that are clean--by clean, I mean those that

are not missing any data and can be processed--within 24 days after they are submitted. And that is from the time the insurance company that is under contract with Medicare gets the claim, it has 24 days from the date it receives it until the date it writes the check and sends the money to the hospital.

This would also apply under the Part B progam. It would apply as prompt payment for everybody--payment to hospitals, payment to doctors, payment to individuals for their doctors bills and other services.

The Part A deductible is a proposal to limit the deductible. As you know, anybody who enters a hospital as a Medicare beneficiary now is liable for this year about $490.00 and some as an out-of-pocket expense the day he is admitted. That is his deductible.

And that deductible increases from year to year, depending upon what the average cost of a hospital day is. Next year it is expected that the deductible will go from about $490.00 to about $572.00. This would limit that increase to $520.00. It would set it at $520.00 next year, and then limit it in the future by linking it not to the cost of a single day but to the cost of a hospital admission, which is a lower increase. It is a rate of increase at a little slower nate.

Under Item 13, last year this was a proposal that was

a piece of a larger proposal. And basically, what it does is it allows home health agencies to be paid without the imposition of limits on a per-service basis.

I will try to explain that. A home health agency may have a limit on, for example, skilled nursing services and a separate limit on homemaker aide services. And those limits currently are applied to each service independently.

Under this proposal, they would be able to aggregate all their costs together and then apply the limits. So, this would basically help home health agencies to provide services to patients by providing them with more money.

Senator Bradley. Mr. Chairman, I just want to confirm that the package prohibits HCFA from setting separate cost limits. Is that right?

In other words, if a local agency wants to vary how much it spends according to physical therapy or how much it uses for skilled nursing or social work, that is up to that agency. It is an overall limit, and they can work it out as they choose.

Mr. Mihalski. That is right. There are still separate limits, but they in effect cannot be applied to each separate service.

Senator Bradley. And as I understand it, this is not retroactive.

Mr. Mihalski. No, sir. Because we are trying to put

together a package that stays within certain boundaries, we had made this effective for cost reporting periods for home health agencies beginning October 1 of 1987. This does not dip back in the past.

Senator Bradley. So, if HCFA did make separate limits in the past, those would stand?

Mr. Mihalski. Yes, sir.

Senator Bradley. My hope is that, in conference, we could show a little flexibility on the retroactivity provision because there are many home health care agencies that are adversely affected by a ruling that isn't pursuant to what our intention was.

Mr. Mihalski. On line 14, this is the waiver liability/ appeals. This is basically a change in what the Administration has done in administering the home health benefits.

Currently, hospitals, nursing homes, and several other kinds of providers can submit claims and, if they didn't know that the claim would be denied, as long as the number of claims that they submitted was below a certain error rate, so to speak, the program will pay those claims.

However, certain claims,the Administration has taken action to exclude certain claims from that waiver liability status; and these are so-called "technical denials" because the patient was not homebound, which is what the rules

require, or the patient received care that was more than intermittent, which is also what the law requires.

So, in short, this basically allows those kinds of claims now to be applied under this waiver of liability rule. There will be an increased expenditure because some of those claims will be paid.

In addition, because we do that, because we make these claims now eligible for this waiver of liability, those claims can now be appealed through the administrative law judge process.

In doing that appeal, the administrative law judge, however, cannot look behind anything that is not either in law or in regulation. And most of the rules that have established these kind of denials are in manuals--instruction manuals--that the Administration has issued.

So, in order to prevent a great deal of appeals then from just going ahead and costing a substantial amount of money, we require that those rules that are in manuals be put into regulation. And through them, the ALJs can look at what are in regulations and then apply the law that way.

Senator Bradley. So, the terms "homebound" and "intermittent care" will have regulations defining them?

Mr. Mihalski. Yes, sir.

On line 15, the quality of care initiatives. There are several initiatives in that particular package, the first of

which would be to waive the liability for a patient who is in a hospital and is told he must be discharged, but the patient does not believe the discharge should occur when they say it will.

And therefore, they appeal to the PRO, the Peer Review Organization. In the past, it has been quite possible for the hospital to start charging the patient for the days that they stay beyond what the doctor or hospital said was medically necessary.

This would basically hold the patient harmless for those charges until the PRO decided whether the discharge was appropriate or not.

In addition, there would be a requirement that patients are notified of their rights of appeal and notified of what their financial liability is and what kind of post-hospital services and care is available to them under the Medicare program.

Another part of the proposal would require that all hospitals provide for timely discharge planning.

Currently, when a person is ready to be released from a hospital, some hospitals may do extensive discharge planning; that is, they may decide what the patient needs after he is released from the hospital.

If they need nursing care facilities, they will identify the facilities the person can use. If they need home health

services, they will identify where the person can get them.

This proposal, in brief, would basically require that that happen in each and every hospital.

Senator Heinz. Mr. Chairman?

The Chairman. Senator Heinz and then Senator Chafee.

Senator Heinz. Mr. Chairman, excuse me. I would just like to clarify something on this provision. Would the provision in the chairman's proposal include asking the PROs to look at post-acute care?

Mr. Mihalski. No, sir, it does not. There was extensive discussion as to whether to require PROs at this time to look at the care that is provided after a person leaves the hospital.

And we felt that, because of a recent court ruling, which sort of puts the whole PRO program in a little state of disarray, and the fact that the Finance Committee has not held any hearings really to identify what the problems might be with that process and what additional burden this might place on those particular PROs, and how that might be funded, we have put that off.

And Senator Durenberger has indicated that he would like to have hearings on this next year to learn what the problems are, how this matter might be properly addressed.

Senator Heinz. Now, just one other point of clarification. There is a new round of contracting with

PROs. When does that begin?

Mr. Mihalski. There is a round currently under way, and the new round, I understand, will begin about in about two years from now, just a little short of two years from now.

Senator Heinz. Would the concern that you just expressed be relevant if we got the Health Care Financing Administration geared up to include the coverage of post-acute care, not in this round that is ongoing, but in the next one?

Mr. Mihalski. Yes, sir. I think that is what the intent would be, is to sort out what exactly should be done and then put that in place with this coming round.

Senator Durenberger. John, would you yield?

Senator Heinz. Yes, I would be happy to.

Senator Durenberger. By way of clarification, and for those who weren't able to participate in the hearing that we held on the issue of quality assurance, this issue of peer reviewing those parts of the settings in which people are cared for after they leave the hospital was raised then by John, because we talked about his bill.

And there is no question in my mind that we are going to have to do what Senator Heinz has asked us to do. I think his reference to having hearings was precisely as to what kind of peer review do you want to do on skilled nursing facilities and so forth; but I think it is certainly

appropriate to consider John's proposal that we look at some language in here that puts the Secretary to work now and commits us to doing peer review after 1988, leaving the precise nature of what we do up for grabs.

Is that what you are looking for?

Senator Heinz. Absolutely correct, Senator Durenberger. Yes, Dave. And just so that the members of the committee are not in doubt as to what we are talking about, we have a bill, S. 2331; and that bill, which not only specifies we are not talking about renegotiating contracts, we are talking about the future round. Also, it is not a comprehensive review of every post-acute case.

It is a selected, targetted, rather modest sampling of what is going on, and I think, Ed, that you are familiar with that; but I just wanted to bring to the attention of our colleagues that this is, first, modest in cost, and it is not a huge mass of administrative burden.

So, I hope that our colleagues will look at that. Thank you.

Mr. Mihalski. Senator, clearly, we can indicate to the Administration that they ought to get working on this issue in report language. If we adopt legislative language to require it, there will be some costs involved.

Senator Heinz. Yes. I am advised that the cost is $28 million over three years?

Mr. Mihalski. About 28 over three.

Senator Heinz. Given the amount of money--and I am expressing a personal point of view admittedly--given the amount of money that we are saving first on DRGs by virtue of moving people out much more quickly into these post-acute care settings, that seems to me--$8 million a year--in terms of the literally billions a year we are saving, to be a very small insurance policy of equality of post-acute care.

I am speaking for myself, and whether my colleagues agree or disagree, that is for another time.

The Chairman. Go ahead, Ed.

Mr. Mihalski. There are other pieces of the quality of care initiative. One would be to have the Secretary implement a pilot program because one of the problems has been that people get into nursing homes after they are in a hospital, or they get into a home health agency; and it is only after they have been there for a while that they find out the program will not pay for those costs.

So, this pilot program would look at getting some kind of a preauthorization so that the patient and the nursing home or home health agency know that, if they admit or start to treat that person, that those costs will be covered.

One other issue, of course, is to allow providers to represent beneficiaries on their appeals of their claims when those claims are denied.

Currently, only the individual can appeal their denial; and this would allow the providers to assist them in that process.

There were also a couple of other small pieces of the proposal. Most of the stuff, I would point out, does come from Senator Heinz' quality bill. Allowing PROs to get information directly from fiscal intermediaries, that is, the people who administer the Medicare program and directly also from the hospital on patients. So, it facilitates the job that they can do.

And also, to require those PROs to at least do a sample review of the people who are discharged from the hospital and then are readmitted to the hospital within 30 days.

There have been some serious concerns that some of these premature discharges are simply a person being discharged prematurely, and it turns out then they are readmitted because they really weren't well enough to go home and they got sicker while they were home. And now, they are back in the hospital.

So, the PROs will be required to look at a sample of those readmitted within 31 days.

And there also would be a provision to have PROs share some confidential information on problem areas that they find with State licensing authorities and national crediting bodies.

The next item is on line 22, which is--I am sorry; I missed Item 16, which is outcomes research. This basically sets aside money to do research on why there are differences in outcome for different medical treatments.

There has been some recent work that has been done in this area, and you will find that you have significant differences in the length of time a patient is in a hospital, although the person in Maine, for example, had the same procedure as the person in Oregon; and yet, there are significant differences in the length of time they are in the hospital.

And this research would look at what accounts for those kind of differences, whether they are medically necessary, and what might be done to even those differences out.

Senator Moynihan. Mr. Chairman, could I ask a question? Would you like to go through the whole page?

The Chairman. I would like to go through the whole page and the revenue page; and then make a quick statement, and then say all right, fellows, we are open.

Senator Moynihan. I would like to make a proposal about the capital reimbursement.

The Chairman. I would just as soon go through the whole list if we can. Although he refers to this as the chairman's proposal, let me assure that, apart from some very quick briefing that Ed has given me, I simply said put

this together with as many of the staff as you can talk with and see what you come up with, and it will be open for changes as we go.

Senator Chafee. This is a staff proposal?

Mr. Mihalski. Yes, sir.

The Chairman. This, I must confess, is a genuine staff proposal, although as I go through my memo, I see your name in here frequently, as this is a Chafee suggestion or a Chafee staff suggestion, on a fair number of these.

But it is not my proposal. I can't claim paternity.

(Laughter)

Senator Chafee. I had better restrict my questions then.

(Laughter)

Senator Chafee. Mr. Chairman, in answer to Pat's question, did you say that you want us to hold up on asking questions until we are finished?

The Chairman. I don't mind your asking questions about understanding what is in it. I would just as soon not have any suggested proposals for the moment until they finish the list and the revenue suggestions.

Senator Chafee. I would just like to ask a quick question then, if I could, on the quality assurance provision and a patient asking for an appeal. See if I understand this correctly.

Let's say a patient is in the hospital and the physician

determines he should go out on the 1st. As I understand the changes, now he thinks he shouldn't get out, and so he can appeal. And the PRO must give him a decision within two days. Is that right?

Mr. Mihalski. Yes, sir.

Senator Chafee. Now, we are up to the 3rd. Now, let's say that the PRO decides that he should get out on the 5th; but if I understand this, the hospital is prohibited from charging the beneficiary until the fourth day after he receives the notice?

Mr. Mihalski. Yes, but the intent of that-- The notice in that case, I think, would be denied. Denial. In other words, the PRO agreed that the patient should have been discharged.

Senator Chafee. No, no. We took the case where he shouldn't have been discharged. They were going to put him out on the 1st. He appealed. The PRO group said he should really stay until the 5th. And he gets the decision two days after filing, in other words, on the 3rd; they say you go out the 5th.

But I understand--if I do correctly--that they are prohibited from charging the patient until the fourth day after he gets the notice?

Mr. Mihalski. The 5th day?

Senator Chafee. Oh, my mistake --

Mr. Mihalski. Yes, that is correct. It is possible then for the patient to be discharged on the fifth day and--or let's say stay in a day until the 6th, and still be not held liable for that sixth day.

Senator Chafee. That is right. Four days after getting the notice. So, although they say you go out on the 5th, he said, well, I won the appeal and I am not charged until four days after, so I think I will stay until the 6th. I like it here.

Mr. Mihalski. All right. That is something that we will have to take a look at. We had picked that up from the quality bill and apparently had not looked at that close enough.

Senator Chafee. Thank you.

Mr. Mihalski. And continuing, going into the Medicaid items --

Senator Heinz. Mr. Chairman, before we go to Medicaid, can I ask one additional question on Medicare?

The Chairman. Yes.

Senator Heinz. And this relates back to the issue of waiver of liability. It is my understanding that in the original staff proposal that the proposal was to implement this provision, which I gather is basically our waiver of liability provision that we had introduced in legislation.

In the committee language of a couple of days ago, it

became effective 90 days after date of enactment. Under what you have here, it becomes effective July 1, 1987.

Now, I don't know what the consequences of that are, but let me tell you what my concern is.

My concern is that the waiver of liability expires 12 months after the 10 regional FIs--the fiscal intermediaries--begin operations. And I don't know enough about the timing or that triggering of that 12-month period to know whether we are going to end up with a kind of a big, gaping hole here that I don't think we intend.

Can you respond to that concern of mine?

Mr. Mihalski. Yes, sir. I might ask the Administration: Can they tell us when the 10 intermediaries will be put in place?

The reason that we did do the delay from 90 days after enactment until the middle of the year was because we had problems with savings in the first year, and changing the effective date was the easiest way to get it.

Mr. Hackbarth. Ed, we will not have the regional intermediaries in place by that date, so there won't be a hole there.

Senator Heinz. All right. Thank you very much.

Mr. Mihalski. On Medicaid, on line 22, expanding coverage for infants; this is children under one year of age and pregnant women. Basically, this is an option for the

States.

The States can elect to provide Medicaid coverage to these individuals, even though the individuals would not qualify for AFDC. The limitation, of course, would be that you can bring people in only up to where they would be at the poverty level.

So, you have this group of people that are above the AFDC qualifying level but below the poverty level, and the States would have the option of picking those people up.

The children are picked up in the first year only up to age one, that is, the infants. But over the time, we increase that by one year so that, in about 1991, the States will be able to cover children up to age six.

On line 23, which is expanding coverage for the elderly and disabled, this is a similar provision.

You have a number of elderly pepple who are above the SSI--the supplemental security income levels--but are below the poverty level; and this would give the States the option of picking those people up if they wanted to.

And they could either give them the full Medicaid benefit or they could simply limit what they give them to filling in where Medicare does not pay. And they could then pay Medicare's deductibles, co-insurance, and premiums.

The one thing that links these two proposals is that the States cannot elect to cover the elderly and disabled

unless they first elect to cover the children and pregnant women.

Once they elect to cover the children and pregnant women, then they can pick any income level between this SSI--the normal qualifying for the elderly--and the poverty level.

There is no longer a link as was once described, whereas the elderly coverage could be no more than what the infant children coverage was.

Under line 24, hold harmless, there was a provision last year that was adopted in COBRA. That provision basically changed the way that we compute how much the Federal Government will match the States in their Medicaid program.

And that change went from making that calculation every two years to making the calculation every year. As a result of a change in conference, where the effective date was moved up by a year, there were certain States that became disadvantaged because the calculation for next year--fiscal year 1987--will result in their getting a lower rate than if they had held that rate for two years--1986 and 1987.

So, this hold those States harmless and allows them to be paid the higher rate that would apply in 1987 except for this provision.

There is also then a ventilator dependents provision in Medicaid. This is similar to what the committee reported

out last year, and it basically says that people who are dependent on ventilators, which are respiratory assistance devices, who meet certain requirements, those people then can receive services in their home.

We can now move to page 3 of 6, and Mr. Colvin will describe then the three revenue options that are in this package.

The Chairman. I might say here that you will recall when the Gramm-Rudman-Hollings Bill was adopted last year, we had a provision put in it that allows us a 20 percent fungeability so that we are in a position to go up or down on revenues or outlays 20 percent of the total that we are to meet.

We are to meet a $12.6 billion total. So, a 20 percent fungeability on that is about $2.5 billion, and we can go up $2.5 billion on revenues or down $2.5 billion on expenditures, or vice versa.

So, we have a fair amount of room, so long as we come out with the total, to go up or down in revenues or expenditures. John?

Mr. Colvin. There are three revenue provisions in the package.

The first is to extend Medicare hospital insurance coverage to all State and local government employees, effective about one year from now--July 1, 1987. Pardon me.

That is June 1, 1987. That is similar to the provision approved by the Finance Committee and the Senate in the reconciliation bill last fall.

The second revenue item is an extension and modification of the telephone excise tax. Under present law, the three percent tax expires at the end of 1987; and under this option, it would be raised to five percent for business customers beginning Octoger 1, 1986 through the end of April 1989; and for residential customers, it would be maintained at three percent as under present law until January 1, 1988, and at that point it would be reduced for residential customers to two percent.

The third revenue item has to do with the timing of excise tax payments on alcohol and tobacco products. The proposal would speed up somewhat the timing of payment of the tax to 14 days after the period to which the tax applies.

Under present law, the period for paying the tax is 25 days after the period for cigarettes and 30 days after the period for distilled domestic spirits. And as I said, the proposal would speed that up to 14 days.

It also would require that the tax be paid 14 days after importation of bottled distilled spirits. And that makes the treatment of imported distilled spirits uniform with domestic distilled spirits.

The Chairman. As I told the staff earlier, it seems to

me we have hit the distilled spirits industry hard enough. I have some misgivings about this, and when we get to the revenue part in discussing it, I will at least express those misgivings again.

Senator Heinz. Mr. Chairman, I have some reservations and hesitations along the same lines. I am somewhat encouraged by the fact that the staff has said, if I understand them correctly, that the changes you are making with respect to imported product whereby you require the collection of duties within 15 days of receipt in the United States, I think you just said that that will prevent domestic producers from being put at any further competitive disadvantage. Is that correct?

Mr. Colvin. That is right. Senator Heinz, earlier you had introduced a bill which addressed that same problem. It did it in a different way that this proposal, however, but it did address the same problem.

Senator Heinz. Thank you.

The Chairman. I wonder if we might do this. As you will note, the outlay totals we are under about $70 million, and the revenue totals we are over about $296; so we would be up about $226 billion on the reconciliation targets.

I am not wedded to either the specifics of the outlays or the revenues, but we do have to hit that $12.6 billion target. I think we might probably best spend our time by

starting on the outlay reductions and opening it up for discussion; or going down the list, one at a time, as we have, and see if people have any comments as we go. Let's see what we can adopt and see where we end up. George?

Senator Mitchell. Mr. Chairman, I had a couple of questions to ask on the revenue item entitled "Accelerate excise tax payments," which I think you were talking about. May I ask them now?

The Chairman. Yes. Go ahead.

Senator Mitchell. I wanted to ask the staff. Of the approximately $400 million raised from accelerating the payment of excise taxes, how much is raised from domestic products and how much from imported products?

Mr. Weiss. Senator Mitchell, I don't have that information right at hand, but I would guess that most of it is from domestic products. It is basically tobacco and distilled spirits, and most of the tobacco is domestic, and a good portion of the distilled spirits is.

Senator Mitchell. That was my next question. And if you don't have it, if you could just get it for us at your earliest convenience, the breakdown among industries. How much on tobacco? How much on distilled spirits? How much from wine and how much from beer?

You don't have that either now, do you?

Mr. Weiss. No, we don't. I think very little of it

is from wine and beer because they are already at 15 days.

Senator Mitchell. Yes.

Mr. Weiss. It has very little effect on that.

Senator Mitchell. Third, I understand that the U.S. Trade Representative is currently attempting to negotiate an agreement with Japan to improve market access there for U.S. wine and spirits, and similar negotiations are occurring with Canada over beer.

Since this proposal would have some effect on imported products--the extent to which we don't yet know--has the U.S. Trade Representative or anyone else in the Administration been asked for and submitted an opinion on this proposal?

Mr. Colvin. Not that I am aware of.

Senator Mitchell. All right.

Mr. Colvin. As Randy said, there would be very little effect on wine and beer because that is currently at 15 days, and it would be changed to 14. And the provision relating to the Customs warehouses only applies to distilled spirits.

Senator Mitchell. Right. But the answer is that no opinion has been sought?

Mr. Colvin. That is correct.

Senator Mitchell. My final question, Mr. Chairman. If the imported product is then shipped out of Customs bond to

a point outside the United States, tax having previously been paid, would the tax then be refunded?

(Continued on next page)

MR. COLVIN. I don't know what present law is on that point, but this does not change present law.

Senator Mitchell. Well, as with the other questions, would you see if you could get an answer as soon as you can?

Mr. Colvin. Yes, sir.

The Chairman. Well, let me suggest again what I would like to do, is to go back to the outlay section of this first.

I might add, since we last had reconciliation and added the Tobacco Program to our bill, we have adopted some new rules in the Senate relating to extraneous provisions. I am not sure we would be able to do that again, or at least we could do it but it would be subject to a much stricter challenge than it was, and consequently I am going to try. We will live with any rules the Senate wants to pass, but we are now faced with one relating to extraneous provisions.

Lloyd?

Senator Bentsen. May I address that point?

The Chairman. Yes.

Senator Bentsen. All right. I have a very serious concern about maternal and child healthcare authorization, putting an increase there, and we are talking about those kinds of services like nurses providing immunization, the help for crippled children, the genetic screening of looking for problems of sickle cell anemia, that type of thing.

And I understand the Budget Resolution provides for this increase, and it is an increase of about $75 million, from $478 million to $553 million.

I further understand that, since this is scored against the Appropriations Committee rather than against the Finance Committee, that it is the opinion of the Chairman that this is an extraneous matter and cannot be dealt with on this particular bill here.

But I am concerned very much that the Appropriations Committee might not appropriate that amount of money without authorization from us, and I would like to find a way to alert them, put them on notice by letter from you, me, whomsoever, that we would be trying to do something perhaps on a second bill that might be coming along.

The Chairman. Well, we have got H.R. 1868 which has already passed the House; it is here, dealing with physician fraud and abuse, and I have a feeling that may be used for a variety of things that the members are interested in.

Senator Bentsen. Well, could I ask the Chairman's feeling about this particular item? Since the Budget Resolution assumes such an increase -- and I think it is a very worth purpose that we are talking about here -- as far as your feelings towards accepting such an authorization on another bill. You would be supportive of that?

The Chairman. Yes.

Senator Bentsen. And could we, in turn, so advise the Chairman of the Appropriations Committee?

The Chairman. I would be happy to do that.

Senator Bentsen. And put them on notice, before they consider their appropriations?

The Chairman. It is going to be tight. We are going to be into a markup on that other bill in early September.

Senator Baucus. Mr. Chairman?

The Chairman. Let me go to Senator Baucus first, then we will go over here.

Senator Baucus?

Senator Baucus. Mr. Chairman, first I have a couple of questions, a clarification, if I might. First on the payments for hospital capital costs. I guess that would be number four in line item four. The question is: What about the sole community providers? I am wondering whether the proposal includes the proposition that sole community hospitals be allowed to continue to pay under their current reasonable-cost formula, as proposed.

Mr. Mihalski. Yes, sir, it does. These figures reflect an exemption for sole community providers; so, they will continue to be reimbursed on a reasonable-cost pass-through basis.

Senator Baucus. And on the prompt-payment provision, is it true that the proposal also provides that if any hospital

is not paid promptly, that as a penalty it can elect to be paid -- excuse me -- that if any hospital is failed to be paid for two consequtive quarters, that it will be allowed to elect to be paid on a biweekly basis, as opposed to the 24-day basis?

Mr. Mihalski. The legislative language does not reflect that because of problems we had with getting estimates from CBO. However, we talked about putting in report language to reflect that kind of proposition. So, if you had two quarters of an intermediary not paying promptly, not meeting the 24-day standard, to get the Secretary, then, to put those hospitals back on periodic payments.

Senator Baucus. And that would apply to all hospitals?

Mr. Mihalski. All hospitals within that particular intermediary, yes. You wouldn't do it nationwide just because one intermediary had a problem.

Senator Baucus. All right. What happens if certain contractors currently pay claims in fewer than 24 days? Will that practice still be encouraged? That is, if they currently pay fewer than 24?

Mr. Mihalski. Yes, sir. We would include report language which would say that we don't intend this to become an absolute standard; so that, where some intermediaries are processing claims in anywhere, let's say, from 10 to 30 days, that all of a sudden the Administration decides that you can't

process any now as fast as 10, 11, 12, 13, they all have to be processed, or the first ones you could process and pay would be in 24 days, that it would be not to do that speed-up.

Senator Baucus. I appreciate that very much. These are provisions.

I want to thank you, Mr. Chairman, for weighing these in, but, in addition to --

The Chairman. Senators Wallop and Chafee and Grassley.

Senator Baucus. Mr. Chairman, I am not finished yet, if you don't mind.

The Chairman. Max isn't done yet.

Senator Heinz. Would the Senator just yield on a point of personal privilege?

Senator Baucus. Sure.

Senator Heinz. I have to go and manage a bill on the Senate floor, the Ex-Im Bill, and I just want to clarify, Mr. Chairman, is it your intention to take any vote this afternoon?

The Chairman. It may be. I would like to start down the list in the order that they appear and see how many we can accept. But we have only got today and tomorrow set aside for this, and we have to finish it by Friday, and we are back in conference on the Tax Bill on Thursday.

Senator Heinz. Mr. Chairman, I don't want to in any way slow down that schedule, for lots of good reasons, but I am

going to be forced to absent myself. If there is something that comes up, and it is a hot, heavy debate --

Senator Baucus. Mr. Chairman, I could yield right now if Senator Heinz has some comments.

Senator Heinz. I don't have anything I wish to offer. I am just begging the indulgence of my colleagues. And if necessary, I might have to request that you wait, you postpone for five minutes or 10 minutes, a critical vote. But I don't anticipate that that is going to be necessary. But if my colleagues would indulge that, I would appreciate it.

The Chairman. Be happy to do it.

Now, let me ask the other members: Do you have something you want to bring up specifically? Or can it wait until we go down the order of these and raise them -- unless they are interrelated, raise them as we are going down the list, so we can see what we can dispose of?

Malcolm?

Senator Wallop. Mr. Chairman, I have one which I want to inquire about, and one which I just want to thank. I am very relieved on behalf of constituents that we've dropped back from seven dollars to one dollar on the renal dialysis payment.

But in item six, I wonder if anybody has made any inquiry into the effect on employers, and particularly small business employers, that would change that revised Medicare

coverage of disabled individuals?

The Chairman. Which one is this one?

Mr. Mihalski. Line five.

Senator Wallop. Yes, the secondary-payor one. I will tell you what my concern is, and that is the possibility that it would encourage employers to drop their health insurance plans, the fact being that the disabled have much more expensive medical expenses than do the working aged, so that it isn't quite a relevant transfer of principles from one to the other.

Have we done any studies? Have we looked at all on the effect on small business employers, or employers generally, of this?

Mr. Mihalski. The only arguments I can give on that is, one, there was a general feeling that people who, although they are disabled, are fully employed are generally on a health status which is not going to be a major financial risk to the employer.

The other issue, then, is the question of whether small employers are exempt. And I would ask the Administration, because I just forget completely: Is this the same exemption for small employers as under the working-aged provision?

Mr. Hackbarth. Yes, it is.

Mr. Mihalski. It is.

Senator Wallop. All right, Mr. Chairman. I am just

somewhat hesitant in there. I think that Mr. Mihalski's statement that "it was felt that it would be this way" is a little thin-ice to be casting entirely in this direction. If it is the will of the Committee, that's fine, but as long as the small employer exemption is there.

The Chairman. Let us start down the list of hospital payments. This is where you are recommending the 1.5 percent payment; is that correct?

Mr. Mihalski. Yes, sir, as opposed to a zero-point-5 percent that the Administration is recommending.

The Chairman. And a 2.2 on PROPAC?

Mr. Mihalski. Yes, sir, 2.201.9, depending upon what you do with cap of the list.

The Chairman. Comments on this item, hospital payments? Max?

Senator Baucus. Mr. Chairman, I have a proposal which I think falls within the Byrd Amendment. Essentially, it is to mitigate the adverse effect that these DRG payments have on outliers as they apply to rural hospitals.

Essentially, currently, outlier payments make up about six percent of all non-rural hospital DRG payments. And because of the very high threshhold, it is very difficult for rural hospitals to qualify to receive outlier payments, and as a consequence they historically receive only two percent.

I have an amendment which mitigates against that

adversive effect on rural hospitals; which is to say that outliers be five to six percent in rural hospitals.

The Chairman. What is the cost?

Senator Baucus. It is still revenue-neutral. It amounts to a $40-million only shift.

The Chairman. Over the three years?

Senator Baucus. I am not sure that it is three years, but it is $40 million.

The Chairman. And how do you keep it revenue-neutral?

Senator Baucus. Ed?

Mr. Mihalski. It would be revenue-neutral for the budget purposes. What it does is shift money from urban hospitals to rural hospitals.

Senator Baucus. That is correct. The total outlier for all hospitals is, I think, $2 billion, if that is correct. Yes, $2.1 billion, and the effect of this amendment would be to shift $40 million out of that almost $2.2 billion.

The Chairman. Comments? David?

Senator Durenberger. Mr. Chairman, I like the suggestion. But what happens -- so everybody realizes what happens -- and I think the reason Max is raising it up here under the hospital payment 1.5 percent -- in order to do the outlier, so-called, provision, which is the one really tough case that walks in each year that breaks the back of a little hospital sort of thing, you have to find the $40 million

someplace else.

And since he is providing this in the rural, it will come out of urban hospitals. But $40 million is not a lot of money. I have been thinking about doing the same sort of thing for regional referral centers, which those of you who have heard from some of your larger rural hospitals know is a real problem.

The imbalance between the urban rate and the rural rate as it affects large rural hospitals that are getting paid at little-rural-hospital prices is a problem, and we have been wrestling with the administrator about how to change that definition. That, too, would cost a few million dollars, and it would be a matter within this 1.5 percent of having to take some money from the SMSAs or MSAs and move it into this area.

But I would say it is good policy to do Max's proposal, and I would encourage you to accommodate it.

The Chairman. Comments on Max's proposal?

Senator Pryor. Mr. Chairman, I don't have comments specifically on Senator Baucus's proposal. I think it is a sound one.

I would like to say -- and I have been advised that this is extraneous matter, and I will not pose it now, but it does deal with rural health. I am going to propose later on, in some piece of legislation somewhere down the line, an

expansion of the Physician Payment Review Commission by two members. One of those members being a rural physician, a general practitioner.

Today there is no representation on this Commission in behalf, really, of the rural physicians of this country.

And the other new member I guess would be decided by the powers that be. I won't propose that now, but I would like to just say that it touches somewhat on this issue.

The Chairman. Any other comments on Senator Baucus's proposal? Senator Grassley?

Senator Grassley. Mr. Chairman, I obviously support this, too, because it is part of a bill that I cosponsored of Mr. Baucus.

But what is the judgment on extraneous stuff? Because you had some doubt when you immediately made your statement, before Senator Bentsen spoke, about extraneous material being applicable or not.

Number one, what is your final conclusion on that? And number two, is this extraneous or not?

The Chairman. Well, it is an interesting process that they are going to ask. Where is Frank? Is he here? I want to make sure that I phrase this correctly. Are you out there, Frank?

As I understand it, they are going to ask the chairman of each substantive committee whether or not the material is

extraneous if it is challenged on the floor.

Mr. Cantrel. The chairman will be asked.

The Chairman. If the Parliamentarian will not ask the Chairman of the Budget Committee, he will ask the Chairman of the Finance Committee, if it is finance, or Health and Human Services. I mean, if the Chairman says, "No, we don't think this agricultural program is extraneous to the Tax Bill," the Chair then rules that way; although you are subject to being overruled by 60 votes, right?

Mr. Cantrel. Correct.

The Chairman. So, in theory, I can say, "No, it is not extraneous; I don't know why we can't add this."

Senator Pryor. Well, I move we add it, then.

(Laughter)

Senator Bentsen. I want to rediscuss maternal-child healthcare, Mr. Chairman.

The Chairman. But in fairness, because I know what they are trying to do with the Byrd Rule, and I think it is a correct rule. A good many committees -- not this one, of course -- did violence to the concept of extraneous provisions last year. I certainly thought the Agriculture tax-tobacco-support-program was relevant to our reconciliation order, but there were some who did not think so.

But, in any event, I am going to try, within reason, to be fair as to what "extraneous" is. Now, if I find other

committees are going to pay no attention, and the Chair doesn't care what it is and says, "Anything goes in this committee," that is another matter. But I would like to start out trying to be within the spirit of the Rule.

Senator Baucus. Mr. Chairman, I would think that this is a little bit different than the tobacco bill.

The Chairman. Oh, I agree.

Senator Baucus. It isn't merely a reincarnation. This is clearly within the realm --

The Chairman. Oh, yours, clearly is not extraneous, I think. I mean, it is very closely allied to what we are doing. I don't think we are being challenged on that.

Senator Pryor. Maybe I should have talked to you and not your staff.

The Chairman. I am going to try to walk a fair line on it, unless I see that nobody is going to pay any attention to it at all. Because, again in fairness, if you are going to try to make the reconciliation process work in the budget process, if every committee is going to say, "We can invade every other committee's jurisdication," and it is "not extraneous," we are going off on the wrong track.

Objections? Any objections to Senator Baucus's amendment?

(No response)

The Chairman. Without objection.

Any further comments on the hospital payment section?

Senator Durenberger. Well, Mr. Chairman, unfortunately I don't have the specific language here, but I indicated earlier that I would have some language changes relative to regional referral centers, which follows the same theory. We are not adding regional referral centers as a definition; we are changing the definition of what qualifies as a regional referral center. And there will be some dollar consequences to it. I just don't know what they are, but I would like to enter that for the record at this point, before we leave item one.

The Chairman. Thank you.

Do you want to move on to capital payments?

Senator Moynihan. Mr. Chairman?

The Chairman. Senator Moynihan?

Senator Moynihan. Mr. Chairman, as I said, there is a problem here. And I know that Senator Durenberger is very sensitive to it, as he is to all of these matters. That has got to do with the effect which this new prospective payment arrangement would have on hospitals that have already begun construction, either begun it or entered contracts, issued bonds or other indebtedness, or entered into enforceable contracts, assuming the previous arrangements.

I think all over the country, I know a half dozen states in this committee -- I can't imagine there is any state in

which there are not places that have assumed existing law and have undertaken capital projects, and could not carry them through. And it is a transition in one respect. It is no different from transition problems we have had with the Tax Bill, except that we are talking about charitable hospitals here; we are not talking about business enterprises or individuals and their estates.

I know that I have been visited by a great range of persons from my own state -- Bishop Sullivan, who is head of Catholic Charities in Brooklyn. There are about as many people in Brooklyn as there are in about 15 states of the Union, and they have about six places underway that they will just have to stop, they just couldn't do it.

The Chairman. It looks to me like the staff proposal is significantly easier on those hospitals than the Administration proposal. Am I correct, Ed?

Senator Moynihan. I think so.

Mr. Mihalski. Yes, sir.

Senator Moynihan. But my question, I wonder if I could ask our staff, our good staff -- without exception, everyone has understood that we have a problem and have to do something about it. What they have asked for is a grandfathering clause which is, if by December 1, 1985, you are issued your debt or have entered an enforceable contract, that the old rules would prevail. And there are people who say that, absent that,

"We are just going to have a hole in the ground. And there are places where you need hospitals.

The Chairman. Let me ask for the Administration's comment and the staff's comment on that.

Mr. Mihalski. Well, to grandfather facilities or commitments that were made before December 1, 1985, or 31st --

Senator Moynihan. Thirty-first.

Mr. Mihalski. -- in 1985, would basically pretty much vitiate the savings here of $600 million, because you would then have all of the existing capital as of this point in time pretty much paid on the existing cost pass-through basis. You would then be paying any new capital that would come online after that time on some kind of a prospective-payment basis.

As I understand the proposal that has floated around and that the AHA has made on this issue, is we would still pay, then, an average cost of capital for capital after the December 31 date. That cost, I assume, would be based on the average of capital at that time, which is about $380 per case. You would, in effect then, be paying out -- for current capital you would be paying the real cost, the reasonable cost; and for new capital, you would be paying them based upon the old existing cost-per-case at that time, and there would be some overpayment.

If you would base the new capital cost simply on the

cost of new capital, that rate would be significantly lower, I should expect, than $380-some or $370-some.

Senator Moynihan. Well, listen. We don't want any overpayment, and you are trying to help us here. The situation is simply that there are projects underway or contracted for which cannot be sustained under the proposed bill.

And enacted in good faith, and only trying to provide healthcare -- these are not private enterprises -- the projects have been begun, and now suddenly we changed the rules for them.

If I could make a point, Mr. Chairman, without getting into the origins of our present difficulty in this reconciliation provision, we are proposing to pick up $5 million out of Medicare, which is a Social Security title, which is self-financing. I mean, it is not a problem with Medicare; we don't have to do this money to keep the Medicare funds available, we are doing it for other reasons altogether.

There are other programs altogether that have run vastly over their expected costs, and other tax proposals that brought in revenue much less than was stated. But not to let the Archdiocese of Brooklyn build hospitals in Bedford-Stuyvestant, it just doesn't seem to me right because we underestimated the cost of the Agricultural Bill.

Mr. Mihalski. Well, on the side of where we came from

in the staff proposal, of course, was the Administration had started with a proposal that did a four-year transition, took approximately $3.6 billion out of the system over a three-year period. Senator Durenberger then introduced a bill which modified that position with a seven-year transition, reduced the savings from $3.6 billion to a little over a billion dollars. The industry initially indicated, I think, some support and then did not. The staff proposal --

Senator Moynihan. May I say, sir, this isn't really an industry. These are hospitals.

Mr. Mihalski. The representatives of those hospitals initially indicated support.

(Laughter)

Senator Durenberger. That would explain the difference.

(Laughter)

Mr. Mihalski. Anyway, then the staff went again to try to accommodate that concern and went down to a 10-year transition with an outlier policy, and now that is not acceptable. I guess the Administration and others would argue that hospitals knew that we were going to change the way we paid capital back in 1983 when we adopted the Social Security Amendments.

The Chairman. Senator Bradley?

Senator Bradley. Mr. Chairman, I would yield to Senator Durenberger, if he is going to speak on Senator

Senator Moynihan's point. I have an idea that I would like to --

Senator Durenberger. No, you probably don't have any idea of what I am going to say, because this is an issue, first, that we all knew we were going to have to address from 1983 on.

And then, second, the solution seemed to change. The closer we got to revenue neutrality, the more the people involved -- whether you call them an industry or a charity -- the closer we got to revenue neutrality, the closer we got to grandfather.

So, the reality -- everybody understands it -- is that we are dealing with a lot of hospitals who are going to have some problems with the so-called "staff proposals."

But in 1983, when we did the Prospective Payment System, the folks on the House side, Dick Gephardt in particular, wanted to fold capital in immediately and just say, "This is all you get, and you are prospective, and you had better buy your capital out of it." In retrospect, maybe we should have done that, but we didn't do it because capital is averaging something under 8 percent of the total per-case cost. So, we said, "Let's not adjust it," because we had some hospitals with high capital and some with low, "So let's not wrestle with it, and let's come up with a solution."

Well, since we said we would come up with a solution, in

in 1983 we had, just on hospital bond issues, we had $7 billion in new issues. In 1984 we had $8 billion in new issues. And then last year, which happens to be the next to the final year before we come up with a new capital proposal, we had $21 billion in new hospital bond issues.

Included in there are two famous hospitals in New York City -- Columbia Presbyterian and Mount Sinai -- whose combined bond issues equals $l billion.

The Chairman: One billion?

Senator Durenberger. One billion, "B" -- billion. Right, $500 million each. So, there is no question that my colleague from New York is correct that there is some pain at Mount Sinai and some pain at Columbia, and that is what took us away from the Administration's original position, which was a four-year transition, to what we are now at with let's call it "the staff proposal," to get me off the hook with the hospitals --

(Laughter)

Senator Durenberger. -- which is a 10-year transition.

I was asked this morning to consider this proposition that Senator Moynihan has proposed, that there would be a grandfather, which in effect says that everything that was borrowed before January 1 is old money, and then we have new money, and we accomplish some kinds of transition with this distinction between old and new money.

I just said to my staff person here a little while ago, "Every once in a while you have to be totally honest on these issues." And to be totally honest to my colleague from New Jersey, I don't know which is the better way to go. I think we were on the right track with the staff proposal. It may be that the old-capital/new-capital proposal that is being made basically by the hospital associations now is at least as good and may be a somewhat better proposal.

We tried in our proposal to take care of the Columbia problem, the Mount Sinai problem, the University of Minnesota problem. I have got a teaching hospital with its neck stuck out a great long way. We tried to do that with an outlier provision. And while it would hurt it, I don't think it would bleed them to death. It is not a terminal problem.

So, I can't, frankly, recommend now that this grandfathering proposal that they have been lobbying all day long is a better proposal, even though I think it could be made to save $600 million, just like the staff proposal saves $600 million. If it saves $600 million, I am not sure off of whom it saves the money; that is what is honestly bothering me right now. Because you have to take this money from somebody to give it to somebody else within this proposition, and I am not sure whether some good thrifty hospitals in New York and New Jersey are going to lose something from '86

on in order to totally grandfather in some of this stuff which was caused by the way we did tax-exempt bonds.

So, the best I can say to my colleagues is that I am recommending the staff position now, but maybe a week from now when we get to the floor, if the Chairman will accommodate us within the dollars, maybe we might all come up with somewhat of a different proposition.

Senator Moynihan. Could I thank Senator Durenberger for -- you know, he agonizes over these issues, and they are not easy.

You mentioned the case of Mount Sinai, which I happen to be familiar with. Mount Sinai is the hospital that in the main serves Harlem. Its plant was built in 1905, when the city first reached that part of New York. They just can't do business in a 1905 hospital, and they are prepared to build an entirely new one. But without this provision, there is just not going to be a hospital, that's all.

Mr. Chairman, help us. We want to solve this problem. We don't want to hurt anybody, and we don't want to give anything away that is not warranted. Can we set this aside until tomorrow? There are bound to be some ways to do it.

And we are not talking about -- look, you know, it is not Medicare's fault that we are going through these exercises. There is money in the Medicare Fund; it pays for itself; it's a solvent system, as Mr. Durenberger knows.

The Chairman. No, but what we are going through is a process the floor of the Senate has agreed to, that we will save so much money in certain areas.

Senator Moynihan. Yes.

The Chairman. And at this stage I don't think it is fair to say, "Well, it is the Armed Services Committee's fault that we are doing this." The time to raise the objections is when we are going through on the floor.

Senator Moynihan. But there is a particualr poignancy about taking it out on hospitals, when the hospitals didn't do it.

The Chairman. Well, we don't have to; we can significantly reduce our savings and increase our taxes.

Senator Long. Mr. Chairman, if I might just comment on that, some of these people came to me who are concerned in Louisiana about charity hospitals. And the way they showed it to me, they would be absolutely devastated by the proposal here. Now, that is their representation, but they give you a chart of figures that show it. They contend that it is possible to make a revenue-neutral arrangement.

Frankly, I didn't have much time to go into the details on how it could be done, but they have figured a way that, rather than grandfathering 100 percent, you would grandfather 96 percent, or something like that. They indicated to me a way that this could be done where it would be revenue-neutral.

Is the staff familiar with that, how they think it could be done, those people?

Mr. Mihalski. I am not quite clear on how it would be done. I am sure we could bring some heads together and talk about it, and see if we can work it out.

Senator Long. Well, I would like to see you do that, because what they showed me is kind of absolute desperation for them; it has just gone down through the years. So over a period of years they are in terrible shape.

I would hate to think that someone like a Sister of Charity who has taken a vow of poverty would say something that is not true; I would like to think that what they tell me is the truth as the good Lord presents it to them.

I would like to certainly consider their problem and try to work it out, if it could be done. I know, from what I have heard presented just by my people in Louisiana, it really sounds like something we ought to try to take care of any way we can do it, and I would like to see us try.

The Chairman. Senator Bradley?

Senator Bradley. Mr. Chairman, maybe we could think about it overnight, in terms of maybe grandfathering and shortening the transition in some way.

I think Senator Durenberger's question is a legitimate question: If we are going to get $600 million here, we ought to know a little bit of who is going to pay the $600 million.

At the same time, I think Senator Moynihan has a good point, as does Senator Long, that it is going to be a problem.

The Chairman. Let us pass over it for a moment. I want to see how many of these we can finish.

Senator Moynihan. Thank you, Mr. Chairman.

The Chairman. Bear in mind that we may have to work late tomorrow night in order to finish. We have adopted Number Three, hospital payments, with the exception that Dave may have an exception on regional medical centers.

Let us go on to secondary payors. Ed?

Mr. Mihalski. The secondary payors is the expansion of the working-aged concept to require that employers, as I said, require those employers to offer the same kind of health coverage to their disabled workers as they offered everybody else. Those disabled workers are generally Medicare beneficiaries. They then can elect that employer plan as their primary coverage, so that Medicare then becomes secondary coverage for their health insurance.

The Chairman. Questions? It seems like a good proposal to me.

(No response)

The Chairman. Any objection?

Senator Chafee. Mr. Chairman, I want to say it seems like a good proposal, too. Again, it is going to cost -- somebody is paying for it -- a billion dollars, and that is

a tax on business.

Just when we get to the telephone tax on increasing the rates on business, I would just like to bear in mind that this seems like a simple thing; but, when you add up to a billion dollars, obviously it is costing somebody a billion dollars, and that is a billion dollars that business is paying that they wouldn't ordinarily pay. I think we ought to bear that in mind when we get to the other side of the equation.

The Chairman. Any objection to adoption?

(No response)

The Chairman. Inherent reasonableness?

Mr. Mihalski. Again, this is the proposal which builds on the Administration's regulatory proposal to allow the Secretary of HHS to decide when fees that physicians charge are inherently reasonable.

The Chairman. Questions?

(No response)

The Chairman. Any objection to adoption?

(No response)

The Chairman. Let us go on to Medicare Economic Index.

Mr. Mihalski. Medicare Economic Index is a change, then, in the indexes applied to a certain element which is used to determine what Medicare will pay for physicians' services, and it basically is a change in an index so that it now reflects, retroactively reflects, a change that was made in the CPI.

The Chairman. Questions?

Senator Durenberger. Mr. Chairman, just to indicate that Senator Dole and I and Senator Bentsen and Senator Long, and there are probabley others on the committee who have been deeply involved in this physician-reimbursement issue, and I think we all have a strong interest in this provision.

The Chairman. Any objection to adoption?

(No response)

Mr. Mihalski. The next item on the list is the end-stage renal disease physician payments. This is a reduction on the monthly amount that we pay physicians for serving the patients with renal failure; and the proposal that the Administration made, the General Accounting Office has looked at and believes it is reasonable.

The Chairman. Any objection?

(No response)

The Chairman. Adopted.

Mr. Mihalski. The next item on the list is end-stage renal disease facility-rate reduction of one dollar per dialysis, as opposed to the $11 per dialysis that was recommended by the Administration.

We do the one dollar because we want to bring this particular proposal into the budget reconciliation process; whereas, a straight moratorium on the Administration's proposal would be extraneous.

The Chairman. Any objection?

(No response)

The Chairman. Ambulatory surgery?

Mr. Mihalski. Ambulatory surgery is built on a Durenberger bill which basically allows --

The Chairman. Isn't this the one we have had before, and we always argue with the House about it?

Mr. Mihalski. Yes, sir. This is a slight modification, but the modification is not significant.

The Chairman. Any objection to adoption?

(No response)

The Chairman. We have gone through this two years in a row with them, haven't we?

Mr. Mihalski. This will be the second year.

The Chairman. Adopted.

Mr. Mihalski. The next one is the periodic interim payments, which would be deleted for all hospitals that are on prospective payment, and a requirement that the Administration pay the claims of hospitals on all of their providers and physicians within 24 days; whereas, the current level of average payment is 30 days.

The Chairman. Questions?

Senator Durenberger. Yes, Mr. Chairman.

The Chairman. David?

Senator Durenberger. I have a modification I would like

to suggest, Ed, with regard to the interest as penalty.

I think you discussed with Chip earlier in the day the difficulties I think the Administration would have if we imposed interest as a penalty sort of automatically every time somebody was late.

We have revised that so the interest penalty would not be operative until six months after the enactment of the package, so contractors have enough lead time to get up to speed.

In order to avoid paying a large number of small interest penalties, with the attendant administrative costs, it would be a 15-day grace period after the payment-due date. At the end of the grace period, interest would accrue on payments that have not yet been made, starting from the due date, which is day 25. And then there is a grace period sunset provision.

I think this is modeled on some other interest-as-penalty prompt-payment bills elsewhere around here that have resulted -- as long as that penalty is hanging out there, the intermediary in this case always pays 99 percent of the time on time. But it is almost necessary to have an interest as penalty.

This amendment tries to make it work without a lot of --

The Chairman. Comments on the Durenberger amendment?

Mr. Mihalski. The Durenberger amendment seems reasonable

in that there was a proposal initially to apply interest to any claim that wasn't paid after the 24th day. This would now, as I understand it, say that we would have interest payments on anything that was not paid at least by -- as I read this -- 39 days?

Senator Durenberger. On the fortieth day.

Mr. Mihalski. The fortieth day? Okay, the fortieth day.

The Chairman. Comments on the amendment?

(No response)

The Chairman. Without objection, the amendment is adopted.

Comments on the proposal? Senator Dole?

Senator Dole. Mr. Chairman, I am advised that there is some concern, particularly in rural areas, about protecting rural hospitals. I think Senator Bentsen has that interest also.

I guess my view is, I am not quite certain what happens to rural hospitals, whether we are going to be worse off, better off, or about the same.

We thought there would be some protection in the proposal, but that apparently was not the case when it was drafted.

Mr. Mihalski. Well, there are some protections for rural hospitals, in that if the group that processes these

claims, the intermediary, fails to provide prompt payment for two quarters running, we --

Senator Dole. And "prompt payment" is what?

Mr. Mihalski. Prompt payment is 24 days after the claim is received.

Senator Dole. That is longer than many cases now in rural areas.

Mr. Mihalski. I don't have a breakdown by rural areas, but I have been told that on the average it is 30 days. I don't know what the difference is between urban and rural. Does the Administration?

Senator Dole. I think the average in our state is about 14 days, and I assume it would be the same in Montana and other rural states.

I don't think we do violence to the proposal, but I would like to reserve the opportunity to make certain we are not going to penalize some of these small hospitals, about to collapse as it is.

Mr. Mihalski. Yes, sir.

Senator Baucus had brought up the point earlier that we didn't want the Secretary to establish 24 days as an absolute standard, and we would include report language to say that, "Where you are paying prompter than 24 days, the intent is certainly not the intent to stop paying those more promptly than 24 days."

Senator Durenberger. Mr. Chairman, if Bob would yield, it seems to me when we had the press conference introducing the prompt-payment bill, I was surrounded by Republican rural Senators, and some Democratic rural Senators, a lot of whom were up for reelection, becauee it was out in the rural hospitals that people were complaining abut the failure of prompt payment.

Now, the funny thing about this, when you average it out it looks like everything is being paid on time. But much of this delay that I have heard about is 40-60-70-80 days. And in rural hospitals, that is an incredible problem.

So, we thought we were doing a big favor to rural hospitals by moving to force 95 percent of all of this stuff within 24 days. We thought we were helping the rural hospitals.

The Chairman. Obviously, we are all moving in the same direction.

Bob, why don't we adopt it with the caveat that if we have done any violence -- none of us intend to -- to the rural hospitals -- we have all got them -- that we will either --

Senator Dole. We have fewer than we had, because some of them have closed. I think what we ought to do is maybe not pass over it but go ahead and tentatively approve of it, and give us an opportunity maybe, some of us, to see what we can come up with.

The Chairman. By tomorrow, because we have to get this out tomorrow night.

Senator Dole. Is that all right, Max?

Senator Baucus. Fine.

Mr. Chairman, maybe this is the exact same subject, but just a slight variation. It has got to do with those cases where the intermediary fails to pay on time, whatever the standard is, and apparently under the proposal the standard is two consequtive quarters, that the hospital can elect then for a two-week fallback provision. I think that should be in statutory language, very frankly, to make it clear.

Mr. Mihalski. We can ask the CBO to price that out and see what we have for a price tomorrow.

The Chairman. Can you price that out with CBO and have it back tomorrow?

Mr. Mihalski. We will ask if they can do that for us.

Senator Baucus. And I am wondering if the standard can be a little tighter, frankly, than the failure to pay two consecutive quarters, because that is a long time.

Senator Dole. A long time.

Senator Baucus. And if that can be tightened up a little bit, It seems to me that would certainly be better.

Mr. Mihalski. We will certainly look at that issue.

The Chairman. Any other comments?

(No response)

The Chairman. We will adopt it with that caveat.

Part-A deductible, is this the 520 that we indicated on the floor we would be able to meet?

Mr. Mihalski. Yes, sir.

The Chairman. Comments?

(No response)

The Chairman. It is expensive; but we said we would do it, and in fairness I think we ought to. Any objection to its adoption?

(No response)

The Chairman. Home health limits?

Mr. Mihalski. The home health limits provision is to allow the payment of home health claims on an aggregate basis rather than having the individual service limits apply.

The Chairman. Sparky?

Senator Matsunaga. In this connection, there are five members of this committee who have cosponsored S. 723, a bill to extend Medicare Part B coverage of occupational therapy, to more effect a community-based treatment setting not covered under existing law; that is, a skilled nursing facility when Part-A coverage has been exhausted; and 2) clinics, rehabilitation agencies; and 3) private practice settings.

Now, this legislation was initially included in the reconciliation package last year, but it was dropped prior to final enactment.

Now, 723 has currently 20 cosponsors, including five members of this committee, as I say, and I feel that in the long run this will save. As I propounded last year, the estimate given by CBO shows that right now, because the Rehabilitation Institute over in Oregon, for example, the outpatient rehabilitation treatment, amounts to $60 an hour. And a therapy clinic in Oregon, at Portland, Oregon, it is $38 an hour, as compared to the occupational therapy services provided by Salem General Hospital at $78 an hour. So, in the long run, because 1) this would prevent recurrence of the same disability after elderly patients are let out much too soon than they should be under Part A, they tend to go back at a higher cost here.

But under our proposal here, they would be given occupational rehabilitative treatment at a much lower cost, and ensure the elderly from continuing in gainful employment.

I am wondering if any thought was given to this, to the inclusion of this in this area. I think Home Health Limits probably would be the best area under Part B. Was there any thought given to this proposal?

Mr. Mihalski. No, sir, we did not. S. 7183 has not yet been priced out officially by CBO, although they think it might cost in the range of $50-80 million over a three year period.

Senator Matsunaga. CBO estimates $47 million -- that is,

$13 million for the first year, and $17 million for years two and three.

But then, you see, that is only the outlay. It does not include the savings which would be involved by repeat hospitalization for those who do not undergo this occupational therapy.

So, in the long run, we would be saving. Instead of a cost item, it would be a savings item.

Mr. Mihalski. The only problem with that, Senator, is that what CBO gives us as the numbers are the numbers we have to live with.

Senator Matsunaga. I would think, Mr. Chairman, that this would be a reasonable amendment, when we know that it is going to save the government some money.

The Chairman. Well, how do we know it is going to save money? That is my only question, Sparky. I have a dozen amendments I am convinced save money, but CBO doesn't agree with me. And apparently they don't agree on this one, either.

Senator Matsunaga. Well, by the estimates of CBO, they come out only with the outlays, but they are not thinking of the amounts that we would otherwise be paying in excess of what they estimate the basic cost to be. We would be saving in excess of the amount of outlay.

Senator Mitchell. Mr. Chairman?

The Chairman. Senator Mitchell?

Senator Mitchell. May I say a word on behalf of Senator Matsunaga's proposal? Even assuming the worst possible circumstance -- that is that there were no saving to be derived from decreased hospital reimbursement, something which I think we all can agree is most unlikely; that is, there will be some saving -- the maximum cost is $47 million over three years.

And since the proposal, in my judgment at least, is a sound one, it seems to me that you are talking about at the outside $47 million and more likely something between $47 million and some level of saving which is difficult to estimate.

So, I would hope the committee would adopt Senator Matsunaga's proposal.

The Chairman. Any comments?

Senator Matsunaga. Does the Administration have anything to say on the proposal?

Mr. Hackbarth. Yes, the Administration opposes this proposal. We would agree with the CBO estimate that this would likely increase expenditures, not reduce them, and we would oppose any further expansion of benefits at this time.

Senator Matsunaga. The CBO estimate is only relative to the outlay. The CBO estimate does not take into consideration what we would save in not having to pay under Part-A, because of repetitive hospitalization on account of

lack of occupational therapy.

The Chairman. Further comments?

(No response)

The Chairman. Further comments of any kind?

Mr. Mihalski. Mr. Muse of CBO indicates to me that the costs on this proposal have already been offset for any savings that might accrue on the hospitalization side.

The Chairman. Sparky, let us do this: We are going to be back here tomorrow. We have only put aside one thing so far. Let us adopt this. Let them go through it once more, and we will bring it up once more tomorrow.

I am inclined to agree with you, but let us put it in the bill.

Senator Matsunaga. All right.

The Chairman. Well, let's adopt it.

Senator Matsunaga. Temporarily adopt it.

The Chairman. Temporarily adopt it, and we will see what we square with your cost estimates by tomorrow, and come back to it.

Senator Matsunaga. Thank you, Mr. Chairman, I appreciate it.

The Chairman. Waiver of liability?

Senator Bradley. Mr. Chairman?

The Chairman. Are you on home health, still?

Senator Bradley. It will fit into home health care,

broadly -- I don't see another category that would exactly fit this.

The Chairman. All right. Then, I am sure it is not extraneous.

Senator Bradley. No. This is an amendment that I discussed with you; it is net of a million dollars in savings. It is a very small amendment; it has two parts:

The first part would strengthen the child-support enforcement program by requiring states, as a condition of getting child support enforcement money, to prohibit retroactive modification of child support awards.

This is aimed at the situation where an absent parent is charged with paying $5000 and skips to another state, and to another state, and then to another state, and ultimately settles and only has to pay about $2000.

What this amendment would say is, you cannot modify a child-support award retroactively. CBO says that would save about $6 million over three years. I would spend five of that on a small respite care pilot program in New Jersey, that has already been started, that aims at low-income beneficiaries.

The program is beginning to work in New Jersey. The state would pay half, and the $5 million would be the federal share.

The Chairman. Bill talked to me about this before, and

I think it is a fair pilot program.

Senator Durenberger. Can I have one in my state?

The Chairman. Can you make it come out with a million dollars ahead?

Senator Durenberger. The child support in my state goes into a respite home.

The Chairman. Comments?

(No response)

The Chairman. I think we ought to give it a try. Without objection.

The waiver-of-liability appeals?

Mr. Mihalski. The waiver-of-liability appeals proposal is an adaptation of something that is in the quality bill that Senator Heinz has introduced. It basically allows certain home health service claims -- claims for home health services -- to come under the waiver-of-liability limits, and it makes those cases appealable, and it also requires that the rules that are used to establish whether or not these home health services should be provided must be in regulation rather than in instructions and manuals.

The Chairman. Comments?

(No response)

The Chairman. Without objection.

Skip over quality-of-care; Senator Heinz is handling a bill on the floor, and he wants to offer a very slight

amendment to it. We will do it tomorrow.

Let us do the outcomes research.

Mr. Mihalski. Outcomes research is a proposal that is based on a Durenberger bill, which basically provides $15 million over three years to look at why there are differences in the outcomes of various medical treatment.

The Chairman. The question has puzzled me for years as to why. I try to think are there ethnic differences, or historical differences, or what it is, and I think the study is well worthwhile. It is almost like basic research, and we may come up with nothing. But I think it is worth it for what we might find.

Comments?

(No response)

The Chairman. Without objection.

Let us move on to Medicaid.

Mr. Mihalski. For the Medicaid, the first proposal on line 22 is to allow the states to expand coverage of the Medicaid program to children under one year of age in the first year, and then children progressively older, up to and including age five, and also pregnant women. And the services that would be provided are regular Medicaid services: prenatal care, delivery, and then post-care.

The Chairman. Comments?

Senator Chafee. Mr. Chairman, I don't think there is

any area that is more cost effective than prenatal care and the postpartum care for pregnant mothers.

The statistics on all this are overwhelming. I have been informed that 50 percent of mental retardation could be prevented by proper care. That seems high to me, but that is what the experts in the field tell me. And by the failure to do this, you end up with somebody who could well cost $40,000 a year.

I would go even further than this; but I am satisfied with this, and I think we ought to do it.

Now, previously, Mr. Chairman, in response to a request by Senator Bentsen, you mentioned that you would be communicating with the Chairman of the Appropriations Committee on a measure he had.

The Chairman. Yes.

Senator Chafee. Do we have to provide the financing for that? If we do, I have a way of providing the financing. Would that be a stumbling block to the proposal you have with the Appropriations Committee if the funding weren't provided?

The Chairman. No.

Senator Durenberger. Mr. Chairman?

The Chairman. David?

Senator Durenberger. Two small amendments to consider on Medicaid, and I don't know why I haven't brought these up.

The Chairman. Are you still on the infants' expanded

coverage?

Senator Durenberger. Yes, I am still on infants. Right. I know John Chafee is going to like these. He could probably explain them better than I can.

Both of them relate to trying to get prenatal care under Medicaid coverage to these women, particularly the first-time-pregnant poor women, as early as possible.

So, one of the amendments I would like to suggest requires that states provide for informing all potentially eligible persons that Medicaid coverage is available from the verification of pregnancy until 60 days postpartum, and for infants until one year of age. "Outreach services must be available both for pregnant women who are eligible for Medicaid under current law and for those who would become eligible under these amendments."

Now, I ask the question, is this like the food-stamp deal, where we put people in the business broadcasting the availability of food stamps? I don't know what the answer to that is, other than I am handed a second potential amendment which says that we ought to expedite the eligibility determination of pregnant women as early as possible by permitting a poor woman who is without insurance to apply. Does this mean apply for Medicaid right in the doctor's office? There would be the forms right there in the doctor's office?

I don't mean by the way I am presenting this to in any way demean either the situation or the seriousness of the problem. It is just that I am not probably as prepared as I should be to lay it out.

But in effect what it is saying, both of these amendments are saying, is that we might be bringing more people into Medicaid coverage if they knew they were eligible and what they were eligible for early on, like the first time they visited the doctor.

The Chairman. Let me ask this, David. Again, see if you can get your amendments prepared tonight and bounce them off of staff. We will come back to it tomorrow. I would like to adopt it as we have got it.

But I do ask, if you have amendments on these, that we not spring them on staff tomorrow, because we have not got any time beyond tomorrow to get them done.

Senator Chafee. Mr- Chairman, I think that is a good solution, and my question is: If Senator Durenberger did that -- and I am for him -- I believe that should be considered an expansion of what we have done.

The Chairman. That is correct.

Senator Chafee. And therefore, should we wait and pass them both together?

The Chairman. I would like to adopt this now, and the reason I ask, because I have the same question he does, are

Page

Missing

Senator Long. Well, Mr. Chairman, I want to ask a question. It is my understanding the question of whether this person who is pregnant is eligible for Medicaid under this proposal really depends upon the person's income, does it not? The question is not whether she is pregnant, the question is how much income does she have?

Senator Durenberger. She has got to be pregnant to fill out the form on the income, I guess.

Senator Long. Well, the --

Senator Durenberger. The doctor does not make the determination of eligibility. She just gets to fill out the form.

Senator Long. But the question occurs to me that I would assume that a lot of people who come in there I imagine is going to be eligible because they have income, they have family income available to them, and the father is able to contribute to the support of the child.

Now some years ago we said that when a person comes in to apply for AFDC that you have first got to make every effort to see that the -- find the father and make the father contribute. And by doing that--incidently, the Senate has followed through on that and have done some very good work to make fathers contribute. We are not getting near as much as we ought to get from them, but we have done a lot more than we used to do. What we did is more than

nothing and that is about what it was when we started out.

So that I am concerned though that handing out these forms right there in the doctor's office would sort of give people the impression that that is routine. The answer to the question is: Is there someone available to pay for this thing? I would hope that when we look at welfare we are going to raise this question.

Now why don't we make a greater effort to make those fathers contribute

And it bothers me to be suggesting to the person right then and there that you are eligible for Medicaid, and say, here is your application; fill it out, when the question was she is eligible depending on what earnings she has or what earnings the father has. And that is a different question. That is one of the persons for the doctor not to want to know about that as a judge. The doctor can tell if she is pregnant, but the doctor is not in a position to know what her earning situation is or how much cash is available to her.

Senator Moynihan. Could I say to my friend from Louisiana that doctors are -- this is such a profund national problem. We have an age of menarche that is now below 12 years in our country.

Senator Long. Well, you are talking about a 12-year old child.

Senator Moynihan. And where I come from the doctors know. And the problem is these children don't see doctors. That is the big problem. I am all for the Senator's proposal.

I would love to see some research associated with it, some inquiry. It is a huge problem. What do you do about these children, and how do you find them, and how do you -- you found their parent; he's a 13-year old, you know.

I am just musing here, Mr. Chairman.

The Chairman. I am trying to remember. You once proposed a theory. Did that relate to dias?

Senator Moynihan. We now have that pretty clear. The oldest series are in Northern Europe. In the 1830s, menarche -- the onset meeting age of menarche was about 17 years, eight months. And it has been dropping about three months a decade ever since, and it is now under 12. And it has to be diet. It could be sun spots, but it sounds like diet and it is happening everywhere. And it is a profound social change.

You have generally -- well, they are pre-teens. They are, by definition, not mature persons. And the Senator is talking about something very real.

The Chairman. Well, David, get your amendment and bring it tomorrow. We will adopt this as it is, and if we have got something solid tomorrow we will go ahead.

Let's move on to expanded coverage elderly.

Mr. Mihalski. That would allow the states to extend coverage to the elderly, who currently do not qualify for the program. They could bring those people in up to those people at the poverty level.

The state would not be able to do this expansion of coverage unless it did the expansion of coverage for the infants and pregnant women, first. And as I said, there is a delinkage; there was a provision at one time which would not be part of this, so that the states could cover the elderly at any level up to poverty independent of what level they covered the pregnant women and children at.

The Chairman. I have had several members talk to me urging their support of this in their comments.

Without objection.

Could somebody on Senator Mitchell's staff tell him we may get to some of the issues on revenue today? He wanted to be advised.

Let's go on to hold harmless.

Mr. Mihalski. The hold harmless provision again is that it holds those states harmless from a change that was made in COBRA, the Reconciliation Act last year. It basically says that rather than having the federal Medicaid payments dropped because of that law, you would be held harmless for one year.

The Chairman. I know of no objection to this. Any comments?

(No response)

The Chairman. Without objection.

And the ventilators.

Mr. Mihalski. The ventilator dependence is a provision that the committee adopted last year. There is a piece of it for under Medicaid. People who are dependent --

The Chairman. This was under Malcolm's proposal, wasn't it?

Mr. Mihalski. Yes, sir.

The Chairman. We had to drop it in conference again with the House.

Mr. Mihalski. Yes, sir.

The Chairman. Is there any objection to again adopting it?

(No response)

The Chairman. That is not a bad afternoon's work.

That, with the exception of a few amendments we can consider tomorrow, will come pretty close to meeting our outlays total. So let's move on and discuss revenues.

Senator Chafee. Mr. Chairman, I would just like to briefly make a comment, and that is that I think we have always got to keep our minds and attention on the younger generation that is coming along, educationally and health-wise.

And it is interesting that if you look here you will notice that for the elderly we added $1.79 billion under item 12 and $455 million under item 23, and at the same time we did a total of 220 for the children.

And we are doing very well by the elderly and we should, but I don't think we ought to lose track of the needs of the young people who I think are losing out in this country, and particularly the young poor which every statistic shows are growing at a rate way greater than any other age group in the nation. And we are not doing well by them by a long shot.

Senator Danforth. Mr. Chairman, I think that as a matter of logic Senator Chafee makes an interesting point. I do understand. I think the chances of being poor for children is about six times higher than for any other age group. But they do not vote. So that is obviously what we do as politicians.

I know Senator Durenberger has taken an interest in this in the past. What are we doing generationally in Congress?

Thirty-five percent of federal spending goes to people that are retired. And it is off limits. Of course, it is off limits. And in fact in the budget reconciliation we add to it. Budget reconciliation we add to it, but that is the politics of generational distribution.

So I think Senator Chafee has made an interesting point, but I do not see much coming of it.

Senator Chafee. Mr. Chairman, I am not out to set up a conflict between old and young. All I am saying is that anything that comes up for the elderly everybody is for. And they vote and they vote as a block and that is important to us. But I just think that we are losing sight of another group that cannot vote, and their parents in many instances do not vote, and they are losing out.

I think we are embarking on a very, very tragic situation for the future. And the statistics for this group of young people--I mean, the children--are devastating, I think.

The Chairman. Senator Moynihan.

Senator Moynihan. Mr. Chairman, could I just make a small advertisement? Tomorrow morning, the Committee on Rules is going to hold a hearing on a proposal that Senator Denton and I have proposed to establish a select committee on children and families in the Senate to parallel the one in the House.

What Senator Chafee and Senator Danforth say is overwhelmingly the case. If I could make a small correction. A child under six today is seven times more likely to be poor than a person over 65. And this is not some Nordic paradise where there are 104 people, and several of them are hermits and the rest of them are fishermen's children. Approximately 22.5 percent of the children under seven at any

one moment are at this moment under the poverty line.

On social security which is our concern, our responsibility, you can make a responsible estimate now that 32 percent of the children born in 1980 will be on AFDC before they are 18. We are the first society in the history of the world in which the poorest group in the population are the children.

Now one other reason that is so is because we have been so successful in dealing with the aged, and this committee has done that. But the fact is we are the only society on earth in which the poorest group in the population are the children. And what you say is absolutely right. And I don't think we know enough about it, and I think we should be more asystematic in our inquiry.

Senator Bentsen. Mr. Chairman, if I may add to that. The problem we are running into today with children having children, the lack of medical care they are in, and the low rate births that we are seeing resulting from lack of that kind of care, and then the mental handicapped, and the physical disabilities, if you were the toughest, hardest kind of a fiscal conservatist you would have to be for trying to correct that.

If you could ignore all the compassion, the emotion of what that child is going to go through and that family is going to go through, or that single parent is going to go

through, you are going to save the taxpayers of this country an incredible amount of money, dollars, just by seeing that they get some preventative health care, and that you get them proper diets at that age. And that is why I just strongly agree with this idea, moving it up finally to age six. I wish we could do it this year.

The Chairman. Let's move on to revenues.

State and local Medicare tax. This is one that this committee is well familiar with. We passed it 13 to 5 in this committee once and then on the floor. Although we deferred it for only one year, and it was 15 to 3. I know Senator Mitchell has an interest in this, and may want to be back, but I think we might as well discuss it because I am presuming that the committee is probably going to adopt it again.

I am open for comments.

Senator Durenberger. Mr. Chairman.

Senator Long. I am one who voted for it the last time.

The Chairman. You were one of the five, I think.

Sparky?

Senator Matsunaga. Will this include the firefighters and policemen also in the proposal?

Mr. Colvin. It would cover all state and local employees.

Senator Matsunaga. All?

Mr. Colvin. Yes, sir.

Senator Matsunaga. Including policemen?

Mr. Colvin. Yes, sir.

Senator Matsunaga. Well, I was one of the five.

The Chairman. What we did was include new employees as of when? Was it March? I am trying to remember, Ed and John.

Mr. Mihalski. Yes, sir, it was March 31st.

The Chairman. It was new employees as of March. We debated covering all employees, and this is one where we did cover them all on a prospective date, and then again in the conference with the House we dropped back. And I know this is one that the House is looking at with more intensity than they did before because they have the same reconciliation targets to meet that we now do and they are looking and wondering where to get the revenue.

Senator Durenberger. Mr. Chairman.

The Chairman. Dave.

Senator Durenberger. My recollection of the way -- this is a question of you as you and the conferees move through the tax bill -- when we came out of the back room with the 27 percent tax bill and addressed ourselves to the issues of 401(k)--maybe John Chafee can remember it better than I--we dealt very briefly with the issue of eligibility, and I cannot remember how it came out. But I know that I raised the issue of the coverage under 401(k) of nonprofit --

employees of nonprofit organizations, and I recall also raising the issue of coverage for state and local employees. And for some reason or other I decided at that time that I would withhold an amendment to include state and local employees in the tax bill thinking that I would come here on reconciliation and have them included as eligibles under 401(k).

Now I don't have the money to do it unless I run off this little list of excise taxes. I have never voted for an excise tax on this committee that I know of, so I hate to do that.

But I am just wondering if there is any possibility--I do not know where the House is on the eligibility of state and local employees for 401(k), but is there any possibility in your discussion of the tax bill that you might include state and local employees to make them eligible?

Mr. Colvin. Senator Durenberger, both the House bill and the Senate bill did not provide 401(k)s for state and local employees.

Senator Durenberger. Is there anyone else on this committee that would share my concern that state and local employees are the only persons who are not eligible for 401(k)s? Maybe between now and tomorrow we could figure an amendment.

Senator Baucus. What is it, a $7 billion item?

Senator Durenberger. Well, it depends on how we do it. We could phase in the maximum contribution limit over a period of time. I think the dollars are, what, $1.3 billion.

Senator Dole. Over three years?

Senator Durenberger. Over three years, yes.

Senator Chafee. Well, Mr. Chairman, I remember that incident very clearly in the back room here, and I thought I gave one of the most impassioned successful speeches I ever gave of which I got two votes, mine and somebody else's.

The Chairman. Which side were you on? I cannot remember.

(Laughter)

Senator Chafee. And maybe I only got one vote. I know I got my own vote. So I would say that was seed we sowed on infertile ground. For some reason, maybe because of the speech, it did not get anywhere.

The Chairman. David, I sense that it is an issue for which whos times has not quite come.

Senator Chafee. I would second that.

I think it is unfair what we did, but nobody had my reasoning. It was not persuasive.

The Chairman. It is an issue we will visit again, but I think probably we would do just as well not to visit it here.

On this issue I think there is not much more

discussion, and I know Senator Mitchell and some others want to be back, so we will just for the moment lay it aside. I am presuming that we are going to adopt it tomorrow based upon what we have done before.

Senator Moynihan. Mr. Chairman, if we do, would it be possible for me to bring up the amendment to our amendment on disinvestment of social security funds?

The Chairman. Yes. Is it extraneous?

Senator Moynihan. We would, in effect, move to another subject.

The Chairman. I want to go through a couple of these, revenue.

Senator Moynihan. Oh, I see.

The Chairman. Excuse me. Yes.

We have got a suggestion from the staff of modifying the telephone excise tax, increasing the business tax to 5 percent and cutting the residence tax to 2 percent.

Senator Dole. What is it now?

The Chairman. Three percent.

Senator Dole. Three.

The Chairman. Three for everybody.

What is the difference in revenues between continuing it at 3 percent and the modification as you have suggested it?

Mr. Weiss. The straight extension of 3 percent would

be about $3.6 billion over this period. So it is a little less than a straight extension.

The Chairman. It is a little more than what the staff is suggesting.

Mr. Weiss. A little more. I am sorry. Yes.

The Chairman. Yes.

Mr. Colvin. The money also falls differently between fiscal years. If there were a straight extension there would be no money raised until after 1987.

The Chairman. But the three years come out the same.

Senator Long. I find some feel just having to write even across the board when there was nonbusiness or business by way of simplification. And I like it that way.

The Chairman. Could we do it across the board?

Senator Long. Yes, sir. You would have the same type across the board for you to raise money you want to raise.

The Chairman. You mean just extend what we have got?

Senator Long. Yes, sir.

The Chairman. Yes.

Senator Long. Just extend it.

The Chairman. Three percent now.

Senator Dole. Would that be enough, John, and then you could knock out that accelerating excise tax payments? Would you have enough left over?

Mr. Colvin. Not quite, Senator Dole.

If you wanted to -- let's say you wanted to delete the telephone proposal on the option sheet --

The Chairman. Wait a minute.

There is no revenues at all in 1987 under that proposal. Is that right?

Mr. Colvin. That is correct.

The Chairman. So we get a sequester.

Mr. Colvin. Senator Dole, if you wanted to start by knocking out the telephone proposal and increase -- and replace it with the telephone money over three years, you could do it with a one and a half percent increase over what the telephone tax would be. In other words, four and a half percent to the end of 1987, and one and a half percent until September 30th, 1989. That would give you about a little bit more money than is in the telephone proposal on this sheet of paper.

Then if you wanted to also knock out the alcohol accelerated payment proposal, you could add another half a percent to the telephone tax for the first fiscal year, and that would bring in about $400 million in the first year.

The Chairman. You mean there is no way we can just extend this 3 percent without running afoul of the sequester in Gramm-Rudman because of no additional revenues in 1987?

Mr. Colvin. That would have no revenue pick up in

fiscal 1987.

The Chairman. Well there has got to be answer to that somehow.

Senator Chafee. The problem is that the liquor brings you in in the first year.

The Chairman. Yes.

Senator Chafee. I am opposed to the whole liquor proposal. As you mentioned, Mr. Chairman, we hit them --

The Chairman. We have done enough to them.

Senator Chafee -- a year ago, two years ago. I think also this proposal has something about, in the second part of it, doesn't it, about they have to pay the tax when they bring it in the barn before they have sold it. Is that right?

Mr. Colvin. That is correct.

Senator Chafee. Isn't that quite a dramatic departure from the way the situation works now?

Mr. Colvin. Now they can store it for a considerable amount of time.

Senator Chafee. Until they sell it.

Mr. Colvin. They can warehouse it in the customs' warehouse.

Senator Chafee. Sure.

Mr. Colvin. And that presents a competitive problem with domestic production.

The Chairman. Let me ask this because I sense the

committee has no great desire to accelerate the excise tax payments. Does the committee have any objection in some form to extending the telephone tax? I want to get over this 1987 hurdle so we don't have any revenues, and yet I am reluctant to do as John says, go to four and a half percent the first year and one and a half percent the years after that. But is there any philosophical objection to extending the telephone excise tax on the committee.

Senator Dole. How long have we had it?

The Chairman. Oh, a long time.

Senator Dole. Forty years?

Mr. Colvin. It started before 1920.

Senator Dole. Temporary.

(Laughter)

Senator Bentsen. Mr. Chairman.

The Chairman. Senator Bentsen.

Mr. Bentsen. Could I get the numbers as to what it would be as compared to what is written down here, which I understand is the staff proposal on the telephone excise tax if we continue current law? What do we get in 1987, 1988 and 1989?

Mr. Weiss. The figures for an extension of present law would be nothing in 1987; $1.3 billion in 1988; and $2.3 billion in 1989.

The Chairman. How much in 1989?

Mr. Weiss. $2.3 billion.

The Chairman. So that is where you come out to your $3.6 billion but nothing in 1987.

Mr. Weiss. That is correct.

The Chairman. If you went to 4 percent across the board, I assume then in 1987 you would get -- how much in 1987 on a 1 percent increase?

Mr. Weiss. You would probably get about $800 million, 700 or 800 million.

The Chairman. So you would get about a $400 million increase in 1987.

Mr. Weiss. That is right.

Well, no, it would be about 700.

Senator Long. Mr. Chairman, I would just like to suggest that it would be uniformity. To have two different rates is the kind of thing that adds to complexity. It adds to tax cheating.

The Chairman. He is talking about 4 percent across the board.

Senator Long. It is all right with me. I am just saying, for the figure, I would like for this to be the same figure no matter whether it is nonbusiness or business.

The Chairman. George?

Well, 4 percent across the board, Randy, what would you judge over the three years? That obviously takes care of our

1987 problem. What would it fives us over three years?

Mr. Weiss. Four percent over the three years would be a total of about $5.5 billion, and it would be about $400 million in 1987, about --

The Chairman. That is about $2 billion more.

Mr. Weiss. Right, about $2 billion in 1988, and $3.1 billion in 1989.

Senator Mitchell. Mr. Chairman, may I ask a question?

The Chairman. George.

Senator Mitchell. I am looking at the sheet entitled "Reconciliation Revenue Options, July 19th." Revenue instructions for fiscal year 1987 are $3.5 billion. The total for that year to be raised, at the bottom of that same column, is $1.3 billion.

Is there any requirement that the instructions be complied with on a year to year basis?

Mr. Colvin. The reconciliation statute is termed based on single fiscal years, but the reconciliation instruction to the Finance Committee is for three fiscal years; therefore, this package is designed to achieve the revenue and outlay number over the three years. And you can see from page 1 of 6 that it comes within a hundred million of both numbers.

Senator Mitchell. Right. I do see that.

So notwithstanding that the amount in the first year is about a third of the amount required, the instructions do not

require compliance on a year to year basis is what you are saying so long as compliance occurs on the total for the three years.

Mr. Colvin. In literal terms, the Budget Act just refers to one fiscal year, but since the instruction covers three years, the package was also designed to meet the 3-year total.

The Chairman. Now I am confused about the answer though. If we do not need it in the first year, are we in violation of the Budget Act, or Gramm-Rudman, or anything else?

Senator Mitchell. Well, the Gramm-Rudman target is for the one year. The amount is for this coming year.

Senator Dole. Well we are going to be short though I think.

The Chairman. In the first year.

Senator Dole. That photograph was taken August 15.

Senator Chafee. Well I have got a proposal to solve it, Mr. Chairman.

Senator Mitchell. Have we decided there is a problem?

Senator Chafee. Well I have got the answer even if there is no problem.

(Laughter)

Senator Mitchell. You are going to propose the answer and then we will dream up the problem that it solves.

The Chairman. What is it?

Senator Chafee. Eight cents more on the cigarette tax, Mr. Chairman. Since cigarettes cost $41 billion to the American society every year, let's have the smokers pay a little more toward it. And that will give you $5 billion. And I will guarantee you a way to spend it.

The Chairman. Before we consider that, let's make sure I understand the answer on the one-year, two-years, three-years.

If we just extend the telephone tax at 3 percent a year, are you telling me we do not raise enough money in 1987 to meet the Gramm-Rudman totals?

Mr. Colvin. You do not meet the distribution in the Budget Reconciliation for fiscal 1987.

The Chairman. So when the snapshot is taken we are short in 1987 because that tax was already in existence and we are not scored for an increase.

Mr. Colvin. The snapshot is based on the deficit, and so it takes into account both the revenues and spending.

Senator Dole. So we are short.

(laughter)

Mr. Colvin. No, you would not be short at that point. You would have achieved deficit reduction in a different method than in the reconciliation instruction. You would have done somewhat more on spending and somewhat less on

revenues for fiscal 1987.

Senator Mitchell. But, John, aren't you saying that if we do not meet the $3.5 billion in the first year--in effect, if we fall short by $2.2 billion as this proposal indicates--that we have to make that up in some other area to meet that target for that year?

Mr. Colvin. That is right. And this package makes it up.

Senator Mitchell. That is right. Notwithstanding the -- oh, and this package does make it up. That is what you are saying.

Mr. Colvin. Yes, sir. On page 3 of 6 you can see at the bottom of the fiscal 1987 column the package is $44 million over the requirement.

Senator Mitchell. For that --

Mr. Colvin. For that year.

Senator Mitchell. You are saying 3 of 6. My sheet says 1 of 5. So we are reading from different documents.

Mr. Colvin. In any event, the aggregate figure is $44 million over fiscal 1987.

Senator Mitchell. For fiscal year 1987.

Mr. Colvin. That is right.

Senator Mitchell. All right.

The Chairman. Senator Bentsen was asking. Four percent clearly--we meet our totals in all of the years--it

puts us about $2 billion over the total we need to actually meet our three year totals.

Senator Dole. We are going to need more than that when they take that new picture.

The Chairman. Oh, I agree.

Senator Dole. And develop it.

The Chairman. Any objection to 4 percent?

Senator Chafee. Yes, Mr. Chairman, I object.

Senator Mitchell. Mr. Chairman.

The Chairman. Senator Mitchell, who came back for this purpose.

Senator Mitchell. Mr. Chairman, let me just say a few words and I will try not to be repetitious, sound like a broken record to the members of this committee.

But as I have said many times, what we have done for the past several years is to reduce taxes based on ability to pay and increase those taxes unrelated to ability to pay. Now I am going to ask that there be placed in the record, and I would ask the members of the committee if they get a chance to take a look at an article that recently appears in the New York Times entitled "The average guy takes it on the chin."

This article demonstrates, states--and I am just going to read two sentences--"After adjusting for inflation, the average weekly earnings in America declined an astonishing

14.3 percent between 1973 and 1986. Median household income in America declined 6 percent between 1973 and 1976." Real incomes in America for 80 percent of American families are declining, and at precisely the same time, we, this committee, and the Congress and the Administration are increasing the tax burden on the overwhelming majority of Americans. Eighty percent of all American families now have less after tax income than they had in 1980, all except the top fifty of income earners. And we are dramatically exascerbating that problem as we constantly increase excise taxes, we constantly increase payroll taxes, we constantly increase every federal tax that is unrelated to the ability to pay while we cut the income tax which is based on the ability to pay; thereby creating in the minds of the American people the impression that we are reducing their taxes when, in fact, we are doing just the opposite.

I predicted during the income tax debate that this would occur. It is now occurring. With the possible exception of the cigarette tax that Senator Chafee is proposing as a public health measure, I can see no justification for us to keep raising excise taxes, thereby increasing the tax burden on 80 percent of American families just as their real incomes are declining. That is exactly what is happening, and the actions of this committee and the Congress have been major contributors to that effect.

And I think we are just making circumstances very difficult for the average working middle class American families.

Senator Long. Mr. Chairman.

The Chairman. Senator Long.

Senator Long. Mr. Chairman, it seems to me that what we are trying to do here is to find the money to pay for Medicare and Medicaid. These are programs that even the Medicare is skewered to the benefit of the low income people as compared to those higher up the ladder. You pay not according to your level of earnings, but the benefits you receive depends upon your health condition.

And, of course, the Medicaid program is strictly a program on a needs based program.

Now when we have an excise tax on something like telephone service, which is certainly not the most extreme case of individual needs, I would think that something like a consumption tax, where it is true the low income people pay more of that than they would if you had an income tax, but on the other hand, who takes the lion's share on the taking down end of it? It is the benefit of these low income people you are trying to help. Sick people, poor people, low income people.

When we put our welfare program in Louisiana these would not have made a very big program there. We paid for the sales tax. And I recall the argument at the time, well,

a few people are going to object to the sales tax because it is aggressive, it tends to hit the low income people. But on the other hand, they are going to get the whole benefit. It is all going to go for their benefit.

And when you look at who is on the taking down end, I think the lower income people would be a big winner on this proposition if you use a tax on telephones to pay for Medicare and Medicaid, if you have to when the cost of it goes up.

The Chairman. Further discussion.

Senator Boren. Mr. Chairman.

Senator Chafee. Mr. Chairman.

The Chairman. Senator Boren had his hand up a while ago.

Senator Boren. Just a question. This proposal, the currrent excise tax is 3 percent. Is that correct?

Mr. Colvin. Yes, sir.

Senator Boren. And this would propose to raise it to 4 percent.

The Chairman. Further discussion.

Senator Moynihan. Mr. Chairman.

The Chairman. Senator Moynihan and then Senator Chafee.

Senator Moynihan. Could I just repeat an earlier point just in response to Senator Long? The Medicare funds are solvent. We are not looking to raise monies to pay for

Medicare. We are looking to raise monies to help reduce a deficit that arises from other reasons altogether.

Senator Long. Medicaid, is it that solvent? Medicaid?

Senator Moynihan. Medicaid is not.

The Chairman. Medicaid is not.

Senator Chafee?

Senator Chafee. Mr. Chairman, as we pointed out in the earlier statement where we were dealing with the increased income from certain programs by extending the cost of company health program for those disabled, how much did that cost?

Senator Dole. A billion.

Senator Chafee. A billion dollars, didn't it?

Mr. Mihalski. The secondary payor, yes, sir, about a billion dollars.

Senator Chafee. Secondary payor. And that essentially is--that is right--$966 million over three years. And that is a tax on business, Mr. Chairman. And what you are proposing here is that by increasing the telephone rates to everybody to 4 percent, including businesses, I protest, one, that you are increasing it for individuals, and I also protest you are increasing it for corporations.

What would that produce on increased cost on businesses be if you added 1 percent?

Mr. Mihalski. One percent on the telephone excise tax?

Senator Chafee. Yes.

Senator Dole. Five hundred million.

Senator Chafee. If you can get it fairly quickly.

Mr. Colvin. The revenues from business are separately stated on the handout. Out of the $3.4 billion that would be coming in under the proposal, $2.4 billion is from business and $1.0 billion is from residential.

Senator Chafee. It would be increased by the increased percentage over existing.

Mr. Colvin. That is increase relative to present law.

Senator Chafee. All right.

So overall we have added to business $1.5 billion today if this increase should go through, and I just do not think that makes sense because we are talking jobs. That is what business is.

Senator Dole. Isn't it deductible?

Senator Chafee. Yes, I suppose. All right.

Senator Dole. So they are not really paying that much.

Senator Chafee. All right.

So they are only paying, under our bill, 33 percent.

Mr. Chairman, if you want money I think you ought to go the route of the cigarette tax.

The Chairman. Well, let's do this. Obviously we are going to have some final debate tomorrow, and we are clearly going to finish this tomorrow. I am going to suggest to you

that we adjourn at the moment. We have only two or three items on the initial page on outlays to finish.

Senator Dole. Could I just say one point?

The Chairman. I know you want to bring up your cigarette tax tomorrow, and you are serious about it, but, clearly, between the state and local Medicare tax, telephone tax, and/or a cigarette tax that Senator Chafee is going to propose, we will be able to meet our revenue totals.

Bob?

Senator Dole. I would just say one thing. We have got a big headache coming up for all of us here if we do not deal with the Gramm-Rudman sequester. And we had a statement today from Senator Domenici in our policy luncheon that he might be able to, with some help from the committee, meet our targets without any sequester. And I cannot think of a better way to help Senator Domenici and have a couple of billion dollars surplus in this little package.

Senator Moynihan. Mr. Chairman, before we adjourn, is there any chance to get to that social security?

The Chairman. Oh, yes.

Pat has a good suggestion on social security, a slight change to what we adopted a couple of day ago on the debt ceiling.

Senator Moynihan. Mr. Chairman, this would be an amendment that would say that if we were in a situation where

the federal government would no longer pay other obligations, the Secretary of the Treasury could disinvest social security funds to pay social security checks.

Senator Dole. That takes care of Armstrong's concern, right?

Senator Moynihan. Yes, sir.

The Chairman. What you are suggesting is a committee amendment to the debt ceiling that we have already reported?

Senator Moynihan. Yes, sir. The draft would be very simple, I think, John, don't you think?

Mr. Colvin. Yes, sir.

Senator Moynihan. Could I make that proposal, Mr. Chairman, that you would offer this as a committee amendment when appropriate?

The Chairman. This is better than what we did. I think we should send it out here, and then I will offer it on the floor as a committee amendment as a substitute for what we put on the debt ceiling bill.

Senator Moynihan. Yes, sir. Could I so move?

Senator Dole. We can put it on there too.

The Chairman. Yes, I think we ought to because we adopted Pat's other amendment on the debt ceiling bill. We have since discovered there has been a slight, I don't want to say defect. This is simply a better amendment.

Senator Moynihan. Fine. So can we just do it that way,

and then this would be part of the debt ceiling proposal?

Senator Dole. Just modify it, yes.

The Chairman. Just modify the debt ceiling proposal. Is there objection?

(No response)

The Chairman. Without objection.

Senator Chafee. Mr. Chairman.

The Chairman. Senator Chafee.

Senator Chafee. Before we adjourn, Mr. Chairman, perhaps you have welcomed already, but I see a familiar name and a familiar face here.

Senator Moynihan. Almost familiar.

Senator Chafee. Almost a familiar face. And we welcome Mr. Chapoton to these circles. The name is well known. They had a name plate all made up without any trouble.

The Chairman. I have got a tale to tell you. Symms came over here and said, "What is Buck doing here?" And for those who are unaware, this is Buck Chapoton's twin brother who has now joined us in a similar capacity. We will be seeing a familiar face for another four years I assume at this committee.

Mr. Chapoton. Mr. Chairman, he told me how much he has enjoyed things here.

The Chairman. You even sound like him.

(Laughter)

The Chairman. We are in adjournment until tomorrow afternoon when we will finish this up.

(Whereupon, at 4:44 p.m., the executive committee meeting was adjourned, to reconvene on Wednesday, July 23, 1986, at 1:30 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting on Legislation to Reduce the Federal Deficit for fiscal years 1987, 1988 and 1999, pursuant to instructions received under S. Con. Res. 120, and to confirm William F. Nelson to be Chief Counsel of the Internal Revenue Service, held on July 22, 1986, by the Committee on Finance, were held as herein appears and that this is the original transcript thereof.

WILLIAM J. MOFFITT
Official Court Reporter

My Commission expires April 14, 1989.