

1 EXECUTIVE COMMITTEE MEETING

2 FRIDAY, JULY 1, 1994

3 U.S. Senate,

4 Committee on Finance,

5 Washington, DC.

6 The meeting was convened, pursuant to notice, at 3:00
7 p.m., in Room SD-215, Dirksen Senate Office Building, Hon.
8 Daniel Patrick Moynihan, Chairman of the Committee,
9 presiding.

10 Also present: Senators Baucus, Boren, Bradley,
11 Mitchell, Pryor, Riegle, Rockefeller, Daschle, Breaux,
12 Conrad, Packwood, Dole, Roth, Danforth, Chafee,
13 Durenberger, Grassley, Hatch and Wallop.

14 Also present: Lawrence O'Donnell, Jr., Staff
15 Director; Lindy Paull, Chief of Staff, Minority; Rob
16 Connor, Assistant to the Chairman.

17 Also present: Margaret Malone, Professional Staff
18 Member; and Debbie Chang, Health Policy Advisor; Chuck
19 Konigsburg, Chief Counsel; Joseph Gale, Chief Tax Counsel;
20 John Buckley, Joint Tax Committee; Will Sollee, Tax
21 Counsel; Dr. Karen Hein, Congressional Fellow, Majority;
22 Jane Horvath, Kathy King, Sheila O'Dougherty, Professional
23 Staff Members; and Teresa Sachs, Special Committee on
24 Aging; and Peter Liebold, Senator Danforth's Legislative
25 Director.

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1 The Chairman. A very pleasant sunny afternoon to our
2 guests and our pretty much depleted staff at this point I
3 would think. If I can exercise a Chairman's prerogative,
4 can I note that it is 50 years ago today that I joined the
5 United States Navy.

6 (Laughter.)

7 The Chairman. It was my first encounter with
8 government medicine and my arms were sore for the next
9 month on either side from the shots. But we are here to
10 show something for it.

11 I believe I spy in the person of the Republican
12 Leader an opening statement and also the Ranking Member.
13 I know that the Majority Leader has an amendment which he
14 would like to offer. We are just a little bit behind on
15 the typing of a general proposition which we will bring to
16 the committee about the time we are concluded with this
17 exercise.

18 Senator Packwood, would you like to go first?

19 Senator Packwood. Well, Mr. Chairman, if we are
20 going to have a hanging, we might as well do it sooner
21 than later I suppose. It is very clear, I think, that
22 there are the votes to send this bill out of committee, a
23 bill that we do not know what is in it, we will not know
24 what is in it. We do not know the costs. We will not
25 know the cost. Some place between \$200 and \$225 billion

1 in taxes and spending. But no valid estimates at all.

2 It is an unfortunate day for this committee. Because
3 when you look throughout history the real subversion of
4 democracy comes with the subversion of the procedures, not
5 of the substance. And by procedural devices today, we are
6 going to act on a very substantive bill and send it out
7 because the majority wants it out, not because we like it
8 or do not like it.

9 We cannot know that. Not because it costs too much
10 or too little. We cannot know that. But it is the desire
11 of the majority to have a bill on the floor -- any bill.
12 So I think, Mr. Chairman, we are probably wasting our time
13 here. We could stay until tomorrow and send it out
14 tomorrow. It will not change the problems we face.

15 I just say it is a sorry day for this committee. It
16 is a committee that all of us revel and joy at serving on.
17 It is a committee that people clamor to get on because of
18 its fairness and its elegance and its intelligence. I
19 hope this is not the start of a day when those qualities
20 are running downhill.

21 The Chairman. Senator Packwood, I think that there
22 is nobody on this committee which does not agree with you,
23 the first fact that we do not have CBO estimates of what
24 we are doing. We have approximations. We have had from
25 the OMB, from the CBO and from the Joint Tax, the best

1 estimates they can give us of what they have. We will not
2 act on this bill until we have the formal estimate of the
3 CBO as is required under statute.

4 That is what is required. The Senate will not act.
5 There will no action on the floor. The Majority Leader is
6 here to confirm that. Those are our rules and we will
7 abide by them.

8 Senator Dole?

9 Senator Dole. Well, I want to sort of echo what
10 Senator Packwood has said. I cannot speak for three of
11 our Republican colleagues, but the rest of us have been
12 acting in this process too for the past eight months and
13 most of us have attended all of the 31 hearings that were
14 alluded to yesterday, back room meetings, and the retreat.

15 I think we did so because we were fundamentally
16 committed to this committee. We believed that we could
17 craft something nearly all of us could support. And when
18 we were asked not to dwell on areas of disagreement but to
19 let six or seven or eight, whatever, to work on a
20 proposal, we complied with that.

21 When we were asked to allow the committee staff to
22 complete a walk through of the most recent proposal
23 without interrupting with lengthy questions, we complied
24 on the basis we were going to have plenty of time to offer
25 amendments and discussion later. And when we were asked

1 to review areas of disagreement, we complied with members
2 of the committee staff.

3 Then on June 9 we received a nine-page outline which
4 we agreed to treat seriously and discuss. And on June 28
5 at 5:30 we were given a 143-page outline and asked to
6 consider it, and we complied. And again we were assured
7 we would have the opportunity for full and thorough debate
8 and public for the opportunity for amendment. And at
9 almost the same time on June 27, the so-called midstream
10 group released their ideas and asked us to consider those
11 as well.

12 Now, I note all these things just to make the record
13 and to illustrate our continued commitment to you and this
14 committee in this deliberation. It took the Clinton
15 Administration about 10 months to come forward with a
16 proposal, to send us a proposal.

17 The Labor and Human Resources Committee had a similar
18 task to ours, were given a proposal by their Chairman on
19 May 9, began their markup I think nine days later, May 18,
20 and reported their bill on June 9, one month later.

21 The House Ways and Means Committee deliberated for 11
22 days, its full committee 17 days. That is 28 days of
23 deliberation on something, on a text, on something you
24 could amend.

25 So what we are being asked to do is just ignore all

1 that, ignore our responsibilities because somebody wants
2 to get this done before the July 4 recess, get it out of
3 committee and in all course we will deal with it when we
4 get it out on the floor.

5 That is not the way this committee does its business.
6 I think we have had disagreements in the past, but I think
7 we have always spent plenty of time making certain that
8 everybody had an opportunity. Here we are dealing with a
9 bill that is going to affect one-seventh of our economy,
10 millions of people, a hundred and some million are going
11 to get subsidies. It is going to be \$200 or \$300 billion
12 in new spending and \$200 billion in new taxes, a half
13 trillion dollars. We have had three votes -- three votes.
14 And maybe there will be one or two today if anybody stays
15 around for votes.

16 So we have been told by seven members of the
17 committee that this is what you are going to get and you
18 ought to take it. We should not have to explain it.
19 Nobody could explain yesterday this \$32 billion tax
20 increase -- \$17 to \$32 billion. The IRS was not prepared,
21 nobody else was prepared. We do not know how much it is;
22 who it affects; whether it can be administered by the IRS.

23 We think there are \$200 billion in new taxes. We
24 want the American public to understand that -- \$200
25 billion in new taxes. A new entitlement program that

1 costs in excess of \$200 billion and have three times more
2 beneficiaries than Medicare or Social Security. That is
3 how vast this program is -- three times more beneficiaries
4 than Medicare and Social Security.

5 Now this is not some little Medicare, Medicaid
6 package or a change of tax provision. This is a measure
7 designed to revolutionize health care, as I said, to touch
8 one-seventh of our economy. I think it deserves a lot of
9 deliberation by this committee.

10 We will disagree on some elements. We may agree on
11 other elements. And some will be considered by the full
12 committee. I do not know where we get the answers.
13 Nobody has the answers on cost. Nobody has the answers on
14 amendment. We are supposed to accept in blind faith
15 because seven of our colleagues have made some
16 arrangement; the rest of us, including six on this side
17 who might have different views or say, well, you are the
18 minority, you have no rights. We have one right -- we can
19 object to the committee sitting today and we may do that
20 unless we get some explanation as long as the Senate is in
21 session.

22 I think we owe something to the American people and
23 the taxpayers and the small business men and women who are
24 going to be affected by this. And the companies are going
25 to pay between \$17 and \$32 billion in new taxes; and the

1 people are going to pay \$200 billion in taxes. And where
2 are the answers? Where are the answers?

3 We are treating this like it was in a sense a Senate
4 resolution. There has not been a piece of legislation
5 this all encompassing as long as I have been around this
6 place, and we spent a lot more time -- we spend a lot more
7 time over there on the B-2 bomber yesterday than we spent
8 on this bill.

9 So, Mr. Chairman, I just urge you to let the process
10 work. It has always worked in the past. It will work in
11 the future. I do not think we should be delayed until
12 everything gets to the floor -- oh, we will answer when it
13 gets to the floor. Let us get it out of here so we can
14 say every committee has their bill reported by July 4
15 recess and that is supposed to be an indication of
16 progress.

17 I really do not think we can say, well, we had three
18 votes yesterday on this. We do not know what document we
19 are voting on today. I guess it has been changed. We do
20 not know whether it is this document or some other
21 document. We have no opportunity to look at what is going
22 to be proposed. It is not even ready yet. And we are
23 asked to vote it out.

24 In my view, that is not the way the system is going
25 to work or should work. And I think the American people

1 will not understand it if members of this committee do not
2 understand it. I know how arrangements are made, but I
3 have never know one to be made with a bill, as I said,
4 that is this important to everybody.

5 It is important to everybody we represent. Everybody
6 is going to have a health care problem. Every small
7 businessman is going to be affected and we do not know how
8 many billions of dollars are being spent, how we are going
9 to pay for it. Just take it on blind faith and say, well,
10 we had seven of our members, who are certainly good
11 members -- I have no quarrel with any of them -- they
12 worked all this out. Certainly they did not make any
13 mistakes.

14 Many things we have not had hearings on that are
15 entirely new and I would hope we would do what we normally
16 do. We would take our time and we would go through the
17 process. We have about 50 or 60 amendments that should be
18 offered that we know of -- important amendments, relevant
19 amendments. And we think we ought to have that
20 opportunity.

21 The Chairman. May I say to my distinguished friend,
22 and old friend, that any amendments offered will be dealt
23 with. This bill will go to the floor where it will be
24 subject to unlimited debate, and it will have the precise
25 -- as precise as Congressional Budget Office estimates can

1 be. We will know the numbers and we will vote
2 accordingly.

3 Does the Majority Leader wish to speak?

4 Senator Mitchell. Mr. Chairman, I would begin by
5 commending you for the thoroughness and fairness of the
6 leadership you have provided on this legislation. In my
7 15 years on this committee I do not recall a major bill in
8 which a Chairman has treated every member, Majority and
9 Minority alike, with as much consideration and
10 accommodation and fairness.

11 There were according to some statements more than 30
12 days of hearings. There have been countless hours of
13 discussion of which the Chairman presided with unfailing
14 courtesy and fairness to every member. This is the third
15 day of the markup, although the first day was spent in
16 going through the measure.

17 So, Mr. Chairman, I think you deserve the
18 commendation of all concerned. I certainly express that
19 myself. I think you have done an outstanding job and I
20 hope that we will move forward and report this bill.

21 I was trying to place a memory as I heard the
22 statements by Senator Packwood and Senator Dole of prior
23 statements made in this room of that type.

24 Then I recalled some years ago when we were in the
25 minority and our Republican colleagues were the majority

1 and we were called into a meeting about 9:00 in the
2 morning and presented for the first time with the proposal
3 then before us, not in legislative form but in outline
4 form. It was until then I think the largest tax measure
5 ever considered.

6 We were told that we would stay in session
7 continuously with no interruption until that bill was
8 reported out of the committee. I cannot recall -- I think
9 it was Senator Long, who had been previously the Chairman,
10 then was the Ranking Member, who made a statement which at
11 least according to my memory was almost verbatim to those
12 made by Senator Dole.

13 Senator Dole. Will the Senator yield?

14 Senator Mitchell. Yes.

15 Senator Dole. That is what Senator Long told me.
16 You get the votes; you are not getting any on our side.
17 We had no choice. The committee did not function. We had
18 11 members locked up somewhere and we did what Senator
19 Long told us to do. We always did around here. So we
20 went off and put our bill together.

21 Senator Mitchell. Well, I can remember the meeting
22 very well because my recollection is that exercising very
23 firm leadership, Senator Dole, got the Republicans to
24 agree to a unit rule that private meetings they would
25 vote. And then whatever that vote was, everyone -- and I

1 think one of our colleagues broke rank once and there was
2 a caucus called and the ranks were reaffirmed.

3 But I remember the statements because they were so
4 strikingly similar to those made here today. My
5 recollection is, this is some years ago that we did, in
6 fact, stay in session. I do not remember the number of
7 hours -- 13, 14, or 15 hours -- except for that one brief
8 break, and did report the bill out.

9 So I think, Mr. Chairman, by contrast, there has been
10 a very large and very deliberate and very thorough
11 discussion of all of the issues here in more volume at
12 least, and detailed, than on any measure in the time I
13 have served on this committee; and it has all been done by
14 the Chairman in what I think has been extraordinary
15 courtesy and fairness to all concerned.

16 So, Mr. Chairman, you need no defense from me. But I
17 am perfectly happy to provide these words expressing what
18 I feel about the manner in which this process has gone
19 forward and I commend you for it.

20 The Chairman. Thank you, Senator Mitchell.

21 In extenuation to Senator Dole's position early on,
22 we were all younger then.

23 Senator Dole. I cannot remember it.

24 The Chairman. We cannot remember it.

25 Senator Breaux?

1 Senator Breaux. Thank you, Mr. Chairman.

2 I think the issue that we are really faced with right
3 here is, do we really know what we are doing. I would
4 suggest that we have been on this for a year-and-a-half
5 talking about health care. We have debated it in this
6 room. We have had 31 hearings out here. We have had
7 countless meetings in that back room. We have talked
8 about it to each other in the halls, on the elevator. We
9 have had meetings on the floor of the Senate.

10 We have talked about and debated every issue dealing
11 with health care that I think any of us could ever think
12 of. We have talked about subsidies for poor people. We
13 talked about purchasing cooperatives. We talked about
14 standardized plans. We have talked about tax subsidies.
15 We have talked about premium caps and we have talked about
16 individual mandates, employer mandates.

17 If there is a subject in health care that this body,
18 this committee, has not talked about and has not heard
19 testimony on, I would like to know what it is.

20 The Chairman. Acupuncture.

21 (Laughter.)

22 Senator Breaux. Which one?

23 The Chairman. Acupuncture. We could not fit it in.

24 (Laughter.)

25 Senator Breaux. I have met with a group of

1 acupuncturists.

2 The Chairman. There you are.

3 (Laughter.)

4 Senator Breaux. And lab therapists and musical
5 therapists. I mean, we have talked about health care
6 enough to make us all sick.

7 (Laughter.)

8 Senator Breaux. So I think at this time, when it
9 comes the time to act, yes, there is ideas that win and
10 there are ideas that lose. That is the nature of a
11 democracy.

12 I can understand saying, I do not know what we are
13 voting on. I have used that argument before. But I did
14 not think it sounded very good when I used it. So I think
15 that we know the issues. I mean, we may not know exactly
16 every detail of what something costs. But I think that we
17 have debated this and talked about it and we know what
18 needs to be done.

19 We have differences of opinion and I respect that.
20 But I do not think if we stayed here another two months
21 that we would know anymore than we know today. I would
22 suggest we know enough to make the best decision that is
23 humanly possible at this time.

24 The Chairman. Thank you, Senator Breaux.

25 Senator Mitchell. Mr. Chairman, I just wanted to add

1 a comment. I commended you and I also want to commend the
2 members of the mainstream group.

3 The Chairman. The mainstream coalition.

4 Senator Mitchell. The mainstream coalition, yes. I
5 do not speak for any of them and I do not agree with many
6 of the conclusions that they have reached, but I think it
7 is a serious credible effort on their part to try to come
8 up with something that accomplishes what I think is the
9 common objective every member on this committee shares --
10 to do it in a responsible way in which it can gain the
11 support of enough members to make it possible to be
12 enacted.

13 So I thank them for their effort and commend them.
14 Although as I said, and I make clear, I do not agree with
15 all of their recommendations.

16 The Chairman. Fine.

17 Senator Wallop?

18 Senator Wallop. Mr. Chairman, I echo what others
19 have said about how fairly you have conducted hearings and
20 how much time each of us has had to talk, listen and
21 learn. What we have not had is time to talk, listen and
22 learn about the proposal which lies in front of us. It is
23 not yet here in the room to my understanding.

24 And to have hearings without substantive figures -- I
25 mean it was a disgrace what the IRS and others told us

1 about that high insurance premium tax yesterday. They
2 thought that it was about 40 percent of the policies, had
3 no idea how many of the insured 40 percent of the policies
4 meant. I suggest to you that those probably represent
5 well over half of the insured of Americans because they
6 are union members and because they are families that have
7 taken the low-end policies are generally the young and
8 less numerous covered under a given policy.

9 But hearings without substantive figures, and votes
10 without any knowledge of what costs are, how much taxes
11 are, who is affected, and for how long, and what those
12 consequences are, are nothing more than a pacifier stuck
13 in the mouth of a squalling baby. It does not his hunger
14 or anything else -- it keeps him quiet.

15 And now all of a sudden we have been kept quiet and
16 here we are. Each of us took an oath to defend and
17 protect the United States from all enemies, foreign and
18 domestic. But I do not think we intended to find them
19 inside the Finance Committee.

20 We are sitting here with one-seventh of the American
21 economy, voting on theories with no idea, nobody -- we
22 have rough estimates and they are so rough that we could
23 not be told how many people, even in a ball park range,
24 were to be affected by the tax that we laid on Americans
25 yesterday.

1 So it strikes me that it is within your power. That
2 much I know about democracy. But one questions whether
3 the procedure is really one that -- I just curiously and
4 it happens to be that I have one of those little calendars
5 with rules on it, and today's rule is the rule of
6 democracy. An old one that each of us have heard, that if
7 you like sausage and democracy, it is best that you watch
8 neither of them being made. This is one of those times
9 that I having done both quite agree.

10 The Chairman. Thank you, Senator Wallop.

11 Does Senator Bradley wish to make any comment?

12 Senator Bradley. No, Mr. Chairman.

13 The Chairman. It is this very moment coming out of
14 the machine, being compiled.

15 Senator Boren?

16 Senator Boren. Mr. Chairman, let me say that I
17 certainly understand the comments that have been made
18 around the table and I understand the frustration when we
19 are dealing with any bills. I cannot remember a markup
20 that we have ever had on any very complex subject when I
21 thought that any of us had an opportunity to know as much
22 as we would like to know on the subject.

23 But I certainly think you have attempted to be very
24 fair. Let me say that the motives of the seven Senators
25 that have been working together from both parties to try

1 to craft a compromise have not been based upon any desire
2 to try to exclude any of our colleagues from the delivery
3 process.

4 It has been a great struggle for us. We have been
5 trying to grapple with as many different proposals as we
6 could, but to produce a product for consideration of this
7 committee in the form of amendments that would merit
8 serious consideration and bipartisan support, and so we
9 have offered our work product back to you and to the other
10 members of the committee on both sides of the aisle in
11 that spirit, in the hope that instead of locking anyone
12 out of the process that it might, indeed, be a starting
13 point to involve all of us in a process and move us toward
14 a consensus.

15 I certainly approach it in that spirit and I think
16 the others do as well. I would say to my good friends on
17 the other side of the aisle, the Ranking Member and the
18 Minority Leader, that I certainly will listen with an open
19 mind to any proposals which they make, both in the
20 committee and on the floor.

21 Any amendments which they offer I certainly intend to
22 consider on an objective basis and make a decision about
23 them. I would hope that we would take the time in this
24 committee to hear those amendments. I know we will. I
25 assume we are not going to lock any Senator, Mr. Chairman.

1 I know how your policies benefit.

2 The Chairman. No, not one.

3 Senator Boren. If it takes us a few extra hours in
4 the markup, if we have to go a little later tonight, if we
5 even have to come back in the morning or whatever, that we
6 take the time.

7 I simply want to assure those on the other side of
8 the aisle that I will listen to their amendments as they
9 are presented. And again to commend the Chairman for his
10 attempt to be fair and to say that is the spirit in which
11 we hope we are all operating.

12 We realize there will be a lot of additional work
13 done on this bill on the floor and I think we are all
14 going to be approaching it in that same spirit on the
15 floor to see if we cannot in the end produce a product
16 that will have broad support, perhaps even broader support
17 than the one that will leave this committee.

18 Senator Wallop. Would the Senator yield for a
19 question?

20 Senator Boren. I would be happy to yield.

21 Senator Wallop. What is it that you suppose that we
22 might be going to amend? There is no bill language. It
23 is one theory cast against another, cast into the sky. As
24 people should understand, that what is going to take place
25 is that this will be drafted while we are gone on the 4th

1 of July recess; and none of us, not even those who are
2 voting for it, will have the foggiest notion what the bill
3 language says even until we get back, let alone how much
4 it is going to cost or anything. So we can amend, but to
5 what end?

6 The Chairman. May I say that it is a common practice
7 to agree upon a specific amendment and have the
8 necessarily complex statutory drafting done by our
9 legislative counsel and we will do.

10 So thanking the Senators for their opening remarks,
11 the bill is open to amendment, as I observed yesterday
12 morning, of the Health Security Act of 1994. There, I got
13 the date right. Did I not?

14 Senator Packwood. Is it, Mr. Chairman, the bill we
15 had yesterday or is it a different bill?

16 The Chairman. A large amendment will be presented
17 directly. But now as we concluded business yesterday, we
18 did not get to Senator Grassley's amendment on nurse
19 practitioners. He said at that time that he was still
20 struggling, that there had been a change in the estimate.
21 And if I recall, you were short \$90 million. I cannot
22 doubt that it will be in the interval you have found it.

23 If you would like to offer your amendment now,
24 Senator Grassley?

25 Senator Grassley. Yes.

1 By the way, I have not found the \$90 million. But in
2 consultation with your staff, because of the rough figures
3 we are working with, I have been assured that is no
4 problem.

5 (Laughter.)

6 The Chairman. Now, is that bipartisan cooperation or
7 is it not?

8 Senator Grassley. I think it is a recognition --

9 The Chairman. That is a new spirit on the part of
10 the Senator from Iowa, which is much appreciated on this
11 side.

12 Senator Grassley. It is a follow-on of the
13 Chairman's admonition to us if there was a good faith
14 effort made to find revenue that we would move forward. I
15 have made a good faith effort to find revenue and have
16 come up with hundreds of millions of dollars that will
17 cover this.

18 This amendment is distributed now. It requires that
19 Medicare programs reimburse nurse practitioners, PAs at 85
20 percent of the physician's relative value scale,
21 reimbursement; and it also will permit reimbursement for
22 rural nurse practitioners in rural areas where you
23 sometimes follow their patients to urban settings to serve
24 as assistants at surgery.

25 This amendment would require that these providers

1 accept assignment; and with the exception of the just
2 mentioned assistant at surgery provision it is exactly
3 like a version that was put in H.R. 11 in 1992. The only
4 difference is that clinical nurse specialists have been
5 dropped from this amendment. Five members co-sponsor
6 this.

7 The informal CBO estimate for the cost of this
8 provision is \$450 million over five years. The original
9 estimate was reduced by delaying this effective date until
10 January 1, 1997.

11 I think the rationale is very clear to everybody who
12 is involved because there are so many on this committee
13 who sponsor this. But this is not a Medicare amendment,
14 but this is a health care reform amendment because what we
15 are trying to do through health care reform is to increase
16 access to primary care providers in underserved areas and
17 that is the motivation behind this.

18 If you want one example from my State, in some parts
19 of my State physician assistants have tried to work in
20 clinics where there is no physician regularly on site.
21 Unfortunately, you must have a physician on site. This
22 allows this to take place so that we can make the use of
23 these very good health care deliverers in areas where
24 there are not enough people to provide these services.

25 Even in situations where doctors are away on

1 emergency call or making rounds, it would be a technical
2 violation of our present setup for reimbursement if these
3 people had to deliver health care under those particular
4 instances.

5 I want to make clear that this is offered because
6 there is a consensus that we are not making adequate use
7 of people who can deliver health care within their
8 license, within their training, and we ought to make
9 better use of it; and this amendment allows it to happen.

10 As I indicated to you, Mr. Chairman, we are making a
11 good faith and have made a good faith effort to raise the
12 amount of money that is being raised. As I indicated, our
13 offset is \$360 million and the offset comes from a
14 provision that would put new long-term care hospitals
15 under a perspective payment system rather than the system
16 that they are presently under.

17 The Chairman. May I say to, my friend from Iowa,
18 that if there is any one emphatic message we have got from
19 a year's of hearings, is that the nurse practitioners are
20 going to play a much more significant role in health care
21 systems as they are emerging, already do and will do more
22 so.

23 I would like to indicate my support for this. I have
24 been for it. I am still for it, even more so in the light
25 of testimony we have heard.

1 Senator Boren?

2 Senator Boren. Mr. Chairman, let me ask Senator
3 Grassley, if I could, how much variation -- and I am very
4 sympathetic to your amendment. I think it is a good
5 amendment. How much variation is there in terms of the
6 licensing procedures for nurse practitioners and
7 physician's assistants in various States?

8 What worries me is that there are a number of States
9 in which there has been difficulty in getting licensing
10 procedures or sufficient procedures set up that would
11 enable the nurse practitioner program, for example, to
12 really be effective.

13 The Chairman. We heard testimony.

14 Senator Boren. Right. Do you have any idea of how
15 many States where we have problems and would the amendment
16 do anything to establish any procedure in those States
17 where there is not one?

18 Senator Grassley. It does not establish any
19 procedure and I do not think we should do that. But it
20 does provide that in every instance these people must be
21 certified under those separate and different conditions.

22 I think that that is all I really want to deal with.
23 I want to deal with the ability to reimburse so that under
24 present law they do not have to be under the so-called
25 direct supervision.

1 Senator Boren. I guess your theory would be that if
2 this kind of reimbursement system is set up it should be a
3 very strong incentive to States and jurisdictions which
4 have not moved forward on appropriate licensing procedures
5 to do so.

6 Senator Grassley. Very definitely. I think it is a
7 trend that no State could stop from adopting eventually
8 anyway, regardless of what we do here. But this will be
9 an incentive for it because when the reimbursement will be
10 there, States know then they can make greater use of these
11 personnel. I believe that they will follow-up then with
12 making their own State laws so that there is adequate and
13 efficient use of these trained personnel.

14 Senator Boren. Thank you very much.

15 The Chairman. Thank you.

16 Senator Durenberger?

17 Senator Durenberger. Mr. Chairman, when this
18 committee back in 1989 attempted to create a system of
19 prospective payment for Part B, which we can all remember,
20 called RBRVS, it was contemplated at that time that the
21 reforms in what up until then had been physician payment
22 we are going to start reimbursing on the basis of services
23 rather than on the basis of specific providers.

24 So I think for the last four or five years it has
25 been our contemplation that we were going to try to move

1 away from this physician specific reimbursement and try to
2 move in the direction of paying for services which would
3 follow the natural trend that the best outcome in many of
4 our settings is going to come from non-M.D. service
5 providers.

6 The physician's assistants, the nurse practitioners
7 and so forth we are all meeting them now all over. We are
8 meeting them in our inner cities. We are meeting them in
9 our rural areas and so forth. In part, I think it is
10 because of the encouragement that the system has given to
11 find better care, more convenient care for a lot lower
12 price.

13 I am curious, only because I have not looked at this
14 amendment lately and I am a co-sponsor of it, as to why it
15 costs money. I assume it is because these kinds of people
16 have been rendering the service but the service has not
17 been -- they have not been reimbursed out of the Medicare
18 trust fund for these services or the reimbursement has
19 been charged to the patient or comes from some other part
20 of the system.

21 Therefore, though it shows up as a cost or here
22 against the general revenue funding of Part B, that we are
23 actually saving money some place else in the system by
24 this particular motion or amendment on the part of our
25 colleague.

1 Senator Conrad. Mr. Chairman, might I address the
2 question asked?

3 The Chairman. Would you, Senator Conrad?

4 Senator Conrad. The Senator from Minnesota is
5 exactly right. The reason this shows as a cost is because
6 it has been cost shifted in the past over to private
7 payers, over to other parts of the system and many of us
8 believe that this, in fact, saves money.

9 I think the perfect example that Senator Grassley has
10 provided in the past is in Iowa where you have a remote
11 site. There is no doctor. The nurse is providing these
12 services but cannot be reimbursed through the Medicare
13 system. They are getting paid, but it is being cost
14 shifted under other parts of the system.

15 And yet, it saves money because they are going to be
16 reimbursed at a rate less than the physician. So I hope
17 my colleagues will look favorably on this amendment. I
18 think Senator Grassley has crafted this with great care.
19 This is a very important amendment for more rural parts of
20 the country and I believe it saves money.

21 Senator Dole. Mr. Chairman?

22 The Chairman. Senator Dole.

23 Senator Dole. I just want to tell Senator Grassley
24 that this plan has so much merit that we included in the
25 Dole-Packwood-Grassley option.

1 Senator Grassley. Obviously, I know that and I would
2 not --

3 (Laughter.)

4 Senator Grassley. And I know that I would not have
5 to offer the amendment if that were before us, but it is
6 not before us.

7 Senator Dole. Not yet.

8 The Chairman. Senator Daschle?

9 Senator Daschle. Thank you, Mr. Chairman.

10 I think we all understand how important an amendment
11 like this is. But I think we also need to appreciate how
12 important it would be for Medicaid. The Chairman's mark
13 also includes nurse practitioners for Medicaid
14 reimbursement and I am very grateful to him for including
15 Medicare as well as Medicare in the mark.

16 I think there are three reasons why this amendment is
17 necessary. First of all, because of the critical shortage
18 we find for providers all over rural America, we have a
19 very serious problem across South Dakota and across the
20 upper Great Plains. We have a shortage of doctors as well
21 as other providers. Two-thirds of our State is considered
22 primary care shortage areas. Certainly this will help us
23 deal with that problem more effectively.

24 Second, one of the problems we found with Medicare is
25 that it is so complex. Part of its complexity is directly

1 related to the reimbursement schedule that is now required
2 in providing direct payment to providers. This will
3 eliminate much of the complexity. This is a simple,
4 across-the-board, straight reimbursement for all nurse
5 practitioners at 85 percent and I think that is a marked
6 improvement in our reimbursement schedule.

7 Third, this puts a great deal of emphasis on the need
8 for primary care. Obviously, nurse practitioners are in
9 the best position to provide primary care. That is what
10 we need in rural America. This will allow us to do it
11 much more effectively with a much more streamlined
12 reimbursement schedule.

13 So for all those reasons, I think it merits our
14 support. Thank you.

15 The Chairman. Thank you, Senator Daschle.

16 Is there any other Senator wishing to be heard?

17 (No response.)

18 The Chairman. If not --

19 Senator Rockefeller. Mr. Chairman, this amendment is
20 \$90 million short, just for your staff to note it was not
21 included. The financing was not properly included in the
22 bill which I believe is going to appear before us. I
23 support the amendment, but the amendment is short by \$90
24 million. Somebody needs to know that.

25 Senator Grassley. Well, I stated that.

1 The Chairman. He so stated that and that some
2 provision will be made.

3 Does the Senator wish for a roll call?

4 Senator Grassley. No, I would like to just vote, a
5 voice vote.

6 The Chairman. Then all in favor will say aye.

7 (A chorus of ayes.)

8 The Chairman. Those opposed?

9 (No response.)

10 The Chairman. Well, on that note of harmony, let us
11 proceed. The amendment is agreed to.

12 The Senator from Delaware, Senator Roth.

13 Senator Roth. Well, thank you, Mr. Chairman.

14 I move to strike Section VII-W. of the Chairman's
15 mark. Mr. Chairman --

16 The Chairman. Roman VII?

17 Senator Roth. Yes. This section would require the
18 United States Postal Service to pre-fund health benefits
19 for retirees. And the Congressional Budget Office
20 estimates that this would cost the Postal Service some \$13
21 billion over the next five years and many more billions in
22 later years.

23 First of all, I want to point out, Mr. Chairman, that
24 this is a matter not really within the jurisdiction of the
25 Senate Finance Committee, but a matter of jurisdiction for

1 Government Affairs Committee; and for that reason I think
2 it is inappropriate to try to establish this kind of
3 requirement.

4 But more importantly I think is that in effect what
5 is being proposed here is nothing more than a stamp tax
6 that frankly will badly zap the Postal Service of needed
7 resources to be deposited into the general fund of the
8 Treasury.

9 Let me point out that under this provision the funds
10 will not be set aside in some kind of a trust fund to
11 ensure funding of health benefits for postal retirees, but
12 instead it will be deposited into the general fund of the
13 Treasury where these monies may be used to pay for any
14 government program, not as I say specifically health care.

15 What it amounts to is an inter-governmental transfer
16 from the off-budget Postal Service to the general fund
17 with postal customers footing the bill.

18 Now, Mr. Chairman, the Postal Service has advised me
19 that if this legislation is retained in the bill it will
20 be forced to amend their postage rate case now pending
21 before the Postal Rate Commission. The current rate case
22 is asking for a first-class stamp increase from 29 to 32
23 cents. And if we should require an additional \$12 to \$13
24 billion payment be required, the Postal Service estimates
25 the price of the first-class stamp would have to be raised

1 to at least 36 cents.

2 Of particular importance is that there would be
3 several months delay before any such additional increase
4 could become effective. And for each additional month of
5 delay in enacting the increase, the Postal Service would
6 lose some \$400 million each month.

7 The Postmaster General has written that it should be
8 recognized at the outset there is simply no way under our
9 existing borrowing and rate making authority for the
10 postal service to make payments of the size contemplated
11 by this pre-funding requirement.

12 He goes on to say that "if these payments are
13 mandated we would have insufficient cash to meet our
14 financial obligations." In short, this pre-funding
15 requirement would bring us perilously close to a decision
16 between making the required payments or making our
17 payroll.

18 We also have a series of letters not only from the
19 Postmaster General objecting to this but from the unions
20 as well. Mr. Miller, the President of the American Postal
21 Union says, "what this amounts to is a postal stamp tax
22 on every citizen to finance health care reform."

23 Mr. Chairman, I would urge that this language be
24 deleted. It really in effect is just an inter-
25 governmental transfer and does not add anything to finance

1 in effect the health bill.

2 The Chairman. Well, the Senator is quite right in
3 the sense of inter-governmental transfer. But it is a
4 one-time event. It does not add anything to the cost of
5 the Postal Service. As interests are involved, payments
6 are pre-paid rather than post-paid. It is a source of
7 revenue which we feel is appropriate, which any number of
8 Senators on this committee have sponsored, which our
9 distinguished colleague, Senator Dole, in his measure has
10 introduced it. So have we.

11 So in that sense there are 19 -- well, let us see,
12 let us not get into how many co-sponsors there are, but
13 there is a clear consensus on the committee that this
14 needs to be done.

15 Senator Dole. Is this in both the midstream group
16 and the Chairman's mark?

17 The Chairman. Yes, sir. And Senator Dole's mark.

18 Senator Pryor. Mr. Chairman?

19 The Chairman. The Senator from Arkansas, Senator
20 Pryor.

21 Senator Pryor. I am not certain I understood the
22 Chairman correctly. I do not know that I have ever signed
23 off to any kind of a concept of taking the postal
24 corporation's money.

25 The Chairman. No, sir, you have not. The Chairman's

1 mark was not co-sponsored.

2 Senator Pryor. Right. Well, just to alleviate any
3 possible misunderstandings, I am going to support Senator
4 Roth. I think he is correct in this step. Thank you.

5 The Chairman. Sure.

6 Senator Roth. Mr. Chairman, if I could just
7 underscore the fact.

8 The Chairman. Please.

9 Senator Roth. This is going to mean at least a 36
10 cent first-class stamp. More importantly is the fact that
11 it is going to give very serious problems to our Postal
12 Service. And by forcing them -- this is nothing but
13 budgetary gimmick. Because the only reason it is being
14 used is that the Post Office is off budget and because it
15 is off budget it under our budgetary rules can be counted.
16 But that makes no sense. We are going to handicap the
17 Postal Service which already is having financial problems.

18 There is a very genuine concern that what this is
19 going to do is force many people in the private sector --
20 not force, but cause them to move even more so to private
21 means of mailing.

22 The Chairman. Right. Thank you, Senator.

23 Senator Dole?

24 Senator Dole. I have been advised that Senator Roth
25 raised this with our staff and we have been able to find

1 other funds to take care of this.

2 The Chairman. I see.

3 Senator Dole. So we will be in a position to support
4 his amendment.

5 The Chairman. Well, in that case, I think I take the
6 sense of the committee. All those in favor of the
7 amendment by Senator Roth will say aye.

8 (A chorus of ayes.)

9 The Chairman. Those opposed?

10 (No response.)

11 The Chairman. Again, harmony reigns. The amendment
12 is adopted.

13 We have, just so we will know, the ranking order
14 here, Senator Mitchell would like to be recognized to
15 offer an amendment; Senator Riegle will do; and Senator
16 Baucus will do. Senator Mitchell?

17 Senator Mitchell. Mr. Chairman, mine is a minor
18 amendment. It would give the Secretary of Health and
19 Human Services the authority to conduct demonstrations
20 under which up to three States two will elect a State-wide
21 separate performance standard rather than be subject to
22 the national Medicare volume performance standard.

23 Under this proposal the Secretary would develop
24 criteria for such demonstrations. It would have to be
25 budget neutral with respect to Medicare physician spending

1 in the State.

2 Mr. Chairman, when we discussed the Medicare volume
3 performance standard in this committee in 1989, several
4 members expressed concerns about whether a national volume
5 performance standard would be effective in controlling the
6 volume of such services. While the committee briefly
7 discussed the concept of a State-wide standard or a
8 specialty specific standard, the Congress eventually
9 agreed upon a national standard.

10 I believe that myself, Senator Chafee, Senator
11 Durenberger and others expressed at least some interest in
12 other models for a volume performance standard, including
13 the possibility of a State-wide performance standard.
14 This would permit the Secretary to conduct demonstrations.
15 There is no cost because it uses existing funds available
16 for the national volume performance standard.

17 The Chairman. In an experimental mode.

18 Senator Mitchell. That is correct.

19 The Chairman. See you learned something you did not
20 know.

21 Senator Mitchell. That is correct.

22 The Chairman. Does Senator Durenberger wish to be
23 heard on this?

24 Senator Durenberger. Mr. Chairman, just briefly. As
25 the Majority Leader indicated, we passed the original

1 physician payment reform bill in 1989. At the time we did
2 that the Director of the Health Care Financing
3 Administration was very sensitive to the impact that not
4 finding some way to get sort of market specific or State
5 specific on volume performance standards that in effect we
6 would end up penalizing the system, those areas of the
7 country that tried to bring down the cost of care to the
8 Medicare eligible and we would be rewarding some of those
9 who made no such effort.

10 At that time, talking about Gale Wilenski, at that
11 time she promised to begin a process of looking at
12 different ways of developing these. In 1991 we included a
13 provision that is very similar to the one that Senator
14 Mitchell has offered as technical changes. It is just a
15 very important effort to demonstrate that there are better
16 ways to do the volume performance standard than these
17 national standards.

18 So I would certainly recommend it to all of my
19 colleagues.

20 The Chairman. You would certainly recommend this.

21 Are there other Senators wishing to be heard on this
22 eminently practical matter? We have heard this measure
23 before. We have approved it before. There is no cost and
24 in the experimental mode we are trying to introduce into
25 our legislation.

1 (No response.)

2 The Chairman. Senator Mitchell, would you accept a
3 voice vote in this matter?

4 Senator Mitchell. Yes, Mr. Chairman.

5 The Chairman. All those in favor will say aye.

6 (A chorus of ayes.)

7 The Chairman. Those opposed?

8 (No response.)

9 The Chairman. For the third time running, the
10 committee is in unanimous agreement on an amendment. The
11 amendment of the Senator from Maine is adopted.

12 The Senator from Michigan wishes to offer an
13 amendment and is recognized for that purpose.

14 Senator Riegle. Thank you, Mr. Chairman. I am told
15 that a vote may be starting at 4:00, so I may get
16 interrupted here. But I would like to start and hope that
17 the string continues as in the last three amendments.

18 The amendment that I am offering would make sure that
19 all children in the country and pregnant women have
20 affordable health care coverage. It would enable every
21 uninsured child and pregnant woman to be able to purchase
22 a health plan at a purchasing cooperative, beginning in
23 the first year that the program is on line.

24 If they cannot afford it -- and I will get to the
25 poverty designation -- then subsidies would be available.

1 We would propose to subsidize up to the 185 percent level
2 of poverty and then the subsidies would phase out up to
3 the point of 250 percent of poverty.

4 The obvious reason for this is that this is a group
5 in the society that is particularly vulnerable. We know
6 we can save money and a lot of heart ache if we have
7 preventive care in place, to see to it that children
8 particularly are getting the care they need and expectant
9 mothers as well, because of what we run into with
10 premature births and other problems when expectant mothers
11 do not receive prenatal care in the proper fashion.

12 Over half the States currently have some type of
13 private insurance plans available. So this is a problem I
14 think the country is coming to recognize. In fact, New
15 York has a plan called the Child Health-Plus Plan that is
16 along these lines, to make private insurance available,
17 which is what we would be doing here.

18 Since 1991 the number of enrolled children just in
19 that State have jumped dramatically from about 7,500 to
20 42,000. So it shows that this can be done through the
21 private insurance system in this fashion.

22 There is a cost associated with it. We recommended
23 that the cost of this, which is roughly \$10 billion over a
24 five-year period, although I think there are offsets that
25 we are not able to score because of problems that are

1 prevented, and otherwise we will have to deal with and pay
2 for anyway, I think would largely offset that.

3 But the money would be used simply to finance these
4 subsidies so people would have the opportunity to go out
5 and get this insurance and have it in place in these
6 instances. It is a tiny fraction of the overall cost of
7 the program. We recommended, although I am open on this
8 question, that we by the small fraction I calculate it to
9 be less than 2 percent of what we are planning now for the
10 rest of the package to finance it off those same revenue
11 sources by that increment in percentage.

12 But if a better way can be found, I am open to that
13 as well. But I do think this is a need that is there. I
14 think it is something the country feels we should do and I
15 think we can do. It conforms with what is laid out in the
16 Chairman's mark. It starts it up sooner in this group. I
17 would hope it could be supported.

18 The Chairman. Thank you. May I say to my friend
19 from Michigan that you address what is the most urgent of
20 the health care problems in this nation. We have health
21 insurance coverage problems of all matter and we know
22 about them. But as Mrs. Clinton has so eloquently stated,
23 we have the finest health care system in the nation for
24 those who get to it. And not just because of the problems
25 of insurance, but for social reasons.

1 Of this group the most conspicuous new as a group in
2 this century, not unknown in the last, are the children.
3 These are primarily -- it is a painful subject to discuss.
4 But the President has been heroic in his willingness to
5 encounter it.

6 In his State of the Union message this year he
7 projected that as early as the year 2004 half the children
8 in our country will be born out of wedlock, more than
9 almost one-third are. Almost certainly by the year 2004
10 the percent will be somewhere between 38 and 40 percent.
11 There is no equivalent to these ratios. I mean, we have
12 no experience in that. Your City of Detroit, my City of
13 New York, and anyone's large city.

14 These are children who will not normally find
15 themselves in an insured setting and they will be cared
16 for when often it is too late or too expensive. It is not
17 for lack of ordinary arrangements that they have
18 difficulties because they do not live ordinary lives.

19 I think is hugely a humanitarian measure and
20 utilitarian measure and I very much support it.

21 The Senator from Montana has asked to be heard and
22 the Senator from West Virginia. The Senator from Montana?

23 Senator Wallop. One State south, Mr. Chairman.

24 Senator Baucus. The Senator from Pennsylvania.

25 Senator Wallop. Wyoming.

1 The Chairman. Senator Wallop, will you speak,
2 please?

3 Senator Wallop. Mr. Chairman, there is no end to the
4 good that can be offered to be done when creating such a
5 bill as this. There is no end to the amount of heartache
6 that can be pointed to that needs to be solved by the
7 taxpayers. I wonder if we could hear from the Vice
8 Chairman of the President's Commission on Entitlements
9 about this and other entitlements that are being created
10 in here.

11 It is not that it is not a good thing to do. But I
12 think at the moment and time when the President is
13 suggesting we find means by which we crawl out from under
14 entitlements that perhaps this is just yet another burden
15 that is being added to them.

16 Senator Rockefeller. Mr. Chairman?

17 The Chairman. Senator Rockefeller asked to be heard
18 and then Senator Durenberger.

19 Senator Wallop. But could we at some moment in time
20 hear from the Vice Chairman?

21 The Chairman. We most certainly can if it is his
22 choice to do.

23 Senator Rockefeller. Mr. Chairman, I strongly
24 support this amendment. I do not think of it as an
25 entitlement. It is simply a part of what is simply the

1 phasing in of what we are trying to do in this country,
2 which is to get to move towards universal coverage.

3 Senator Durenberger and I sat on the Pepper
4 Commission together. The National Commission of Children
5 was a work of four years. In both cases serious health
6 care work was done over a period of six years and in both
7 cases pregnant women and children were considered to be
8 the right place to start the first phase in terms of
9 phasing in coverage, in terms of preventive care and every
10 other reason.

11 Senator Durenberger. Mr. Chairman?

12 The Chairman. Thank you, Senator Rockefeller.

13 Senator Durenberger?

14 Senator Durenberger. Mr. Chairman, I wonder if we
15 could not -- I have a variety of questions I would like to
16 ask because I really do not understand how this operates.
17 But would it not be logical if we could get somebody up
18 here to explain how your mark currently deals with
19 uninsured children and pregnant women, begin with that and
20 see what it is we are amending? Because I have only just
21 seen this, Don, and I have read through it only once. I
22 could ask you a bunch of questions. But I wonder if it
23 would not be more helpful if we got someone up from the
24 staff to explain how we currently are moving in the
25 direction of insuring all children and pregnant women and

1 what is missing and how you are filling the gap, Mr.
2 Chairman.

3 The Chairman. Fine. Margaret Malone is here and
4 would be happy to do.

5 Senator Dole. And might I also, I want to make sure
6 that we have access to Debbie Chang on my staff, who has
7 been working with a number of offices and staff people.

8 The Chairman. Would you like to have Ms. Chang at
9 the table?

10 Senator Durenberger. If I may.

11 The Chairman. Ms. Chang, we welcome you, I believe
12 for the first time to the committee.

13 Senator Dole. But she has been around for a long
14 time and she knows what she is talking about.

15 Ms. Malone. Senator Durenberger, the Chairman's mark
16 provides for subsidies beginning in 1996 at State option.
17 These would be for full subsidies for those who have
18 incomes below 100 percent of poverty. That threshold
19 would be phased in so that in 1997 everybody below 125
20 percent of poverty would have a subsidy; in 1998 all those
21 below 150 percent; and so on until the year 2000 when all
22 those below 200 percent of poverty would be entitled to
23 some subsidy.

24 The full subsidy would be available for those below
25 100 percent of poverty. The subsidy would phase out

1 between 100 and the year 2000 with 200 percent of poverty.

2 The Chairman. And this takes it to 250.

3 Senator Dole. I thought it was 185.

4 Ms. Malone. The amendment as I understand it --

5 Senator Riegle. It would be now at 250.

6 Ms. Chang. Senator Riegle's amendment would increase
7 the subsidy from 200 percent of poverty to 250. It would
8 also provide that the subsidies are available in the first
9 year of the program, January 1996. So that those with
10 incomes up to 185 percent of poverty would get a full
11 subsidy of 100 percent of the premiums; and then from 185
12 to 250 it would be phased out. The subsidy would be
13 phased out.

14 Senator Durenberger. To get that straight, as far as
15 eligibility is concerned, there is no difference in terms
16 of eligibility.

17 Ms. Malone. I assume in terms of basic eligibility
18 that would be the case.

19 Senator Durenberger. Other than income eligibility.

20 Ms. Malone. Yes, they do not intend to amend
21 anything other than in the income level.

22 Senator Durenberger. And in terms of the so-called
23 benefits to be provided there is also no difference?

24 Ms. Chang. There is no difference.

25 Senator Durenberger. So what we are talking about is

1 a planned effort to move in the direction of making sure
2 that private health plan coverage is available to all
3 pregnant women and children under the age of 18 by some
4 date in the future. Let me just stop right there. Is
5 that right?

6 That is the plan, the Moynihan plan, is to move in
7 the direction of guaranteeing coverage over a period of
8 time and its limit is that 200 percent of poverty.

9 Ms. Malone. Yes. And the major difference probably
10 between the two proposals is that the Chairman's mark
11 provides a full subsidy for those below 100 percent of
12 poverty. As I understand the amendment, this would
13 provide a full subsidy for those under 185 percent of
14 poverty.

15 Ms. Chang. The other difference between the
16 amendment is that the Chairman's amendment provides
17 subsidies. They are phased in to the year 2000 and this
18 provides it in the year 1996, right away. So subsidies
19 are available to uninsured pregnant women and children.

20 Senator Durenberger. And what is the cost of the
21 difference in the two approaches? In other words, the
22 approaches are the same, it just takes longer in the
23 Chairman's mark to get to the same end.

24 What does it cost to do it more quickly under the
25 Riegle amendment?

1 Ms. Chang. We do not have an official CBO estimate.
2 But using estimates from the National Academy of Social
3 Insurance and the current population survey, rough
4 estimates are that it would be \$10 billion over a five-
5 year period.

6 Senator Riegle. If I may add, that is a way we sort
7 of score these things now without taking into account or
8 allowing ourselves to think that by so doing we would be
9 saving money that we are not able to take credit for. So
10 I think it is fair to say that while it scores out at
11 about \$10 billion over that period of time, that I think
12 we would be saving money in other health expenditure areas
13 that in fact would reduce in practical fact the net effect
14 of that cost.

15 Senator Durenberger. If I may, Mr. Chairman, let me
16 ask some questions about the mechanics of how we are doing
17 it.

18 The Chairman. Please.

19 Senator Durenberger. And again, Don, I just read
20 through your amendment one. The language that I read in
21 there says co-ops or cooperatives would be purchasing
22 coverage. If I understand anything about the Chairman's
23 mark or anything like that, the co-op is a member-owned
24 vehicle for people to purchase coverage.

25 The Clinton co-op was kind of a government run or

1 potentially government run organization that would
2 actually go out and buy services or buy coverage.

3 What we have before us now is the potential for
4 voluntary cooperatives which would be member-owned through
5 which moms would be able to purchase health plans which
6 would include the coverage contemplated both by the
7 Chairman and the amendment.

8 Can you clarify that language?

9 Ms. Chang. Yes. The intent was to be consistent
10 with the Chairman's mark. In other words, that people
11 could go to the co-op and purchase their health care from
12 the co-op. It was not intended that the co-op would
13 purchase the health care.

14 Senator Durenberger. Now, talk to me a little bit
15 about the companies that are currently paying for or
16 providing payments for their employees. I am assuming
17 there is a requirement in there that they either have to
18 continue coverage to a certain level or if they do not
19 have that coverage they have to put that coverage in,
20 which sounds to me very much like an employer mandate.

21 Ms. Chang. The amendment would require those firms
22 that are currently offering to children up to age 18.
23 Those companies would be required to continue offering the
24 benefit packages that they are now offering. It does not
25 place a new requirement on those companies who are not

1 offering health care to their, you know, dependents or
2 children.

3 Senator Durenberger. Then what is the solution then
4 for the female employee who wants to be protected but does
5 not have the coverage through the employer?

6 Senator Riegle. Depending upon her income she would
7 fall under this provision and would have, depending upon
8 what she earns, either have that policy paid for fully or
9 depending upon the level of her income paid for in part so
10 that she could insure her child in that fashion.

11 The reverse situation we have right now is, we have a
12 lot of working women, many of whom are single heads of
13 households with children, who are not able to have
14 insurance for their children through the work place,
15 cannot afford it on the outside. And if the child gets
16 sick, the only way they can pay the bills is literally to
17 go on welfare and get Medicaid.

18 It is exactly the reverse incentive of what we want.
19 In other words, we want people to be able to work and
20 afford insurance. So we have tried to structure the
21 subsidy schedule so that it phases out so that people are
22 not put in this terrible dilemma that if you get a child
23 with serious appendicitis it takes \$10,000 or \$15,000
24 worth of bills, that you literally have your whole life
25 turned upside down because you cannot pay the bills

1 without going on Medicaid.

2 Senator Durenberger. Mr. Chairman and Don, I really
3 appreciate that. I think I know what you are trying to
4 do. It is just that I am having difficulty understanding
5 how you are doing it. Is it the contemplation then that
6 if you are employed but do not have this coverage that you
7 go and buy another policy out in a co-op?

8 Ms. Chang. That is right.

9 Senator Durenberger. You are going to own two
10 policies?

11 Ms. Chang. If you are currently working and you do
12 not have health care coverage through your employer and
13 you fit the category of being a pregnant woman or child up
14 to age 18, then you can get the health insurance policy
15 directly from the co-op.

16 Senator Durenberger. But you have health insurance
17 that just does not happen to have this coverage in it and
18 you said you are not mandating that coverage, then you go
19 to a co-op and buy a second health plan?

20 Ms. Chang. I am sorry. I did not understand your
21 question, Senator.

22 Senator Durenberger. Well, maybe it is possible to
23 explain first how the Chairman's mark would work. What I
24 am trying to get at, Debbie, is you said there is no
25 employer mandate. In other words, we are not instituting

1 a mandate to provide new coverage for every employed
2 person and to have employers contribute to it.

3 Ms. Chang. That is correct.

4 Senator Durenberger. And I am asking the question,
5 if a woman is covered by an employment plan that does not
6 have the coverage that is in this plan, your answer is,
7 well, she can go buy another plan out in the marketplace
8 which seems to be a rather inefficient way of going about
9 this.

10 Senator Riegle. Mr. Chairman?

11 The Chairman. Senator Riegle?

12 Senator Riegle. We do not anticipate doing this any
13 differently than is in the Chairman's mark now. So I
14 think the question, to the extent it needs clarification,
15 needs to be answered, we are not breaking new ground in
16 that area. In other words, we are dovetailing and riding
17 on the Chairman's proposal.

18 We are changing the timing and the level of where the
19 subsidy kicks in. That is the only change we contemplate.

20 The Chairman. And the level.

21 Senator Durenberger. But what we are talking about
22 here is only accelerating eligibility and increasing the
23 amount up to 250, the eligibility level.

24 Senator Riegle. That is exactly right.

25 Senator Durenberger. What is 250 percent of poverty,

1 by the way?

2 Senator Conrad. \$37,000 for a family of four.

3 Senator Riegle. For a family of four. But bear in
4 mind it disappears at that point. So it is phasing down
5 as you are coming up that curve.

6 Senator Durenberger. Well, is there a way to explain
7 if there is a phase down, is there some way to explain how
8 large this subsidy actually is at what income level? It
9 struck me that the Chairman and a lot of other people went
10 to a lot of effort to put their mark together to reach the
11 same end, but in a way that seemed at least to me to make
12 more sense.

13 I do not doubt your bona fides in this. I am just
14 trying to figure out why are we taking on all this extra
15 cost.

16 Senator Rockefeller. Mr. Chairman?

17 The Chairman. Senator Dole was recognized next.

18 Senator Dole. Is this in the midstream group's
19 proposal or is it in the Chairman's mark?

20 The Chairman. No, this is an original creation of
21 Senator Riegle.

22 Senator Dole. What is he amending?

23 Senator Riegle. I am amending the Chairman's mark.

24 The Chairman. Amending the Chairman's mark, which
25 has a provision with respect to this subject. He is

1 changing two numbers basically.

2 Senator Dole. So it is in the Chairman's mark. Is
3 that what we are going to have later on?

4 The Chairman. You have that now, sir. We may have
5 something else later on.

6 Senator Dole. But what happened to the group? I
7 mean they are still here.

8 The Chairman. Mainstream.

9 Senator Dole. Midstream.

10 The Chairman. No, sir, mainstream.

11 Senator Dole. Well, there are three on each side of
12 them over here, so we call them the midstream group.

13 (Laughter.)

14 The Chairman. You are free to call them whatever you
15 wish.

16 Senator Dole. So they have adopted this, even though
17 your theory has been you pay as you go. That is what I
18 have been told. And I guess you pay for it by raising all
19 the 23 different tax increases in this bill, which amount
20 to at least \$400 billion over the next 10 years, along
21 with \$600 billion in spending for a tidy \$1 trillion
22 package over 10 years.

23 According to the amendment you pay for it up front by
24 increasing all the taxes; is that correct?

25 Senator Riegle. We take the percentage increase

1 across the board as the approach. It looked to us to be
2 the most reasonable. I said I am open to any other way
3 that might look like a better way to do it.

4 I thought because of the figures you have just cited,
5 if those are in the ball park, the \$400 billion, that the
6 amount that we are talking about as a percentage of that,
7 given what people were addressing here is a very tiny
8 fraction. I do not say it is insignificant or
9 meaningless. But I think you have to weigh it against
10 these children who were uninsured. They are out there
11 now.

12 Senator Dole. \$400 billion is not a little amount.

13 Senator Riegle. I understand that. But we estimate
14 here that this would be roughly \$10 billion over the five
15 years. But that is not taking account --

16 Senator Dole. \$10 billion?

17 Senator Riegle. \$10 billion. But taking account of
18 the fact that we know that this will forestall other
19 problems that we will pay for in other categories that we
20 cannot credit back against it.

21 Senator Dole. I think we do not go this far in our
22 proposal. But we do add -- I think all these proposals
23 have additional money for community health centers and
24 other areas because we are sensitive to the concerns you
25 have raised.

1 The Chairman. That is right.

2 Senator Dole. You know, but I think that is why it
3 is so important that somebody knows what all this is
4 costing and what the final package is going to cost. I do
5 not know, maybe \$1 trillion is too low. It probably is,
6 because we generally under estimate. But I think that is
7 a nice figure -- \$1 trillion, 10-year package.

8 The Chairman. Senator Packwood and then Senator
9 Rockefeller.

10 Senator Packwood. Partially what Senator Dole is
11 asking, on the tax increase proportionate along the way,
12 it is small. But it is an interesting way of financing a
13 number of amendments. But specifically I want to know,
14 this will then apply to slightly increasing the tax on the
15 high cost plans that we voted in yesterday, make the tax
16 slightly higher.

17 Senator Riegle. I really struggled with that issue.
18 Because, you know, there is no good way to pay for these
19 things. Our best faith estimate is roughly \$10 billion
20 without scoring some savings that we think this will
21 bring. So I think the real cost is less than that.

22 If you look at that as a percent, say, the \$10
23 billion if that is a figure that is generous on the
24 estimate side as a percentage of \$400 billion in order to
25 cover the kids, it seems to me to be a very sound

1 investment.

2 But between now and the time of the floor if we can
3 find any better way to pay for this, I am all for that.
4 But the answer to your question is quite right. If you
5 are going to take and apply any amount, however large or
6 small across the same base, you are taking a very tiny
7 fractional increase.

8 That seemed to me, under the circumstances we are in
9 right now, to be the best way to do it. But I am open. I
10 would welcome your thoughts, too. I mean, if there is a
11 better way to do this -- I guess what I really want to say
12 is this, when we have people now, a lot of parents, single
13 parents particularly, who are working, struggling, trying
14 to stay in the work force, trying to stay off welfare,
15 whose children are not insured and they cannot afford to
16 insure them with private insurance, the incentive to have
17 to give up your job in order to get insurance for your
18 kids under Medicare is precisely the wrong --

19 The Chairman. Under Medicaid.

20 Senator Riegle. Under Medicaid, I beg your pardon.
21 I thank the Chairman. Is precisely the wrong incentive.
22 I mean, we are talking about trying to get people off
23 welfare. The way it is right now, we are telling people
24 you have to go on welfare to be able to insure your
25 children if you are at the low end of the income range.

1 You know, it is just time we change that. I think in
2 our hearts we all know that. If this is not a time to do
3 it, I am not sure when the time is.

4 Senator Packwood. That answers my question, Mr.
5 Chairman.

6 The Chairman. Thank you, Senator Packwood.

7 Senator Rockefeller?

8 Senator Rockefeller. In response to Senator
9 Durenberger, I think he was worried about sort of the
10 compelled nature of this. But I think the reason for that
11 is because of what is going on so routinely now in America
12 and that is that corporations are simply cutting back on
13 their benefits and they are saying, all right, we will
14 give benefits to you the employer but we are going to cut
15 off benefits to your family or a certain portion of your
16 family.

17 I think back during the Pepper Commission we felt
18 this was a good idea. But this social phenomenon of
19 cutting back on benefits which always affects the family
20 first and the worker last was not around then. So it is
21 kind of a special modern circumstance that I think Senator
22 Riegle is trying to respond to.

23 Senator Durenberger. Mr. Chairman?

24 The Chairman. Yes, Senator Durenberger.

25 Senator Durenberger. If I may just briefly respond,

1 the implication that all over America everybody is dumping
2 women and children out of their health plan, out of the
3 employee health plans, does not make a lot of sense to me
4 because I do not think that is the reality.

5 I think the reality, and you mentioned some
6 supermarket or something yesterday, too, the reality is if
7 you face increases in your premiums of 20 percent, 30
8 percent, something like that a year, pretty soon you have
9 to make an adjustment somewhere in the benefit plan.

10 Everybody seems to make those adjustments except some
11 of these big union plans that are fully paid and all of
12 the folks that will not even let us look at their benefit
13 packages. What we are trying to do here on both sides of
14 the aisle is get those costs under control.

15 We are trying to get the benefit of competition and
16 the kind of things that we see in other markets all over
17 America so those prices start going down rather than up.
18 I think the hesitancy, if anything, you hear in my
19 questions here is certainly not related to the
20 insensitivity to the fact that investing money in moms and
21 kids is going to pay off big. It is in the priorities of
22 making sure that we keep this cost containment first and
23 we pay as we go through this system.

24 There is an incredible reluctance in this place to
25 raise any money to do any of the good things that we want

1 to do. But a profligacy, if you will, on all the good
2 things that we want to do. I guess we have not heard the
3 end of it yet today. We are going to hear about long-term
4 care and a whole bunch of other things.

5 I respect both of my colleagues so much because we
6 spent all of our time, this is the Chair of the two health
7 subcommittees over here. But I think what the Chairman
8 and everyone else here has offered is a way to get to the
9 same end on the basis that if we are willing to raise the
10 money here to get the job done, then by gosh the women and
11 children will be covered.

12 But if we are not willing to raise that money, we are
13 just going to continue to shift the cost off onto
14 employers and that sort of things, well then you know you
15 are not going to get to that end. And in effect, Don, I
16 mean, this looks like shifted.

17 Senator Riegle. If I can respond to that because I
18 am not sure we are in a different place here. This is
19 aimed only at the currently uninsured children. The issue
20 that you have raised and that came up peripherally is, do
21 we create an incentive somehow because we put this in
22 place that maybe some employer would tear down the
23 coverage on the theory that they can get picked up through
24 this approach.

25 Now that question would also attach to what is in the

1 Chairman's mark, if that is the issue. That is not what
2 we are aiming at here. We asked for a continuation of
3 effort for those that presently insure that would not drop
4 the kids off simply to take advantage of either the
5 Chairman's provision or our modification to it.

6 We are really after the uninsured kids. It is time
7 that the country do this. You know, we ask people to have
8 faith in the country. We want these children to grow up
9 believing in the country and believing the country cares
10 about them. They are in a situation right now where they
11 are uninsured. Their parents do not have the wherewithal
12 to see that they are insured. We ought to fix that
13 problem.

14 I mean, that is one thing that we have within our
15 power to do. Yes, it does cost some money. But I think
16 you and I both know, and I have the statistics I can cite
17 here in terms of what prenatal care saves us on average,
18 what the other kind of preventive care for children saves
19 us on the average.

20 You know, many of us have been through this
21 experience. My little four-year-old had terrible
22 appendicitis. She nearly died. She spent 10 days in the
23 hospital out here at Children's Hospital. Thank God the
24 people were there to do it. The bills were extraordinary.
25 We had the good fortune to have insurance.

1 I think about these parents, many of whom I have
2 talked to in Michigan, single parents and in tact
3 families, who do not have this insurance and their kids
4 have these problems arise. And it destroys these
5 families. They cannot pay these bills. You know, they
6 ought to have an insurance available to them in this
7 fashion.

8 I mean, this is an investment in a country and in
9 people, at least for this tier, that kids cannot protect
10 themselves, not really. You know, I think around 200
11 years, it is 1994, you know, the things we spend money on,
12 if we cannot deal with that problem, I think there is
13 something wrong.

14 The Chairman. Could I suggest, I think the time is
15 at hand to vote on this.

16 Senator Chafee. Could I just ask one question?

17 The Chairman. Of course, Senator Chafee.

18 Senator Chafee. Senator Riegle, in the last
19 paragraph of the amendment summary, and this may have been
20 touched on, there is a reference to a children's health
21 trust fund. That has been eliminated, has it not? That
22 is not part of this is it?

23 Senator Riegle. Let me just check what our last
24 discussions were.

25 Ms. Chang. We had discussions with your staff,

1 Senator Chafee, and we talked about trying to find a
2 different financing source. So that is not the current
3 financing source.

4 Senator Riegle. So that is out.

5 Senator Chafee. Second, as you mentioned, if a State
6 so opts under the current law they can have covered this
7 group under Medicaid. In other words, you cannot, if the
8 State opts and many States have, mine has, under Medicaid
9 to have covered this group.

10 Ms. Chang. Absolutely.

11 Senator Chafee. Now this is the same group we are
12 discussing, because the group we are discussing here is
13 off Medicaid now and is going to work.

14 Ms. Chang. Right.

15 Senator Chafee. Now, under the program that we have
16 presented, we work our way up to 240 percent of poverty.
17 This goes up to 250 percent of poverty. So the way this
18 thing as I understand it would work is, just take the way
19 our system had where we start at 100 percent of poverty
20 and work our way upward, what this would do is give this
21 group priority as it were.

22 Ms. Chang. That is correct.

23 Senator Chafee. In other words, they would move
24 along the system faster than would the others.

25 Senator Riegle. That is right.

1 Ms. Chang. It would be in the first phase of
2 coverage.

3 Senator Chafee. So they would be in the first phase.
4 I think it is a good proposal. The only concerns I have
5 is, you are moving them way ahead of the other needy
6 people, but you are concentrating on children and pregnant
7 mothers. How many years would it take under this to get
8 up to the 250 percent of poverty?

9 Ms. Chang. We would bring it up to 250 percent of
10 poverty in the first year -- 1996.

11 Senator Chafee. We will have a chance to look at
12 that perhaps some more.

13 The Chairman. Senator Dole?

14 I am sorry, Senator, Chafee, are you finished?

15 Senator Chafee. I approve of what you are trying to
16 do here. The only concern I have is going up so high in
17 preference over others who might be extremely needy. But
18 that is a call we will have to make.

19 Senator Riegle. Senator Chafee, if it would be
20 helpful, I know you have 240, you know, in the spirit of
21 trying to work something out, I think we could accept 240.

22 The Chairman. I think that would be helpful.

23 Senator Durenberger. Mr. Chairman, another part of
24 that problem though is, you are at 100 percent of premium
25 to 185 percent of poverty, as I understand it. If I am

1 right, that means up to \$20,000 a year you are getting
2 free health insurance, just because you happen to fall in
3 this particular category.

4 That is another part of it I think I would --

5 Senator Riegle. Well, the problem is for somebody in
6 that situation, if you go out and try to buy health
7 insurance now on your own and to pay the premium, you
8 know, most people are not going to have the income to do
9 it and they are not doing it. That is why the kids are
10 uninsured.

11 The Chairman. I am going to have to -- I want to
12 hear Senator Dole, of course.

13 Senator Dole. Does this tie in all the President's
14 welfare reform? Is this going to apply to illegitimate
15 children as well as children born in wedlock?

16 The Chairman. Would you let me answer? By
17 definition all children.

18 Senator Riegle. We are talking about the children
19 that the country has.

20 Senator Dole. I understand that point. But we have
21 all kinds of welfare reform proposals.

22 Senator Riegle. It is not designed to tie into the
23 welfare reform proposal.

24 The Chairman. The welfare reform, if I may say, does
25 not address this particular subject.

1 Well, now, as we do have to move on, I am going to
2 ask, I think that we will need a roll call vote on this
3 matter. Does Senator Riegle wish to have a voice vote or
4 roll call?

5 Senator Riegle. Well, if a voice vote --

6 The Chairman. Let us see what a voice vote does. We
7 have had luck with voice votes. All in favor of the
8 Riegle amendment will say aye.

9 (A chorus of ayes.)

10 The Chairman. Those opposed?

11 (A chorus of nays.)

12 The Chairman. I believe a roll call vote is in
13 order.

14 (Laughter.)

15 The Chairman. The Clerk will call the roll.

16 The Clerk. Mr. Baucus?

17 Senator Baucus. Aye.

18 The Clerk. Mr. Boren?

19 Senator Boren. Aye.

20 The Clerk. Mr. Bradley?

21 Senator Bradley. Aye.

22 The Clerk. Mr. Mitchell?

23 Senator Mitchell. Aye.

24 The Clerk. Mr. Pryor?

25 Senator Pryor. Aye.

1 The Clerk. Mr. Riegle?
2 Senator Riegle. Aye.
3 The Clerk. Mr. Rockefeller?
4 Senator Rockefeller. Aye.
5 The Clerk. Mr. Daschle?
6 Senator Daschle. Aye.
7 The Clerk. Mr. Breaux?
8 Senator Breaux. Aye.
9 The Clerk. Mr. Conrad?
10 Senator Conrad. Aye.
11 The Clerk. Mr. Packwood?
12 Senator Packwood. No.
13 The Clerk. Mr. Dole?
14 Senator Dole. No.
15 The Clerk. Mr. Roth?
16 Senator Packwood. No, by proxy.
17 The Clerk. Mr. Danforth?
18 Senator Danforth. No.
19 The Clerk. Mr. Chafee?
20 Senator Chafee. Aye.
21 The Clerk. Mr. Durenberger?
22 Senator Durenberger. No.
23 The Clerk. Mr. Grassley?
24 Senator Grassley. No.
25 The Clerk. Mr. Hatch?

1 Senator Hatch. No.

2 The Clerk. Mr. Wallop?

3 Senator Packwood. No, by proxy.

4 The Clerk. Mr. Chairman?

5 The Chairman. Aye.

6 The vote is 12 ayes, 8 nays. The amendment of the
7 Senator from Michigan is agreed to.

8 The Senator from Montana.

9 Senator Baucus. Thank you, Mr. Chairman. Mr.
10 Chairman, I have two amendments. But in the spirit of
11 cooperation, if others want to have amendments, I would
12 wish to offer one first and then the other later.

13 The Chairman. Sure.

14 Senator Baucus. My first amendment is, which I am
15 now circulating, is very simple. On page 84 of the
16 Chairman's mark strike the proposed increase in the ad
17 valorem excise tax on handgun ammunition and a proposed
18 \$10,000 per year occupational tax on importers and
19 manufacturers of handgun ammunition; and also strike the
20 requirement that importers and manufacturers of handgun
21 ammunition register with the Secretary of Treasury.

22 Mr. Chairman, it is a very simple amendment. I think
23 that the tax from 11 percent to 50 percent on handgun
24 ammunition is inappropriate. The current 11 percent tax
25 on handgun ammunition goes to the Pittman-Robertson Act.

1 That is a legislation we passed years ago. Those funds
2 are used for wildlife and habitat restoration projects.
3 They are used for education programs for hunter safety.
4 States are given an apportionment on a formula basis.
5 States have discretion.

6 Many of us, Mr. Chairman, voted for the Feinstein
7 Amendment, which was a ban on certain assault rifles. I
8 did. Many of us voted for the Brady Amendment, which is a
9 background check. I did. I felt those were reasonable
10 provisions that address in some way, not very much, but in
11 some way the rising type of crime in this country.

12 I believe, however, that this provision, this tax on
13 handgun ammunition will not go to any way in solving the
14 crime problem in this country, and that is because
15 essentially most handguns are used for legitimate
16 purposes.

17 I can just tell you, Mr. Chairman, in my State of
18 Montana, if anybody goes backpacking up in bear country or
19 mountain lion country, you know, he packs a 357 or a 44 or
20 a good pistol with a little wallop to it to protect
21 himself.

22 The Chairman. Would you just yield for a question.

23 Senator Baucus. Sure.

24 The Chairman. Because I just love the great
25 outdoors.

1 Senator Baucus. You are invited, Mr. Chairman, to
2 come this summer backpacking with me.

3 The Chairman. And I was a gunner in the Navy. I
4 know something about guns. Just how many grizzlies have
5 been shot down by those old 44s last year in Montana?
6 Just how many grizzlies. Can you give me an estimate?

7 (Laughter.)

8 Senator Baucus. Mr. Chairman, almost every year --

9 The Chairman. Toting my old 44.

10 (Laughter.)

11 Senator Baucus. Almost every year in Montana
12 grizzlies maul somebody.

13 The Chairman. Yes. But how many of them get shot
14 down by a 44-round caliber --

15 Senator Baucus. Mr. Chairman, I tell you whenever I
16 go backpacking in bear country, you are doggone sure I
17 have a gun with me. And any self-respecting person does
18 who does not want to get eaten up by a grizzly. I would
19 say the same with a mountain lion.

20 In addition to that, Mr. Chairman, it is used for --
21 handguns are used for sporting purposes. It is a
22 legitimate reason.

23 Senator Dole. Throw this bill at them. That will
24 get them.

25 (Laughter.)

1 Senator Baucus. Compare this, say, with a cigarette
2 tax. Every legitimate use of a cigarette harms somebody.
3 Whenever anyone legitimately smokes a cigarette he or she
4 is harmed to some degree. I can understand and agree with
5 the excise tax on cigarettes.

6 That is not true with handguns and handgun
7 ammunition. Most legitimate uses of handguns do not harm
8 anybody. By far, most do not harm anybody.

9 The Chairman. Would the Senator yield for a
10 question?

11 Senator Baucus. Sure.

12 The Chairman. If it is a legitimate use, it does not
13 harm anybody.

14 Senator Baucus. That is correct.

15 The Chairman. It is the illegitimate use that has
16 spread fear like a sheet of ice across the streets of
17 American cities. That is a phrase by the Senator from New
18 Jersey, and a very good one. Go ahead.

19 Senator Dole. It is applied to the illegitimate use.

20 Senator Baucus. Mr. Chairman, this is really just a
21 revenue raiser and it is an emotional provision in my
22 judgment in the bill, and that is why it was placed in.
23 It will have virtually no affect on crime in this country
24 -- zero. I urge the adoption of the amendment.

25 Senator Hatch. Mr. Chairman.

1 The Chairman. Let us see. I want to hear from
2 Senator Hatch first.

3 Senator Hatch. Mr. Chairman, I support that. I have
4 to say, you know, it is not so much that so many people
5 are mauled. We do have a few anti-gun environmentalists
6 who get mauled every year in the west.

7 The Chairman. But not by bears.

8 Senator Hatch. By bears.

9 (Laughter.)

10 Senator Hatch. And they always feel threatened, I
11 have to say. But it is the fear that you will be
12 threatened, and that you could be mauled, and you could be
13 hurt. It is a reality in the west. I strongly support
14 this amendment.

15 First of all, it is just another attempt to try and
16 undermine severely what many of us believe are the
17 constitutional rights under the second amendment. This
18 measure that the Chairman has --

19 The Chairman. Sir, may I ask a question?

20 Senator Hatch. Sure.

21 The Chairman. If this undermines the constitutional
22 rights under the First Amendment --

23 Senator Hatch. The Second Amendment.

24 The Chairman. The Second Amendment, the right to
25 keep and bear arms, would not the present statute which

1 levies a tax on handgun ammunition also violate that
2 Second Amendment?

3 Senator Hatch. Sure.

4 The Chairman. Well, then why have we not seen you
5 over before the Supreme Court?

6 Senator Hatch. Well, because the fact of the matter
7 is --

8 The Chairman. You tried to get him on there you say.

9 Senator Hatch. Yes, that is right. There needs to
10 be some change over there, I am sure. Thank goodness I am
11 not called upon to do it, except indirectly I might add.

12 Under our Constitution people do have the right to
13 bear arms to defend themselves and defend their families.
14 There are about 200 million firearms in our society today.
15 There are a lot of people who believe in them and a lot of
16 people use them for lawful purposes -- hurting, sport,
17 protection, collection. There are a lot of good reasons.

18 This is an excise tax that really is, in the opinion
19 of many of us in the west, and I think in almost every
20 State, a heinous tax.

21 Legal restraints on lawful purchase of handguns,
22 through the form of taxation on handgun ammunition, we
23 believe have little affect on the illegal use of handguns.
24 We think they will here, too. Because criminals generally
25 obtain handguns on the black market or from other

1 criminals, not from gun shops or licensed dealers.
2 Although there are some instances where that may be the
3 case.

4 Therefore, what a tax on ammunition will do is simply
5 make it far more costly for law-abiding citizens to
6 purchase handguns for lawful purposes, such as hunting,
7 target shooting, competition, collection, et cetera, and
8 for home and self-defense.

9 The proposal, as I read it, and I hope I will be
10 corrected if I am wrong, would increase the ad valorem
11 excise tax on handgun ammunition. Most cartridges would
12 be taxed on an increased 50 percent rate. But others
13 would be taxed at a 10,000 percent rate.

14 Therefore, most criminals that inflict injuries
15 through the use of handguns would not be paying the tax.
16 Those who do not abuse the right to have a handgun would.
17 Moreover, importers and manufacturers of certain firearms
18 are subject to a special occupational tax of \$10,000 per
19 year. Dealers are subject to a special occupational tax
20 of \$500 per year.

21 Now to me that is outrageous. I think all it will do
22 is increase the illegal trafficking in firearms which many
23 of us would like to stop, and which we think tough
24 criminal laws will help to stop, not laws like this.

25 So I really appreciate the amendment of our

1 distinguished colleague from Montana. Maybe we in the
2 west think of things just a little bit differently. But
3 100 percent of the current tax on ammunition now goes to a
4 trust fund for the benefit of sportsmen and women. So it
5 is really a user fee and these additional taxes will be
6 user fees as well. And what we cannot tax directly, we do
7 so indirectly through user fees.

8 About one-sixth of the handguns used by serious
9 criminals are purchased from a gun shop or pawn shop and
10 most of these handguns are stolen, borrowed or obtained
11 through private purchases that would not be affected by
12 gun laws.

13 So the people who really are dangerous to society are
14 these criminals. If you think about it, we are taxing the
15 wrong people and I think in the process creating issues
16 that you really do not need to try and solve the health
17 care problem. There ought to be other ways you can raise
18 these funds without taxing decent, law-abiding sports
19 people.

20 I might add that only 7 percent of the most serious
21 armed criminals buy their firearms either directly or
22 indirectly from retail outlets. According to the U.S.
23 Justice Department funded Wright-Rosse felon survey. So
24 only lawful purchasers and possessors of handguns and
25 ammunition are affected by this tax.

1 So it bothers us. It is an unnecessary, it seems to
2 me, problem to the overall health care bill. And even
3 though I know that the distinguished Chairman is very
4 sincere in wanting to do this and feels this may be one of
5 the ways of deterring the use of handguns, it really will
6 not. It will just create a much higher and greater
7 illegal black market in these weapons. I would hope that
8 he would consider some of these thoughts.

9 Plus, I think it creates unnecessary problems for the
10 bill that really it just does not need to have. There are
11 a few other areas where we might have unnecessary problems
12 as well.

13 Senator Dole. Tax the bears.

14 The Chairman. Senator Dole thinks if we tax those
15 grizzlies, we could --

16 Senator Hatch. Well, now, I think that is a very
17 intelligent idea myself.

18 The Chairman. Well, that is the first tax I have
19 heard you say anything friendly about in a long while,
20 Senator.

21 May I make the case here, which is an epidemiological
22 one. This is a health care bill. Handgun morbidity and
23 mortality is epidemic in our cities. This is not very
24 usefully approached as a question of criminal behavior.
25 You have a public health problem.

1 If you think of it in epidemiological terms, you come
2 to a very simple proposition which is that guns do not
3 kill people, bullets do. If you are an epidemiologist and
4 you are trying to think of how to deal with malaria and
5 yellow jack in the Panama Canal, you do not swat
6 mosquitos, you drain swamps.

7 In the epidemiological triad, we have in our country
8 -- and may I say, I have nothing against guns. I was a
9 gunner in the United States Navy. We have about a two
10 century supply of handguns. And we have -- a handgun will
11 last indefinitely unless you leave it out in the rain or
12 fire it continuously. Some of the cheaper ones will not,
13 but I mean any of the well made.

14 In the United States Navy, the sidearm in the United
15 States Navy today was designed in 1911 and many of the
16 models of 1911 are still in use. That is the standard 45
17 with too large a caliber. We carried much too large a
18 caliber partly out of the grizzly bear experience. Quite
19 seriously, it takes a large caliber.

20 We found out in the Pacific War the Japanese had a
21 much smaller caliber. A small caliber will go through you
22 just as well and you can carry twice as many. A handgun
23 is not a weapon the Navy uses much. But we are moving
24 over to a berretta, a 38-caliber berretta. It is lighter
25 and is just as efficient.

1 You go back four decades. It takes time to learn a
2 subject like this, for the social learning takes a couple
3 generations. Back in the 1950s the most serious public
4 health problem that we perceived -- I will not say it is
5 the most serious one we had -- was that of automobile
6 accidents. Though any epidemiologist will tell you they
7 are not accidents, they are predictable events in a
8 complex system and that you could set about a great deal
9 to change the behavior of drivers. But if you wanted a
10 driver behavior population that is near universal you
11 cannot do much about behavior of 110 million people.

12 On the other hand, the design of vehicles you can do
13 a great deal about because the choices are in the hands of
14 a rather small number of people.

15 I came to Washington with President Kennedy. In the
16 course of the 1960 campaign he was asked to answer a
17 questionnaire of the American Automobile Association. I
18 in turn was asked to fill this out as I had some
19 involvement with this.

20 I took the liberty to say that automobile crashes
21 were the largest source of morbidity and mortality in
22 American life between ages of one and 37 which was the
23 case then. This was a subject that just no one could
24 grasp it. The automobile manufacturers, I am sorry to
25 say, Senator Riegle, could not grasp it at that time. It

1 just was a different wave length if you want to use that
2 term.

3 This was 1960. By 1966 we had the National Traffic
4 Safety Administration. Dr. William Hadden, Jr. who had
5 taught me the subject of Albany became the first head. We
6 have held the number of deaths from automobile crashes at
7 under 50,000 now for a generation. If you added mileage
8 and such like, it would be at 200,000 a year. Some of
9 that probably better medicine.

10 But largely it is better design. In the 1950s
11 automobile companies would not dream of mentioning the
12 safety of their vehicles because it suggests they might
13 have accidents, and we would say crashes. Now, it is very
14 common to see on television a demonstration of models
15 going through collisions. One of the second or third most
16 important themes in motor vehicle advertisements is
17 safety. And good. We learned. There was a lot of social
18 learning there.

19 It began incidently in airplane manufacture. Now, it
20 is going to take us a while to learn that bullets kill
21 people or maim them. They kill children. It is an
22 epidemic and it has come upon us quite unexpectedly, as if
23 this was a technology. It has been around a lot time, but
24 how many eight-year-olds in Detroit were killed by
25 handguns 50 years ago. Not many. Not many in Brooklyn.

1 Not many in the cities we see around us.

2 But we also have an increasing cult of violence on
3 behalf of people who insist that they are not violent, and
4 they are not particularly. But the black talon, the new
5 black talon which appeared not long ago, Winchester, it
6 sits right here, its describes its singular capacity, to
7 cut your guts up. Under international law, it would be a
8 violation. It would be a dumb-dumb bullet which we
9 violated a century ago in the Haig Convention. Dumb-dumb
10 is a village outside of Calcutta where the British made a
11 soft round that splattered and instead of going through
12 you rips you up. This rips you up with high technology.

13 It expands to expose razor-sharp reinforced jacket
14 petals. These cut tissue in the wake of the penetrating
15 core. It describes the ripping bullet. You would not
16 shoot game with this. You do not shoot game to rip up the
17 flesh; you shoot game to get it.

18 We first learned about this from a doctor in an
19 emergency room in the Bronx, describing the problem of
20 putting your hand into the guts of a victim of one of
21 these guns, probing around to find these razor sharp edges
22 in the large expectation that when you find one you are
23 going to prick that rubber glove and you will have AIDS.
24 It is just a great way to spend your nights in an
25 emergency room.

1 We will learn this. Here it is. Bob Dole, you know
2 something of ammunition. Have you ever seen something
3 like that?

4 Senator Dole. No.

5 The Chairman. Just touch it.

6 Senator Wallop. Mind you do not get AIDS.

7 The Chairman. Yes. We will get around to this. It
8 takes some maturing. This is civilization. We have been
9 taxing ammunition for half a century. No one has spoken
10 about it more eloquently than my colleague from New
11 Jersey. I think he might like to say something now. I
12 hope he would say something about it now.

13 Senator Bradley. Thank you very much, Mr. Chairman.
14 I, of course, do strongly support your provision in the
15 bill. I think it is a question of maybe difference of
16 regions, difference of personal experience, a disagreement
17 over what actually will correct what is obviously an
18 unacceptable situation nationally.

19 I mean, last year there were over 12,000 people in
20 this country who were murdered with a handgun -- 12,000
21 people. In Great Britain it was about 186 and in Japan it
22 was about 50. I mean, this is a mark on our society of
23 significant proportions.

24 A few months ago a young man who had purchased a
25 handgun legally in California and paid \$298 for it walked

1 out on the Long Island Railroad and shot, what was it, 20
2 people -- 5 additional people he killed.

3 The average cost of treating someone with a gunshot
4 wound in hospital, and it is primarily in urban America
5 where these calculations are being made, is \$30,000. So
6 20 people at 30,000 is, what, \$600,000. Now \$600,000,
7 about 50 percent of which was borne by the taxpayer,
8 because a lot of people who are shot do not have health
9 insurance.

10 So the question is, would a tax on that gun have
11 prevented that individual from getting it, because he
12 bought it legally. Well, the younger you are, the more
13 important a tax will have because the less money you have
14 to buy. At some point guns or ammunition become
15 unaffordable to a class of people.

16 Now, Senator Moynihan's amendment does not deal with
17 guns. I wish it did. But he has taken the view, which I
18 think comes from long experience, that the way to deal
19 with this is through increasing the tax on ammunition. It
20 seems to me that that is a minimum we should be doing if
21 we are serious about this.

22 We cannot run away from this because the violence is
23 there. And it is like liberals and conservatives like to
24 disagree and then live in their own worlds and talk to
25 their own people and the violence increases. I think

1 there has got to be found some common ground. I mean, we
2 do tax cigarettes. In this bill we are increasing taxes
3 on cigarettes.

4 And we calculate if we increase taxes on cigarettes
5 we will have less consumption of cigarettes. Why would
6 that not apply to ammunition? It would apply to
7 ammunition. So I would hope that we would oppose Senator
8 Baucus' effort and take this as a sign for the need to
9 talk more together about what series of steps needs to be
10 done. Challenge our own preconceptions and even our own
11 constituents preconceptions.

12 Senator Hatch. Mr. Chairman?

13 The Chairman. I thank you very much for that, sir.

14 Senator Chafee asked to speak and then, of course,
15 Senator Hatch will speak.

16 Senator Chafee. Mr. Chairman, I commend you for this
17 amendment. I am going to support it. As you know, I have
18 legislation introduced to ban all handguns, except in
19 certain categories of policing, and military, and so
20 forth.

21 There are some 68 million handguns in the United
22 States of America today with 2 million being added every
23 year. It is the handguns that are causing the slaughter
24 in our cities. As was pointed out, there is over 1,000
25 deaths a month in the United States from handguns and

1 1,000 suicides.

2 When our young people commit suicide all too often it
3 is with a handgun. Amongst the black population handguns
4 are the largest cause of death between those in the ages
5 of 15 to 24. A whole generation is being slaughtered of
6 young blacks who hopefully would be our leaders of some
7 type in the future. It is not everybody involved in drugs
8 that is being shot, it is innocents walking down the
9 street all too often, caught in the cross fire.

10 Now some say this is a radical proposal. Nonsense.
11 It is not radical. The situation we have in the United
12 States of America today is radical. No other nation in
13 the world permits one to go down and buy a handgun. The
14 Governor of Virginia was commended, and rightfully so, for
15 getting legislation passed that restricted handgun
16 purchases to one a month, sort of a gun a month club.

17 That was looked on as a very significant achievement
18 and, indeed, it took a lot of work on his part to get it
19 done. But has the country gone crazy? You have an option
20 to buy a handgun a month.

21 So this proposal, as I say, is not a radical one.
22 Clearly, it is a health issue. We are on a health bill
23 today. If you want to do something about health care, it
24 is over \$2 billion a year, the cost of tending to those
25 injured with handguns were the statistics that you and

1 Senator Bradley mentioned.

2 The people that get injured, they do not have health
3 insurance. So the rest of us end up paying for them. So
4 if we really want to do something, I hope we would support
5 this amendment; and I must say, I have a little room left
6 on my amendment for a few more co-sponsors to ban all
7 handguns.

8 Thank you.

9 The Chairman. Thank you, Senator Chafee.

10 Before I recognize Senator Hatch, may I say, this is
11 a sensitive subject, but it has been made public. So I do
12 not hesitate to say it. I made the point that a
13 reasonably well-made handgun has a life of two centuries.
14 The report by the special investigator, Mr. Fisk,
15 yesterday, since it is a public matter, determined that
16 Mr. Foster had shot himself with a 38-caliber gun built in
17 1913.

18 In the end, I think this might take about 30 years
19 and about 200,000 children's lives. But I think we will
20 get there.

21 I see that the Majority Leader would like to be
22 heard. Senator Hatch?

23 Senator Hatch. I would be happy to yield to the
24 Majority Leader.

25 Well, if I could just say a few more words. My

1 concern is a very serious concern. Recently, Professor
2 VanAlstein, who is not known for conservative politics, of
3 the Duke University Law School, wrote a very, very
4 interesting Law Review article making it clear that this
5 Second Amendment right is a lot more than the National
6 Guard's.

7 You are talking about an express constitutional
8 amendment that our Founding Fathers put into the
9 Constitution that provides what really are fundamental
10 rights. Fundamental rights to all Americans. Now, there
11 are about 200 million guns in this society, owned by an
12 awful lot of decent, honorable people. About a third of
13 them, a little less than a third are handguns -- I believe
14 Senator Chafee is probably correct, about 68 million of
15 them are handguns -- and there are some heinous things
16 that happen with handguns. Generally they happen with
17 stolen, or black market, or other types of handguns rather
18 than from legal dealers, although some of them do happen
19 as a result of legal dealers.

20 Fewer than 1.5 percent of U.S. handguns are used each
21 year to injure someone or to the extent that some hospital
22 care might be required. And gunshot wounds amount to
23 approximately one-fourth of one percent of America's
24 annual medical costs.

25 That is serious, but not nearly as serious as some

1 are saying. Now any death of anybody is serious. Any bad
2 incident is serious. We have to take it serious. But we
3 also are talking about fundamental rights of all
4 Americans. Black talon bullets are banned now, except for
5 the military. So are all teflon-coated bullets. To put a
6 tax on them is not going to help very much at all.

7 You are going to find that if you start down this
8 line that you are only going to hurt the people who are
9 honest, decent law abiding citizens who have guns because
10 there is going to be a black market in guns like you have
11 never seen before.

12 And I remember pointing out on the floor during the
13 crime bill during the so-called Brady Amendment, which was
14 supposed to solve all problems according to some people
15 who were advocating it, I pointed out that all you are
16 going to do is cause a lot of Americans to go out and buy
17 guns, which is exactly what happened.

18 Gun sales have been up, some estimate, over 300
19 percent since the Brady bill passed. And as you all know,
20 the Brady bill, part of it, is in questionable
21 constitutional circumstances right now. Then after the
22 Brady bill passed, they admitted it is not going to do
23 much; somehow they want to do a number of other things
24 that may be they think important to help prevent some of
25 these incidents that are occurring.

1 Nobody can be happy about these incidents mentioned
2 by our friend from New Jersey or by our dear colleague
3 from New York. On the other hand, we are talking about
4 rights here. I think we ought to go slow before we start
5 taking away people's rights.

6 Now the genius of Senator Moynihan's inclusion into
7 his mark is that he is not trying to take away their right
8 to own arms or to keep and bear arms, he is just taking
9 away their right to fire them or at least making it more
10 difficult for them to fire them.

11 And basically making it much more expensive for the
12 average American citizen who owns a gun to be able to
13 obtain ammunition or to be able to pay for ammunition.
14 Now that I have to say is an ingenious approach to it. I
15 just think it is wrong. I think we have to be very
16 careful there.

17 It would be far better for us to take a much more
18 stringent approach towards crime. I have said enough.
19 But to make a long story short, I hope we will vote
20 against this amendment. I think it is wrong. I mean vote
21 for the amendment. I think that the inclusion of the
22 distinguished Chairman in the bill is wrong and I think
23 will cause us a lot of problems in our society.

24 The Chairman. Just one detail. The Majority Leader
25 has asked to speak. You are quite right, you cannot buy

1 teflon-coated bullets today.

2 Senator Hatch. Right.

3 The Chairman. And you cannot do it because I
4 introduced a bill to ban their manufacture or import.

5 Senator Hatch. Good for you.

6 The Chairman. It was thought to be a piece of cake
7 for those who oppose such things, until they found that
8 the police officers of the United States felt that their
9 lives were in jeopardy from these --

10 Senator Hatch. Then why tax something that cannot be
11 bought?

12 The Chairman. The police officers thought their
13 lives were in jeopardy from these armor piercing bullets
14 and the United States passed a law against them. It is
15 the first law abolishing a round, banning a round of
16 ammunition. I do not think it will be the last.

17 The Majority Leader.

18 Senator Mitchell. Mr. Chairman, the provision in the
19 bill which Senator Baucus' amendment seeks to strike
20 covers three different subjects. I inquire of Senator
21 Baucus whether he would consider deleting from his
22 amendment and therefore leaving in the bill the provision
23 with respect to the so-called expanding projectiles, the
24 black talon bullets, to which Senator Moynihan has
25 referred, that his motion to strike would be limited to

1 the two other subjects that are included in the bill.

2 Senator Baucus. I thank the Leader. In fact, I was
3 going to make that very same suggestion. That is, that
4 one provision you mentioned still be included in the bill
5 as I believe black talon, hollow point projectiles, et
6 cetera, as described here, should properly be so included
7 in the bill.

8 Senator Mitchell. Let us bring it to a vote,
9 Senator.

10 Senator Baucus. I so modify my amendment.

11 The Chairman. The Senator has the right to modify
12 his amendment.

13 Senator Conrad, did you ask to be heard?

14 Senator Conrad. Well, just briefly, Mr. Chairman, to
15 say as one who voted on the assault weapons ban and one
16 who voted on the Brady bill, not because I thought the
17 five-day waiting period would do much of anything, but
18 because of the provisions that were included to provide
19 for an instant check over time.

20 I do think an increase from an 11 percent tax to a 50
21 percent tax, which is a 400 percent increase, really goes
22 too far. I say that with great respect to the Chairman.
23 I come from a different part of the country.

24 My family have been victims of crime here in
25 Washington and I would say to you, my wife was assaulted

1 with an automatic handgun. I honestly do not believe that
2 those thugs would have one less bullet as a result of
3 this. I do not think the drug enforcement gangs of this
4 city or the neighborhood gangs of this city or of other
5 cities across America would have one less bullet, I
6 honestly believe that, as a result of this increase.

7 I do think it would have an impact on a lot of very
8 decent, honorable people in my part of the country and
9 other parts of the country who use a handgun for sport and
10 for hunting and who do not create a crime problem. My
11 State is the lowest crime State in the nation. I look
12 forward every weekend to going home to North Dakota. I
13 get off that plane and I feel safe. I must say, there is
14 no day that I am in this city that I feel safe. Not one
15 day. I go home every night to my neighborhood, every
16 single night, and look over my shoulder.

17 In the last three weeks we have had a man murdered
18 one-and-a-half blocks from my home. We have had a woman
19 beat to death four blocks from my home. But I honestly do
20 not think that this provision would make a difference. If
21 it did, I would support it.

22 So I hope the colleagues will support the amendment
23 of my colleague from Montana.

24 The Chairman. May I thank my friend, Senator Conrad,
25 and make the point that that person murdered a block-and-

1 a-half from your home, that will go on now. How we will
2 learn to deal with this, I do not know. Some societies
3 never learn to deal with their problems and they change.

4 But what concerns me, you see, this is a passage
5 provision. Just take certain kinds. I had a bill
6 impending for years. I had S.25. There was a time about
7 15 years ago when a third of the rounds fired at New York
8 City policemen were 25-caliber or 32-caliber. No
9 sportsman would know what to do with a gun like that.
10 They used to call them Saturday night specials. That was
11 a passive act.

12 If we do not learn to use passive devices, we will
13 start using authoritarian ones. I can see it coming. Any
14 kid on the block after 9:00, lock them up, that sort of
15 thing. You can be philosophical about this.

16 As I watch 50 years after the Navy you begin to
17 realize I am not going to see the hundredth. But I am
18 telling you the time will come when the society either
19 will learn to use epidemiological insights of this kind.
20 The medical profession has not been much help
21 incidentally. There is no reputation to be made in these.
22 There is no reputation to be made in automobile safety.
23 Just a few eccentrics did it and they changed our lives.

24 How many persons at this distinguished panel have an
25 automobile in which they carry children? Everybody here

1 has an automobile. Do we not all have one? I expect so.

2 Senator Dole. Nowhere to park it.

3 The Chairman. No parking space. That is different.

4 (Laughter.)

5 The Chairman. Does not everybody in this room, if
6 they have children, are fortunate enough to still be young
7 enough to have children or even more fortunate to be old
8 enough to have grandchildren, do they not have a little
9 seat they put that kid in and they buckle him up? Do you
10 not?

11 That was an unknown idea 40 years ago. No one would
12 have known what you were talking about. None was made.
13 No one was received. Why would you do that? Now, you do
14 it automatically. This is a passive device and it has
15 great consequences. There is such a thing as learning.

16 We did not know where yellow fever came from. We
17 figured it out. But I seem to be talking too much. It is
18 not my intention.

19 The Senator from Delaware, Mr. Roth, where they make
20 ammunition and have done so since the 18th Century to
21 great advantage to all concerned.

22 Senator Roth. Mr. Chairman, I have a letter here
23 from the Director of the Delaware Division of Fish and
24 Wildlife concerning the tax under discussion. He says
25 that the State is very dependent upon the revenue from

1 excise taxes on firearms to manage and conserve wildlife.
2 He says he is afraid that your proposal may be robbing
3 Peter to pay Paul and they are interested in knowing what
4 contingencies might be made for the loss of revenue to
5 wildlife restoration.

6 And specifically in his letter he says, "The
7 Pittman-Robertson Fund has become the backbone of most
8 State wildlife management programs, including Delaware.
9 So we urge you to do what you can to protect it as the
10 Finance Committee begins debate." He points out that
11 like other State fish and wildlife agencies we will want
12 to know about contingencies and all other sources of
13 revenue will be made available to make up for the loss of
14 funds and with the need for habitat restoration and
15 wildlife management growing annually how will we be able
16 to continue to pro-actively respond.

17 The Chairman. Fine.

18 Senator Bradley. You can always put a tax on the
19 Delaware Memorial Bridge.

20 The Chairman. Yes.

21 Senator Roth. We have one.

22 The Chairman. A very simple point. Probably three-
23 quarters of the taxes he collects from ammunition are from
24 12-gauge shotgun shells. You do not have a lot of deer in
25 Delaware.

1 Senator Roth. We do have a lot of deer.

2 The Chairman. Do you have deer down on the shore?

3 Senator Roth. Yes.

4 The Chairman. All right. Then you get your share of
5 30-caliber and so forth. But this does not touch it.
6 That is all rifle and shotgun.

7 Senator Dole. Vote.

8 The Chairman. A proposal has been called for a vote.
9 You do not want to hear more about the epidemiological
10 theory?

11 Senator Dole. We are still waiting for the package.

12 The Chairman. The package is ready. That is why
13 this conversation has been extensive.

14 Senator Dole. That is what I thought.

15 (Laughter.)

16 The Chairman. Those in favor will say aye.

17 Senator Baucus. Mr. Chairman, I ask for a roll call
18 vote.

19 The Chairman. You ask for a roll call vote?

20 Senator Baucus. Yes, I do.

21 The Chairman. The Clerk will call the roll.

22 The Clerk. Mr. Baucus?

23 Senator Baucus. Aye.

24 The Clerk. Mr. Boren?

25 Senator Packwood. Aye, by proxy.

1 The Clerk. Mr. Bradley?
2 Senator Bradley. No.
3 The Clerk. Mr. Mitchell?
4 Senator Mitchell. Aye.
5 The Clerk. Mr. Pryor?
6 Senator Packwood. Aye, by proxy.
7 The Clerk. Mr. Riegle?
8 Senator Baucus. No, by proxy.
9 The Clerk. Mr. Rockefeller?
10 Senator Rockefeller. Aye.
11 The Clerk. Mr. Daschle?
12 Senator Daschle. Aye.
13 The Clerk. Mr. Breaux?
14 Senator Breaux. Aye.
15 The Clerk. Mr. Conrad?
16 Senator Conrad. Aye.
17 The Clerk. Mr. Packwood?
18 Senator Packwood. Aye.
19 The Clerk. Mr. Dole?
20 Senator Dole. Aye.
21 The Clerk. Mr. Roth?
22 Senator Roth. Aye.
23 The Clerk. Mr. Danforth?
24 Senator Danforth. No.
25 The Clerk. Mr. Chafee?

1 Senator Chafee. No.

2 The Clerk. Mr. Durenberger?

3 Senator Durenberger. Aye.

4 The Clerk. Mr. Grassley?

5 Senator Grassley. Aye.

6 The Clerk. Mr. Hatch?

7 Senator Hatch. Aye.

8 The Clerk. Mr. Wallop?

9 Senator Wallop. Aye.

10 The Clerk. Mr. Chairman?

11 The Chairman. No.

12 There are 15 yeas, 5 nays. The amendment is agreed

13 to.

14 Senator Rockefeller. Mr. Chairman?

15 The Chairman. Yes.

16 Senator Rockefeller. I have an amendment.

17 The Chairman. Just a second. Senator Hatch is
18 available for an amendment. The text of the Chairman's
19 amendment is about to be distributed. So I would like to
20 ask if we could have a fairly succinct, a brisk,
21 discussion on this matter.

22 Senator Hatch. Well, Mr. Chairman, my amendment
23 would strike section U. of title Roman numeral VII, the
24 Large Employer Assessment.

25 Now it is called an assessment and we all know it is

1 a tax. We cannot kid ourselves about it. It seems to me
2 that because it is politically impossible to place an
3 employer mandate for a tax on small employers, this mark
4 before us merely transfers the burden of paying for health
5 insurance from the workers of smaller companies to the
6 workers of larger companies.

7 And if anybody thinks the corporation is paying this
8 tax, they just do not know what they are talking about.
9 The fact is, it is going to be the workers who pay it and
10 it does not make much difference what size the business
11 is, whether they are small business or large business
12 workers, they are still going to have to pay this tax.

13 I might say that workers in large corporations
14 deserve our consideration just as much as workers in small
15 firms. Just because somebody works in a large firm does
16 not mean that he or she makes a lot of money or has a
17 stable employment situation.

18 In fact, it has frequently been the larger companies
19 that in fact have laid off most workers. So there is no
20 reason to think that large companies will not react to
21 taxes and mandates exactly the same way that smaller firms
22 do. That is by offsetting cuts most probably in their
23 labor costs.

24 Now there are 728,000 businesses in this nation with
25 more than 500 employees, Mr. Chairman. While this

1 represents only 11.8 percent of all business
2 establishments, more than 46 percent of all American
3 workers are employed at those firms.

4 What good is it for us to generate health coverage
5 for workers if those same workers or those same or other
6 workers lose their jobs because of this payroll tax? But
7 I think this tax will have macroeconomic effects as well.

8 As I understand it, Mr. Chairman, this so-called
9 assessment is estimated to raise about \$100 billion over
10 10 years. So it cannot help but have a huge negative
11 affect. That is not to mention all of the other taxes
12 that really are included in this proposal, some of which
13 has been mentioned by the minority leader here today.

14 Keep in mind, that is on top of the \$246 billion tax
15 increase of 1993, which by the way hit Utah alone by an
16 estimated \$1.4 billion estimated dollars. That is a heck
17 of a lot of money for a State as small as mine, sucked out
18 of my home State, particularly as we are a relatively
19 small State with a population of only 1.77 million.

20 Now that is \$791 for every man, woman and child in
21 Utah. Or if we look at this tax contribution more
22 realistically, it amounts to \$2,485 per Utah household. I
23 do not think Utahans should have to shoulder any more
24 taxes on top of that.

25 Now this payroll tax would have many negative

1 implications, both on individual workers and firms on all
2 of the economy as a whole. For instance, think of the
3 disincentive for a business to move from 499 workers to
4 500. This is another reason for small and medium size --

5 Senator Rockefeller. Mr. Chairman, could we have
6 order so the Senator from Utah could make his amendment.

7 Senator Hatch. I appreciate my colleague asking for
8 that.

9 This is just another reason for small and medium
10 sized businesses not to take risks in order to grow and
11 expand the economic activity.

12 So, Mr. Chairman, I suggest to my colleagues that
13 enacting a payroll tax cut would create jobs and enacting
14 an increase in a payroll tax is going to destroy jobs. So
15 that is why I urge my colleagues to support this
16 amendment, to strike this tax. I think it is a mistake.
17 It is going to cost us jobs. In the end, it is going to
18 be putting more pressure on getting a health care bill
19 through.

20 Senator Dole. Would the Senator yield for a
21 question?

22 Senator Hatch. I would be happy to yield for a
23 question.

24 Senator Dole. This one percent would yield, what,
25 about \$150 billion?

1 Senator Hatch. \$100 billion over 10 years. This is
2 the estimate. So you add that on top of the \$246 billion
3 in last year's tax bill, then you add it to the other
4 taxes that you have been talking about here, and it is
5 significant.

6 Senator Dole. That will reduce, if we prevail, to
7 only be 21 tax increases in the bill.

8 Senator Hatch. That is right. There would only be
9 21 instead of 22.

10 The Chairman. May I thank my friend for his very
11 brisk and clear explanation. There is only one
12 justification for this measure, which is that we have to
13 pay for the health care that we are providing in the
14 Health Care Act of 1994.

15 It is the case that large firms do have lower average
16 health care costs. It is purchasing in volume and it is
17 the nature of these firms. It is our experience. The
18 administration proposed a premium tax on firms over 5,000.
19 We reduced it to 500. There is no rationale, say, that
20 this covered a larger number of employees and would bring
21 in more revenue.

22 I would suggest if there is any other grounds that
23 would be would be wrong in my view. There may be other
24 grounds. But it is the fact that their health care costs
25 are lesser than those of smaller units and they can more

1 easily -- revenue can be raised from them, sir. It is a
2 choice you have to make.

3 Senator Packwood?

4 Senator Packwood. Except many big firms -- I do not
5 know whether it is most or not -- are unionized. Their
6 health plans are extensive. We are already taxing them
7 with the amendment we approved yesterday unfortunately. I
8 would hope we would strike it.

9 Now we are going to tax them again. It is the very
10 biggest firms with the most expensive programs that we are
11 hitting. These are by in large blue collar union firms.

12 Senator Hatch. That is right. And, you know, since
13 the Packwood amendment has removed all employer subsidies
14 I have to believe that all of the revenues raised by this
15 mark are really not needed at this particular point. I
16 mean, assuming that the mark was deficit neutral to begin
17 with, the Chairman's mark, then the removal of the
18 subsidies should leave excess revenues. You do not agree
19 with that?

20 The Chairman. I devoutly desire to agree with you in
21 that regard, Senator Hatch, but I do not think it is the
22 case, that we have a surplus of revenue here.

23 Senator Hatch. Well, I am not saying a surplus. But
24 the fact is that the assumption is there. Now whether it
25 is right or wrong, I do not believe it is right myself.

1 The Chairman. Another incisive call for a vote over
2 here.

3 Senator Hatch. I would like to vote on this
4 amendment.

5 The Chairman. You shall have a vote immediately.

6 Senator Bradley. Mr. Chairman?

7 The Chairman. Senator Bradley asked to speak.

8 Senator Bradley. Mr. Chairman, I am not sure that
9 this provision is the best possible provision to raise the
10 revenue that we need to provide subsidies for low-income
11 Americans to be able to buy health coverage.

12 I thought about offering a substitute idea which
13 would be a one percent payroll tax that would be applied
14 to those employers not over 500, who in many cases are
15 providing health insurance as Senator Packwood said. But
16 instead to those employers who are not providing health
17 insurance after a certain period of time.

18 I thought that would have been a little more shared
19 responsibility that we talked about around the committee
20 yesterday. That everybody contributes something to try to
21 provide national health insurance for as many Americans as
22 possible, hopefully universal coverage.

23 So I would see that as a better proposal. I also saw
24 and participated in the employer mandate vote yesterday.
25 And, therefore, feel that some on this committee, though

1 not necessarily in the Senate as a whole, but on this
2 committee, might view that as a disqualifying aspect of
3 this idea.

4 Therefore, we are left with Senator Hatch and his
5 amendment and we are left with whether we want to have the
6 money to fund the bill. In which case, I hope that we
7 will not take the position that we do not want to fund
8 this bill. I hope that we would reject Senator Hatch's
9 amendment.

10 The Chairman. Thank you, Senator Bradley.

11 Senator Daschle?

12 Senator Daschle. Thank you, Mr. Chairman.

13 I would just add to what Senator Bradley said. That
14 I think there is a non-economic rationale and it has to do
15 with cost shifting. Often times we will continue to see
16 unfortunately because there is not a large risk pool
17 established under the bill the creation of smaller risk
18 pools through these cooperatives, these business
19 cooperatives. Small businessmen are going to be trying to
20 aggregate their resources. And as they do, they are going
21 to be taking on a lot of the society risk that is out
22 there.

23 They will also see costs shifted, the Medicaid costs,
24 as they continue to pay their premiums. So both in terms
25 of taking the adverse risk, as well as the Medicaid risk,

1 you will see a greater and greater degree of emphasis put
2 on the risk pools to do that, these cooperative pools.

3 So what this will do is give us an opportunity to at
4 least offset some of that cost by these larger
5 corporations which are opting out. If they do not opt
6 out, they are not sharing the risk. I think that really
7 is what the effort was, is to try to find a way to share
8 the risk, to ensure that all of the responsibility will
9 not be on these smaller risk pools, these smaller
10 cooperatives that these small businesses are going to have
11 to create for themselves.

12 Senator Hatch. Mr. Chairman?

13 Senator Dole. Mr. Chairman?

14 The Chairman. Senator Dole.

15 Senator Dole. I guess in the State of Kansas, maybe
16 South Dakota, we do not have many employers of 500 or
17 more, but other States do. This is another \$50 billion
18 tax on business.

19 Senator Hatch. \$100 billion.

20 Senator Dole. \$100 billion over 10 years. I guess
21 over 20 years it would be what, \$200 billion?

22 Senator Hatch. Maybe more.

23 Senator Dole. Probably.

24 Senator Hatch. It could be less.

25 Senator Dole. I think we just have to scale back the

1 package. That is what you do. You just cannot keep at
2 it, adding more taxes. We gave businesses a \$265 billion
3 tax increase last year and now there are at least \$200
4 billion in new taxes in this, whatever package we are
5 dealing with. We do not have any.

6 The Chairman. Well, within the moment, sir. It is
7 ready.

8 Senator Dole. And we will ask for a little recess
9 then so we will have a chance to work out our strategy,
10 which is short about four votes.

11 (Laughter.)

12 Senator Dole. But we will have a strategy anyway.

13 Senator Hatch. Mr. Chairman?

14 Senator Durenberger. Mr. Chairman?

15 The Chairman. Senator Durenberger?

16 Senator Durenberger. The two-and-a-half hours we
17 have spent so far on this bill has all been, as others
18 have indicated, about expanding coverage and getting rid
19 of the taxes that we have already put in the mark to pay
20 for it.

21 We have not yet talked about reform. I think when we
22 get that package we are going to see some of it. But let
23 me make this point with regard to large firms. The first
24 point is with regard to the premium tax that we talked
25 about yesterday on those large firms. That tax is not on

1 the totality of the premium. It is on the premium that
2 relates to a standard benefit.

3 So the difference between a union firm and something
4 else makes no difference at all. But more importantly,
5 and the reason, Mr. Chairman, that I am going to support
6 the amendment of my colleague from Utah, is that the main
7 place we are getting universal coverage in America today
8 is from the people that this tax tends to be levied
9 against.

10 The main place we are getting change in health
11 insurance and in bringing in accountable health plans and
12 changing the market is right here with these firms. These
13 firms either individually or working with others are the
14 ones who brought us universal coverage or close to it --
15 95 percent plus of these firms cover their members. And
16 they are the ones that are reducing the cost in health
17 care.

18 I do not know why it is they who should be penalized
19 with a coverage tax. Now, hopefully, we are going to give
20 smaller firms and individuals through cooperatives the
21 same opportunity to do volume purchasing. Frankly, Mr.
22 Chairman, I do not think anyone in this system ought to be
23 discouraged from doing good, from providing universal
24 coverage, from reducing the cost, for negotiating better
25 deals by taxing them. That is the reason I will support

1 my colleague.

2 The Chairman. With that, Senator Hatch, would you
3 mind if we just had a vote?

4 Senator Hatch. If I could just make a 30-second
5 comment.

6 The Chairman. Of course, sir.

7 Senator Wallop. Mr. Chairman, I have been trying to
8 gain your attention.

9 The Chairman. I am sorry. I thought you wanted an
10 amendment.

11 Senator Wallop. I have those, too. But I have as
12 well a comment.

13 The Chairman. Senator Wallop.

14 Senator Wallop. I will be very brief, Mr. Chairman.
15 But what is interesting about this conversation is the
16 sort of socialist abstractions that we run across here.
17 We are hearing about costs and cost shifting and money
18 does not come from somewhere. Money is just needed and
19 there are large firms.

20 All the human element of this is gone. Money must
21 come from employers it is said. The obvious correlation
22 of that is that employers do one thing to gain that title.
23 They employ. Therefore, the money comes from employees,
24 Mr. Chairman, no matter how we like to make it sound as
25 though it is some obligation of employers. It is out of

1 their total ability to pay and compensate that this money
2 comes.

3 So we need it to subsidize low-income Americans.
4 And, in fact, what we are doing is discovering the means
5 by which we subsidize the number of low-income Americans.
6 People will lose their jobs from these taxes that are
7 contained in this bill, this in particular. And the
8 number of low-income Americans grow at almost direct
9 proportion to the amount of subsidy you gain.

10 It just seems to me that we need to focus on the fact
11 that real human's lives are affected by this, not just
12 some abstractions.

13 The Chairman. Thank you, Senator Wallop. May I
14 apologize. I had thought you had indicated you wanted to
15 offer the next amendment.

16 Senator Wallop. I would be happy to do that, too.
17 But I understand you have one to offer, too.

18 The Chairman. Mr. Rockefeller, then you.

19 Senator Hatch, would you just close this?

20 Senator Hatch. Mr. Chairman, I will be very short. I
21 am really concerned. We are taxing the American people to
22 death. Nobody here can make a good argument that we are
23 not excessively taxing the American people.

24 The point that I am making here is that we cannot
25 ignore the fact that this tax will lead to disemployment,

1 which is the combination of jobs lost and jobs not
2 created. Now that is what is involved here.

3 You know, if we have the world to tax more, maybe
4 that is another matter. But we are taxing the American
5 people to death. There are lots of other taxes in this
6 bill. This one is not justified because the workers are
7 going to have to pay it.

8 The Chairman. I think that is perfectly a succinct
9 statement. All those in favor of the amendment will say
10 aye.

11 (A chorus of ayes.)

12 Senator Hatch. Mr. Chairman, I want a roll call
13 vote.

14 The Chairman. A roll call vote. The Clerk will call
15 the roll.

16 The Clerk. Mr. Baucus?

17 Senator Baucus. No.

18 The Clerk. Mr. Boren?

19 Senator Boren. Aye.

20 The Clerk. Mr. Bradley?

21 Senator Bradley. No.

22 The Clerk. Mr. Mitchell?

23 Senator Mitchell. No.

24 The Clerk. Mr. Pryor?

25 The Chairman. No, by proxy.

1 The Clerk. Mr. Riegle?
2 The Chairman. Aye, by proxy.
3 The Clerk. Mr. Rockefeller?
4 Senator Rockefeller. No.
5 The Clerk. Mr. Daschle?
6 Senator Daschle. No.
7 The Clerk. Mr. Breaux?
8 Senator Breaux. Aye.
9 The Clerk. Mr. Conrad?
10 Senator Conrad. Aye.
11 The Clerk. Mr. Packwood?
12 Senator Packwood. Aye.
13 The Clerk. Mr. Dole?
14 Senator Dole. Aye.
15 The Clerk. Mr. Roth?
16 Senator Roth. Aye.
17 The Clerk. Mr. Danforth?
18 Senator Danforth. Aye.
19 The Clerk. Mr. Chafee?
20 Senator Chafee. Aye.
21 The Clerk. Mr. Durenberger?
22 Senator Durenberger. Aye.
23 The Clerk. Mr. Grassley?
24 Senator Grassley. Aye.
25 The Clerk. Mr. Hatch?

1 Senator Hatch. Aye.

2 The Clerk. Mr. Wallop?

3 Senator Wallop. Aye.

4 The Clerk. Mr. Chairman?

5 The Chairman. No.

6 There are 13 yeas, 7 nays.

7 The distinguished Republican Leader has suggested
8 that he would like to have a brief period to consider the
9 Chairman's mark, the amendment to the Chairman's mark.
10 Would an hour's recess be adequate for that purpose?

11 Senator Dole. Could we just ask, does this replace?
12 That is the question I have.

13 The Chairman. It is the Chairman's amendment.

14 Senator Packwood. Just to make sure, these are
15 amendments to your mark.

16 The Chairman. Yes.

17 Senator Packwood. And we can work from your mark
18 with this?

19 The Chairman. That is right.

20 Senator Packwood. Thank you. So it is not a
21 substitute?

22 The Chairman. No, it is not a substitute.

23 Senator Dole. We will assemble as quickly as we can.

24 The Chairman. All right, we will come back at 7:00.

25 We thank everybody for their good time and there will be

1 time for other amendments at that point.

2 (Whereupon, at 5:32 p.m., the above-entitled meeting
3 recessed, to resume at 7:00 p.m.)

4 (Continued on page 113.)

1 AFTER RECESS

Gilmour
115 pp.

2 (7:38 p.m.)

3 The Chairman. A very good evening to our guests and
4 our expert witnesses.

5 Yes. Senator Chafee is recognized.

6 Senator Chafee. Mr. Chairman, I have been selected, I
7 presume, on the basis of a prior incarnation that I held
8 over in the Pentagon. And, in celebration of your 30th
9 anniversary -- 50th.

10 The Chairman. Oh, my goodness. My goodness.

11 (Laughter)

12 (Applause)

13 The Chairman. Thank you very much. SECNAV.

14 (Laughter)

15 The Chairman. We will now proceed as planned to go
16 through the amendment to the Chairman's mark.

17 Mr. Sollee, Ms. Horvath, would you proceed, please?

18 Mr. Sollee. All right. Beginning in Part I of the
19 Chairman's mark. The Chairman's amendment would strike the
20 second paragraph on Page 1 in State responsibilities, which
21 would have enclosed a civil penalty of 50 percent on
22 insurance companies that offered a non-standard, non-
23 certified package.

24 The second change would be on Page 5. The community-
25 rated threshold would be dropped from 500 to 100, so it

1 would be employers who had fewer than 100 employees would
2 now be in the community-rated market, and employers with
3 100 or more employers could experience-rate and self-
4 insure.

5 Ms. Horvath. It is on Page 3.

6 The Chairman. Page 3.

7 Mr. Sollee. Sorry. Page 3.

8 The Chairman. Next, is Page 5.

9 Mr. Sollee. All right. The next major provision is on
10 Page 7. The one on Page 5, really, is striking the 50
11 percent penalty again as it would apply to self-insured
12 plans.

13 On Page 7, there was a guaranty fund for self-insured
14 plans on Page 130 of the mark, and that would be stricken
15 and replaced instead with reinsurance standards, a new Item
16 9, where the Department of Labor would develop standards to
17 ensure that self-insured plans would purchase adequate
18 reinsurance in case of insolvency, and that would replace
19 the guaranty fund.

20 The next major amendment is on Page 8 of the mark, and
21 that would slightly broaden the definition of association
22 plans and MEWAs that would be eligible for a grandfather
23 rule.

24 Senator Packwood. Could I ask a question, Mr.
25 Chairman?

1 The Chairman. Please. Of course.

2 Senator Packwood. Do you want us to ask questions now,
3 or do you want to go through this, first?

4 The Chairman. I think if we can go through it, then we
5 can ask questions.

6 Senator Packwood. All right.

7 Ms. Horvath. It broadens the definition of association
8 plans that would be eligible to obtain self-insurance or
9 purchase experience-rated policies outside of the
10 community-rated market.

11 Mr. Sollee. There are a couple of limitations on the
12 ability of those groups to continue, and the association
13 plan to be grandfathered would have had to have at least
14 500 participants as of June 1, 1994, and the association
15 plan cannot increase the number of participants by more
16 than 10 percent each year. That is it for Part I.

17 The Chairman. Who is next, now? Dr. Hein, you are
18 taking up Part IV, Benefits?

19 Dr. Hein. The amendments to Part IV in the Benefits
20 section include the following. In Section A, which is on
21 Page 18 --

22 Senator Breaux. I am having a problem finding out
23 where you are. You are on Page 3 of --

24 Dr. Hein. Page 18.

25 The Chairman. No, no.

1 Dr. Hein. Of the mark.

2 The Chairman. Of the document you are working from.

3 Senator Breaux. Of the amendment.

4 Dr. Hein. Oh, I am sorry. Yes.

5 Senator Breaux. All right. So the amendment is on
6 Page 3, and is going to Page 18 of the big mark.

7 Dr. Hein. Of the Chairman's mark.

8 Senator Breaux. Identify that so we can not be too
9 lost. More lost than we are.

10 Dr. Hein. All right.

11 So, the Benefits section has three parts to it. In the
12 first part under Value and Structure of the Benefits
13 Package, the amendment would strike two sentences that have
14 to do with the relationship between the fee-for-service and
15 integrated plans, and those two sentences would be replaced
16 with the following: a relationship between the actuarial
17 value and types of delivery systems would be determined.

18 A second area that would be struck from the Chairman's
19 mark are Parts I, II and III, which essentially describe in
20 detail a higher cost-sharing plan details, and then a
21 lower, and combination. That would be replaced with the
22 following two sentences: 1) Cost sharing arrangements would
23 be specified by the National Health Benefits Board. 2)
24 There would be at least two options for certified standard
25 health plans. Both would have the same categories of

1 covered services. However, one would contain higher cost
2 sharing and/or fewer covered services.

3 In Section B, Covered Services, this amendment would
4 strike the categories that were in the Chairman's mark and
5 would be replaced by the following 12 categories: 1) In-
6 patient and out-patient care, including hospital and health
7 professional services; 2) emergency services, including
8 appropriate transport services; 3) clinical preventive
9 services, including services for high-risk populations,
10 immunizations, tests, and clinician visits; 4) mental
11 illness and substance abuse services. Should I continue to
12 read the list, or just point out the differences? Sorry?

13 The Chairman. The differences.

14 Dr. Hein. The differences are, essentially the list is
15 similar to the Chairman's mark, with the exception of
16 extended care services that are not contained on this new
17 list.

18 The third part, description of the National Health
19 Benefits Board, basically substitutes one portion of the
20 role of the board in refining the statutory definition of
21 medically necessary or appropriate with the following.

22 Senator Packwood. I am sorry. What page are you on?

23 Dr. Hein. This is on Page 21 of the Chairman's mark.

24 Senator Baucus. Oh, of the amendment.

25 Dr. Hein. On Page 3.

1 Senator Baucus. Thank you.

2 Dr. Hein. On the bottom.

3 Senator Baucus. Thank you.

4 Dr. Hein. And, now, turning to the first sentence at
5 the top of Page 4 in the amendment. Qualified health plans
6 would provide coverage for categories of services that are
7 medically necessary or appropriate for the enrollee.
8 Criteria for determination of medically necessary or
9 appropriate treatments would be set forth, and that would
10 be in statute.

11 The National Health Benefits Board would have the
12 following additional responsibilities that were not
13 mentioned specifically in the Chairman's mark. 1) To
14 develop interim coverage decisions in limited
15 circumstances; 2) design the benefits package to prevent
16 adverse risk selection; 3) not specify specific types of
17 providers when clarifying covered services; 4) not specify
18 particular procedures, nor treatments; and 5) consider the
19 following priorities--and this is, again, a direction to
20 the board--within the constraints of the actuarial limits
21 set in statute.

22 And the three priorities would be: 1) Parity for mental
23 health and substance abuse services with other medical
24 services using the standard of medical necessity or
25 appropriateness for the enrollee, and using out-patient

1 treatments to the greatest extent possible; 2)
2 consideration of the needs of children and vulnerable
3 populations, and the latter would include rural and
4 underserved individuals; and 3) improving the health of
5 individuals through prevention.

6 Senator Dole. Can I just ask, Number 3, does that
7 prevent non-discrimination against certain types of
8 providers?

9 The Chairman. Against certain --

10 Dr. Hein. No, it was not intended to address the needs
11 of providers.

12 Senator Dole. It says not specify specific types of
13 providers.

14 Dr. Hein. Oh, I'm sorry. I thought you were talking
15 about this last, improving the health of individuals. I am
16 sorry, Senator Dole. Number 3, not specify specific types
17 of providers, that part? The intent was not --

18 Senator Dole. That is not discrimination against
19 chiropractors or oral surgeons?

20 Dr. Hein. The intent was simply not to link a specific
21 service with a specific type of provider.

22 The Chairman. That is a non-discrimination clause.

23 Senator Dole. Thank you. So it does not discriminate.

24 Senator Chafee. The objective, as I understand it, is
25 if a chiropractor can do it better, fine.

1 The Chairman. It is a non-discrimination clause.

2 Senator Chafee. They do not specify who the providers
3 are.

4 The Chairman. Yes.

5 Senator Chafee. Or have to be.

6 Dr. Hein. Right. There is another, separate provision
7 in the bill that deals with discrimination specifically.
8 This provision was meant to not tie a specific service to
9 a type of provider.

10 The Chairman. Fine. Go ahead.

11 Senator Hatch. Could I ask one question, Mr. Chairman?

12 The Chairman. Please.

13 Senator Hatch. Say a chiropractor is licensed by the
14 State. Can they receive benefits from this?

15 Dr. Hein. Yes. And I believe that is in the other
16 provision, that if you are licensed in a State to provide
17 service, then that is fine.

18 The Chairman. Fine.

19 Mr. Konigsburg. Continuing on Page 4 of the amendment,
20 the amendment contains the following changes in the deficit
21 control fail-safe mechanism on Page 27 of the Chairman's
22 mark.

23 First, the mechanism is made prospective instead of
24 retrospective. For example, in January of 1997, the
25 President's budget will estimate the projected increase in

1 the deficit attributable to health reform for fiscal year
2 1998 instead of determining the actual increase in the
3 deficit in the prior year.

4 Second, under this prospective approach, any estimated
5 deficit increase will be offset by delaying the phase-in of
6 subsidies rather than reducing subsidies which had already
7 become effective. This approach of prospectively delaying
8 new benefits would also be applied to the new tax
9 deductions.

10 Third, instead of an automatic suspension of these
11 procedures in the case of no economic growth, the amendment
12 calls for the Congress to vote on suspension in the case of
13 low economic growth. This is defined as two consecutive
14 quarters of real economic growth below one percent, and
15 these procedures are based on the Gramm-Rudman-Hollings
16 Act.

17 Fourth, and finally, the procedure would operate every
18 year instead of every other year.

19 The Chairman. Thank you, Mr. Konigsburg.

20 Senator Dole. You cannot amend anything, right?

21 Mr. Konigsburg. Pardon me?

22 Senator Dole. There are no amendments.

23 Mr. Konigsburg. Congress would have an opportunity,
24 through a fast-track process, Senator, to develop an
25 alternative deficit reduction resolution, which would be

1 developed through consultation among committees and with
2 the administration.

3 Senator Baucus. Where does it say that?

4 Senator Dole. It says, the bill may not be amended.

5 Mr. Konigsburg. Once it is submitted by the President,
6 that is correct.

7 Senator Dole. Well, we do not do it until it is
8 submitted by the President. Who would amend it, the
9 President?

10 Mr. Konigsburg. It would not be amendable once it is
11 transmitted, but it would be subject to negotiation during
12 the consultation among the committees.

13 Senator Dole. That is different than amendment. I
14 mean, we can negotiate with the President.

15 Senator Packwood. Ahead of time.

16 Mr. Konigsburg. But there would be no amendment once
17 it is --

18 The Chairman. This is basically a fast-track vote.

19 Mr. Konigsburg. Yes, sir.

20 Senator Packwood. It is almost more than a fast-track.
21 Could it include price controls?

22 Mr. Konigsburg. There are no limitations in what could
23 be included in this alternative resolution.

24 Senator Packwood. Could it include cuts in other non-
25 health programs to narrow the deficit caused by the

1 increase in health spending?

2 Mr. Konigsburg. There would be no limits on what could
3 be included.

4 Senator Packwood. No limits, no debate, no amendments.

5 Senator Breaux. There will be an amendment to this,
6 though.

7 Senator Wallop. No confidence in democracy, and we are
8 moving quickly to a dictatorship here.

9 The Chairman. The legislation will have been drafted
10 in consultation with this committee.

11 Senator Wallop. Mr. Chairman, consultation does not
12 imply a vote.

13 The Chairman. We will be doing the same thing with the
14 Uruguay Round as soon as we get through with this. You are
15 quite right. You are quite right.

16 Senator Wallop. I think it is terribly dangerous, for
17 whatever it is worth.

18 The Chairman. A fair point. Thank you, Mr.
19 Konigsburg.

20 Ms. King?

21 Ms. King. Yes. There is a provision in the amendment,
22 starting on Page 10, that requires that claims for clinical
23 laboratory services be billed directly by the provider who
24 performs those services.

25 Senator Packwood. What page is this on?

1 The Chairman. 10.

2 Ms. King. Page 10.

3 The Chairman. That other was all that other stuff.

4 Senator Packwood. Yes. Well, I am looking at Page 10.

5 The Chairman. D, Page 39.

6 Senator Packwood. Thank you.

7 Senator Dole. Is that it?

8 The Chairman. Revenue. Your part was easy. He's had
9 a long night. Mr. Buckley and Mr. Gale.

10 Mr. Gale. Thank you, Mr. Chairman. I will run through
11 and highlight the revenue provisions in the amendment.
12 First of all, under 7A --

13 Senator Breaux. What page are you on?

14 Mr. Gale. That would be Page 41.

15 The Chairman. Page 10 of the --

16 Mr. Gale. Oh, I'm sorry. On the amendment itself.

17 The Chairman. Page 10.

18 Mr. Gale. Page 10.

19 The Chairman. Title 7.

20 Mr. Gale. And I am at Page 11, now, to go to the
21 tobacco excise tax changes.

22 Senator Breaux. And that amends what page of the
23 Chairman's mark?

24 Mr. Gale. 11. Oh, the Chairman's mark. It is 41. I
25 am sorry, Senator.

1 Senator Breaux. Just give us the number. Get us
2 started on the same one.

3 The Chairman. Joe, you are at Revenue Provisions,
4 Title 7, at the bottom of Page 10.

5 Mr. Gale. That is right. 10 on the amendment, and 41.

6 The Chairman. That is right. It says that. All that
7 is included in this.

8 Mr. Gale. Right.

9 The Chairman. Tell us about the tobacco tax.

10 Mr. Gale. All right. The proposal in the amendment
11 would be for a one dollar increase on the cigarette tax,
12 one dollar above the current law, 24, and a similar
13 increase on chewing tobacco, snuff --

14 The Chairman. Corresponding tobacco.

15 Mr. Gale. Right. Those are one dollar each on those,
16 and pipe tobacco, with the tobacco equivalency approach of
17 the Chairman's mark.

18 Senator Dole. I do not use snuff, but I am curious,
19 because I think they have a 12,000 percent tax increase in
20 the President's bill. How much is this one?

21 Mr. Gale. It is one dollar above the current tax,
22 which is about --

23 Senator Dole. But it is lower than they had in the
24 original bill, right?

25 The Chairman. Yes, sir. These are lower.

1 Senator Packwood. This looks like about a 3,000
2 percent increase.

3 Mr. Gale. All right. Under the mark, originally,
4 there would have been a \$5.52 tax. It is now at one
5 dollar.

6 Senator Dole. Thank you.

7 Senator Breaux. Can I ask another question?

8 The Chairman. Yes.

9 Senator Breaux. Then the tax we have on cigarettes is
10 less than the tax we have, from a percentage standpoint, on
11 the non-cigarette tobacco products?

12 Mr. Gale. It would be, actually, a larger percentage
13 of the retail price because, in the case of smokeless
14 tobacco, the retail price is in excess of two dollars,
15 whereas, for a 20-pack of cigarettes, average retail is
16 about \$1.69. So, when you are putting a dollar on each of
17 those, you have got a larger percentage increase on
18 cigarettes.

19 Senator Breaux. You have a larger percentage increase
20 on cigarettes?

21 Mr. Gale. Compared to the retail price, but a dollar
22 across the board.

23 Senator Daschle. Mr. Chairman.

24 The Chairman. Senator Daschle.

25 Senator Daschle. This may have been asked already, and

1 I apologize if it has been. But we understand that this
2 package is roughly revenue neutral.

3 Mr. Gale. Well, we do not have CBO estimates.

4 Senator Daschle. I know that. But, I mean, just
5 roughly, you are assuming that the increase in the
6 cigarette tax offsets some of the decreases in the other
7 revenues that were originally anticipated.

8 Mr. Gale. Well, we have had some substantial revenue
9 losses in the amendment on the one percent payroll tax just
10 before the recess.

11 The Chairman. We lost money this afternoon.

12 Mr. Gale. So the question of whether the bill is in
13 balance, I guess, we would not be certain without further
14 estimates.

15 Mr. Gale. The next portion of the amendment concerns
16 what would have been a tax credit for self-employed and
17 individual purchases of insurance. That is being converted
18 in this amendment to a 100 percent deduction for either
19 individual or self-employed purchases of health insurance
20 coverage.

21 There is a transitional rule here which would reinstate
22 the 25 percent deduction for self-employed individuals for
23 1994 and 1995, and then the 100 percent deduction would
24 come into effect January 1 of 1996.

25 Senator Breaux. Is this a loss from what we have in

1 the mark, or a gain?

2 Mr. Gale. The best estimate at this point from the
3 Joint Tax Committee is that it is substantially the same.
4 Is that correct, John?

5 Mr. Buckley. That is correct. We estimate it just
6 about the same thing you have in the mark.

7 Senator Dole. But I think the running total on the day
8 is a loss of \$94.1 billion.

9 Senator Packwood. About \$30 billion an hour.

10 Senator Dole. A pretty good afternoon.

11 Mr. Gale. There is also a conforming change to Item F
12 in the Chairman's mark, simply on the prepayment of health
13 insurance coverage. It was originally drafted when the
14 deduction was going to be a credit. Now that it is a
15 deduction, a conforming change is made to Section F.

16 Under Section G, which is at Page 51 in the mark and
17 Page 11 on the Chairman's amendment, the proposal
18 concerning the definition of employee has been modified to
19 provide that the Treasury Department make a legislative
20 proposal regarding the classification of workers as
21 independent contractors or employees.

22 Under Item K, which is on Page 11, and Pages 65-66 in
23 the mark, the proposal in the Chairman's mark to repeal
24 Section 833, Special Deduction for Blue Cross/Blue Shield
25 Plans, has been eliminated. A rule for Blue Cross/Blue

1 Shield-like plans remains in the mark.

2 Senator Baucus. Mr. Chairman, might I ask a question
3 on that?

4 The Chairman. Yes.

5 Senator Baucus. What is the purpose of the elimination
6 of the repeal?

7 Mr. Gale. The repeal has to do with a special
8 transition rule that was given to Blue Cross/Blue Shield in
9 the 1986 Act. The mark had been to eliminate that
10 provision and the proposal to repeal it has been removed so
11 that that deduction would remain.

12 Senator Baucus. I understand. But my question is,
13 what is the rationale for continuing?

14 Mr. Gale. The rationale?

15 Senator Baucus. Yes.

16 Mr. Gale. Many of these Blue Cross/Blue Shield
17 organizations have a history of open enrollment, community
18 rating, and similar practices which have created, over this
19 period of time, a different risk pool of their current
20 policyholders.

21 So they would start, under the new regime, under the
22 bill, with a substantially worse risk pool than other, say,
23 commercial insurers. And this rule --

24 Senator Baucus. This is my point, that in my
25 experience, frankly, a lot of Blue Cross/Blue Shields to

1 not community rate. I am just curious as to how many do,
2 how many do not. Are we giving a special break, frankly,
3 to them when, in fact, they do not deserve it?

4 Mr. Gale. It is true that some do and some do not. It
5 is not a uniform situation in all respects. But there are
6 many Blue Cross/Blue Shield plans that have adhered to
7 community rating and open enrollment.

8 Senator Baucus. Thank you.

9 Mr. Gale. Under T, which are the rules for voluntary
10 employer contributions, the proposal is to make a
11 modification that would permit so called basic or very high
12 deductible policies to be eligible for deduction. They
13 were not so eligible under the Chairman's mark, and they
14 would be under this amendment.

15 The Chairman. Senator Breaux.

16 Senator Breaux. Is this the catastrophic type of plans
17 that would now be eligible?

18 Mr. Gale. Yes, would now be eligible.

19 Senator Dole. How much is it, John, about \$5,000?

20 Senator Breaux. I do not think we specified the type
21 of deductibility by this amendment, do we?

22 Mr. Gale. Well, it keys off of the catastrophic plan
23 provided in the Benefits section of the bill, but it says
24 the catastrophic type coverage, if an employer provides it,
25 is deductible by the employer. It would not have been

1 under the original mark. The modification is to make it
2 deductible. Or, to speak precisely, the excise tax that is
3 intended to be a proxy for the elimination of deductibility
4 would not apply.

5 Item V has been mooted. That would have adjusted the
6 threshold for the payroll tax.

7 The Chairman. Item U.

8 Mr. Gale. I am sorry. I misread it.

9 The Chairman. You have not been asleep in 48 hours.

10 Mr. Gale. I read the U as a V. Pardon me.

11 Senator Breaux. That is out because we took it out of
12 the Chairman's mark?

13 Mr. Gale. That is right. This would have simply made
14 a conforming adjustment to the employer community rating
15 threshold from 500 to 100.

16 The last item, Item W, concerns long-term care, and the
17 amendment would add a substantial portion of the
18 administration proposals on the tax treatment of long-term
19 care insurance. It would include the proposal that would
20 permit an individual to receive long-term care benefits
21 tax-free, up to a daily limit of \$150 per day. For the
22 expenses for long-term care services and long-term care
23 insurance premiums, tax treatment would be clarified to
24 make those deductible as medical expenses.

25 Item 3, which is a departure from the administration's

1 proposal, would not permit an exclusion of long-term care
2 coverage provided by an employer from the employee's
3 income. So, if an employer provides long-term care
4 coverage, its value would be treated as taxable income to
5 the employee.

6 Finally, the fourth part of the proposal clarifies the
7 tax treatment of long-term care insurance policies so that
8 any question of the inside build-up being taxable is
9 eliminated. It would be treated like an accident health
10 insurance policy.

11 Senator Packwood. Could I ask Joe a question?

12 The Chairman. Of course.

13 Senator Packwood. Joe, I just want to make sure I have
14 got my figures right now where we are on revenues, after
15 what we have done today. The nurse's amendment loses about
16 \$90 million, as I recall; \$360 versus \$450 net.

17 Ms. King. That is correct.

18 Senator Packwood. The children's amendment was \$10
19 billion.

20 Ms. King. I believe that is correct.

21 Senator Packwood. I mean, lost. We are spending more.
22 The ammunition amendment, we lost \$140 million. The one
23 percent payroll tax, we lost \$50 billion. The Postal
24 Worker Retirement prefunding, we lost \$13 billion.
25 Dropping the tobacco tax to one dollar, we lost \$20

1 billion. Going to 100 percent deduction for self-employed
2 as opposed to the 15 percent credit, I do not have an
3 estimate on that yet. I do not know if that is neutral or
4 not.

5 Mr. Gale. The Joint Committee has --

6 Mr. Buckley. It is neutral.

7 Senator Packwood. Neutral?

8 Mr. Buckley. It is, basically.

9 Senator Packwood. All right. On Blue Cross/Blue
10 Shield, we lose \$300 million, and the clarification on
11 long-term treatment, \$1.2 billion. I get a total, we are
12 down \$94.73 billion.

13 Mr. Buckley. Our estimate on long-term care is a lot
14 higher than that.

15 Senator Packwood. The loss is a lot higher than that.

16 Mr. Buckley. That is right.

17 Senator Packwood. So \$3 billion?

18 Mr. Buckley. About \$5.9 billion.

19 Senator Packwood. \$5.9 billion rounds us off right at
20 \$100 billion. Billion. Yes. All right. Let me change
21 that figure. Instead of 1.2 it is 5. what?

22 Mr. Buckley. It is 5.9. It is a very preliminary
23 estimate, but that is what our current estimate is.

24 Senator Packwood. Is it likely to go up?

25 Mr. Buckley. I do not know.

1 Senator Packwood. All right. So, roughly at \$100
2 billion. All right.

3 The Chairman. That is in the provision. That is the
4 same provision.

5 Mr. Buckley. I am sorry. These are 10-year numbers.
6 That is right, sir. Are you giving five-year numbers?

7 Senator Packwood. Yes.

8 Mr. Buckley. All right.

9 Senator Packwood. Roughly \$3 billion?

10 Mr. Buckley. Yes.

11 Senator Packwood. All right. So we are only at \$97
12 billion.

13 Senator Breaux. This amendment also reduces the
14 poverty level, too.

15 Senator Packwood. The what?

16 Senator Breaux. The amendment also reduces the poverty
17 level for subsidy eligibility, from 240 down to 200, I
18 think.

19 The Chairman. We will get to estimates in time. Title
20 10, Medicare.

21 Senator Hatch. Could I ask one question, Mr. Chairman?

22 The Chairman. Yes, of course.

23 Senator Hatch. Did I mishear you? Are you, under this
24 mark, going to tax senior citizens for certain long-term
25 care? How did that work?

1 Mr. Gale. Not senior citizens, an employed individual.

2 Senator Hatch. Employees. Employees.

3 Mr. Gale. Employees who would receive a new long-term
4 care benefit provided by an employer would have that amount
5 considered taxable income.

6 Senator Hatch. All right. Why employees?

7 Mr. Gale. Because it is an item of value being
8 provided that would traditionally be treated as income.

9 Senator Dole. Policy.

10 The Chairman. Mr. Buckley, did you want to say
11 something?

12 Mr. Buckley. Well, I was going to say, unlike
13 traditional health insurance, there are some personal
14 expenses that come out on the other side of the policy and
15 I think that is one reason why they denied the exclusion
16 for the employer-provided coverage.

17 The Chairman. Right. All right. Thank you very much,
18 gentlemen.

19 Ms. King?

20 Ms. King. Mr. Chairman, this amendment begins on Page
21 12 of the Chairman's amendment and amends Page 114 of the
22 Chairman's mark. There is only one amendment in the
23 Medicare section, and it is a provision designed to further
24 improve Medicare risk contracts. These are situations in
25 which Medicare beneficiaries enroll typically in health

1 maintenance organizations.

2 This amendment has several parts. Included among them
3 are a provision that allows the Secretary to waive the
4 requirement that at least 50 percent of enrollees
5 participating in an HMO in which Medicare beneficiaries
6 participate be not Medicare beneficiaries.

7 It also permits employer plans to offer Medicare health
8 plans to former or current employees, it permits the
9 Secretary to offer a coordinated open enrollment period, it
10 changes the payment methodology for Medicare risk
11 contracts, and it directs the Prospective Payment
12 Assessment Commission and the Physician Payment Review
13 Commission to conduct studies.

14 The Chairman. Thank you, Ms. King.

15 Ms. O'Dougherty?

16 Ms. O'Dougherty. Yes. On the Health Plan Standards
17 section, which is Page 14 of the amendment, Page 130 of the
18 Chairman's mark, the first element is mentioned in Section
19 I, the guaranty funds were eliminated. Items 2-7 are
20 organizational changes to have just one section for the
21 health, with standards for all health plans, and also minor
22 changes to five of the standards.

23 Number 8. This change, which is on Page 15 of the
24 amendment, would combine the functions of the
25 accreditation, certification, and enforcement programs with

1 the functions of the consumer information centers.

2 Senator Dole. Page?

3 The Chairman. Page 16. Well, page 15. You carry
4 over.

5 Ms. O'Dougherty. And on Page 16, Number 9, Section 1,
6 eliminated the civil monetary penalty. These sanctions
7 would replace that. Number 10. As just mentioned, the
8 consumer information function will be combined, so this is
9 allocating more money to the State-based programs. Number
10 11 is adding to the section on preemption of State laws for
11 benefit mandates and utilization, management, and review
12 programs.

13 Number 12, the final item in the Health Plan Standards
14 section. The requirement to contract with the central
15 community providers is replaced with a requirement to offer
16 a contract with at least one essential community provider
17 in a State-defined service area. So, in other words, you
18 do not have to contract with all essential community
19 providers, but one in each area.

20 The Chairman. Thank you.

21 Ms. O'Dougherty. I can just keep going, I think.

22 The Chairman. Title 16.

23 Ms. O'Dougherty. Correct. On Page 17 of the
24 amendment, Pages 140-142 of the Chairman's mark. The
25 first, under Section B, Health Services and Quality

1 Improvement Research. This changes the funding source from
2 appropriations to -- with the 1.75 percent assessment on
3 premiums, .25 of that was for health research, and applied
4 20 percent of that .25 percent would go to research, under
5 this section.

6 The Chairman. Senator Dole had a question.

7 Senator Dole. How much is that 1.75 percent assessment
8 raised?

9 Ms. O'Dougherty. I am sorry, I do not know.

10 The Chairman. Mr. Sollee, what do we score that at?

11 Mr. Sollee. \$31 billion over five years.

12 Senator Dole. Over five years.

13 The Chairman. Yes. Over five years.

14 Ms. O'Dougherty. The second, the implementation of
15 quality improvement research. This replaces the quality
16 improvement foundations with demonstration projects and
17 grants to test and evaluate mechanisms to provide technical
18 assistance to health plans.

19 The last section, Consumer Information. As was
20 discussed in the Health Plan Standards, these functions
21 will remain but they will be combined into one overall
22 State program.

23 Senator Dole. Mr. Chairman.

24 The Chairman. Yes. Senator Dole.

25 Senator Dole. Mr. Chairman, I would move that any

1 amendments be limited to five minutes.

2 The Chairman. So ordered.

3 Senator Wallop. Mr. Chairman, could I inquire?

4 The Chairman. Senator Wallop.

5 Senator Wallop. Will any of the scoring or estimates
6 take into account the number of new federal personnel
7 required to administrate these new --

8 The Chairman. Yes. The answer is, yes.

9 Senator Wallop. It will show us the --

10 The Chairman. Yes. Yes.

11 Senator Wallop. I suspect that the number will reach
12 into the many hundreds, if not thousands.

13 The Chairman. The record will show, the answer is yes.

14 Senator Wallop. Thank you.

15 Senator Roth. Mr. Chairman, along the same lines --

16 The Chairman. Senator Roth.

17 Senator Roth. -- there is a lot of talk about so
18 called unfunded mandates on the part of States. Will any
19 effort be made to collate and estimate the cost to the
20 States of the requirement of this?

21 The Chairman. The answer is, it surely ought. I do
22 not know that we have a formal mechanism for doing that,
23 Senator Roth. It is a big issue right now, and ought to
24 be. But we have a Joint Committee on Taxation that can
25 tell you what taxes can be, and it can calculate what

1 Senator Wallop indicates, but I just do not want to promise
2 what we cannot deliver.

3 Senator Roth. I would think it would be very
4 important, because --

5 The Chairman. We certainly undertake to attempt.

6 Senator Roth. -- we just had a meeting with all of the
7 governors.

8 The Chairman. And they would like to know.

9 Senator Roth. They would like to know.

10 The Chairman. And they are not wrong.

11 Well, we have the amendment before us. And, under the
12 five-minute rule, I would --

13 Senator Dole. Is this whole thing one amendment?

14 The Chairman. Yes, sir. That is one amendment.

15 (Laughter)

16 Senator Baucus. Mr. Chairman.

17 The Chairman. Yes.

18 Senator Baucus. Just a couple of questions.

19 The Chairman. You have five minutes under the Dole --

20 Senator Dole. With three minutes you modify the mark
21 with this and you will not need a vote.

22 The Chairman. We will modify the mark with this. The
23 mark is so modified.

24 Senator Breaux?

25 Senator Breaux. Are we on amendment to the Chairman's

1 mark, offered by the Chairman?

2 The Chairman. As modified, yes.

3 Senator Breaux. When did we modify it?

4 The Chairman. I just now modified it.

5 (Laughter)

6 Senator Breaux. Was it a big modification?

7 (Laughter)

8 Senator Breaux. It went by really quick.

9 The Chairman. But there it is before you.

10 Senator Breaux. I was wondering whether I am still for
11 it as modified, or not.

12 I just wanted to, very briefly, commend the Chairman
13 for his amendments. Many of the things that are
14 incorporated in the Chairman's amendment to the mark are
15 things that the so called Mainstream Coalition worked on
16 for a number of days, and those features are in this.
17 There are other things in it as well. I think there will
18 be additional amendments to it, but I would compliment the
19 Chairman for his exercising, I think, very good judgment in
20 putting together this amendment, and I support it.

21 The Chairman. I thank Senator Breaux.

22 Now, under an arrangement that we had, Senator Pryor
23 asked to offer an amendment on long-term care.

24 Senator Pryor. Thank you, Mr. Chairman.

25 The Chairman. Senator Pryor, you are recognized under

1 the Dole rule.

2 Senator Pryor. Under the five-minute rule. I will
3 move rapidly, Mr. Chairman. Thank you for recognizing me.
4 Mr. Chairman, I offer this amendment this evening on behalf
5 of myself, Senator Rockefeller, Senator Conrad, Senator
6 Riegle, Senator Chafee, and others.

7 This is, I think, a modest amendment relative to long-
8 term care, Mr. Chairman and colleagues. It is an amendment
9 which is optional for the States. It is basically the
10 concept of a block grant. It does not include nursing
11 homes as we know nursing homes.

12 The Chairman. Senator, may I ask, you will be touching
13 upon the tax treatment of long-term care, will you not,
14 that we have in our modified Chairman's amendment?

15 Senator Pryor. I will not be touching on that.

16 The Chairman. You will not?

17 Senator Pryor. No, I will not be touching on that.

18 The Chairman. I am sorry. Fine. Fine. Let us hear
19 you out. Let us hear you out.

20 Senator Pryor. Momentarily, I do not know if we go
21 beyond the five minutes, I would like to yield to a member
22 of my staff, Theresa Sachs, if we still have any time left,
23 to answer any detailed questions.

24 The Chairman. Sure. We surely will.

25 Senator Pryor. I am going to yield momentarily to

1 Senator Rockefeller and Conrad, also.

2 The Chairman. If Theresa would take a seat at the
3 table, we would welcome her.

4 Senator Pryor. Theresa Sachs. Thank you.

5 The States, Mr. Chairman, will have the flexibility to
6 determine how these benefits are offered. This is not an
7 entitlement. There will be a cap out to the States. The
8 States must prioritize.

9 There is a lot of, I guess, what you would call home
10 rule embodied in this amendment. I think that the States
11 can really look out there among their own population and
12 decide what is most needed. The benefits would include
13 respite care, adult day care, home health care, homemaker
14 services, and other services at the State direction.

15 We think, Mr. Chairman, that after looking at this
16 amendment, and especially comparing it to a much more
17 expensive and costly system as proposed by the President,
18 we have scaled this down.

19 We do not have it begin until 1998; that is two years
20 later than the President's program. It would phase in
21 within a seven-year period, and the States, as we say,
22 would have a lot of flexibility in making some of these
23 decisions.

24 Now, Theresa Sachs is at the table. She would be glad
25 to answer any questions. But, if I could, Mr. Chairman,

1 let me yield to Senators Rockefeller, Conrad, and Chafee,
2 in that order, if possible.

3 Senator Rockefeller. Mr. Chairman, to be brief, each
4 day there are some 10 million Americans who depend upon
5 long-term care to get through that day and to survive that
6 day. Of the 10 million, there are about five million who
7 depend on another person to help and assist them get
8 through that day in acts of daily living. And, of that 10
9 million, over three million are people who have severe
10 retardation, comparable cognitive problems, who desperately
11 need our help.

12 This is a modest program. Medicare takes care of acute
13 care, but not long-term care, or private insurance, as I
14 think no more than maybe two million insurance policies in
15 the whole country. We need this, sir.

16 The Chairman. Thank you. Senator Conrad.

17 Senator Conrad. Mr. Chairman and colleagues, I would
18 like to emphasize that we have found a financing mechanism
19 for this proposal, and the financing mechanism funds this
20 program without cutting a dime from the Medicare program.
21 It is paid for through a provision to eliminate duplicate
22 payments made by auto and health insurers for identical
23 services.

24 According to an estimate by Lewin-VHI, automobile
25 insurance coordination could produce as much as \$16.7

1 billion in savings to the Federal Government over the next
2 five years. In addition, State and local governments would
3 save \$5 billion, and employers would save over \$14 billion.

4 Mr. Chairman and colleagues, we are obviously not using
5 the employer savings of \$14 billion, we are not using the
6 \$5 billion that State and local governments would save, but
7 we are tapping the \$16 billion that the Federal Government
8 would save.

9 The provision eliminates duplication by requiring auto
10 insurance carriers to reimburse health care plans directly
11 for their expenditures on medical care covered by
12 automobile insurance. What we have happening, Mr. Chairman
13 and colleagues, is double payments for the same injuries.
14 The savings to the Federal Government would result
15 primarily from new procedural requirements for direct
16 payment by auto insurers to Medicare and other Federal
17 Government programs for auto accident-related services.

18 We have carefully crafted the financing of this
19 proposal and we have assured by making it a capped program
20 that it cannot exceed the funding provided. We would be
21 happy to answer other questions.

22 The Chairman. Thank you.

23 Senator Chafee, you wish to speak on this topic?

24 Senator Chafee. Mr. Chairman, I will be brief. This
25 amendment is not restricted, as perhaps has been pointed

1 out, solely to the elderly, for those on Medicare, for
2 example, it is for the handicapped, likewise. The thrust
3 of the amendment, as was pointed out by Senator Pryor, is
4 to provide services for those in the community. It is
5 home-based care.

6 The objective is to do everything possible to keep
7 these individuals out of nursing homes and other such
8 facilities, not only in the long-run and the short-run, we
9 believe there will be considerable savings from what would
10 otherwise be the situation.

11 Every one of us have seen in our own States where we do
12 have these community-based care, home-based care, and the
13 results, really, are extraordinary. I have had the
14 opportunity to see them myself in my State. Thank you.

15 The Chairman. Fine.

16 Senator Packwood. I do not understand. Is it \$4.7
17 billion over five years, \$48 billion over 10. That is
18 because it is not phased in until about 1998. That is the
19 outlay.

20 Senator Pryor. That is correct. We delayed the
21 phasing in versus the so called Clinton plan for an
22 additional two years. That is why it is 4.7, we save
23 considerable money right there.

24 Senator Packwood. That, I understand. But we have an
25 outlay of \$4.7 billion in the first five years, and then

1 \$48 billion in the second five. Explain to me again the
2 revenue.

3 Senator Conrad. Perhaps I could do that.

4 Senator Packwood. Yes. I heard you, but I could not
5 understand it.

6 Senator Conrad. Well, according to Lewin-VHI, from
7 eliminating the duplicate payments, the savings to the
8 Federal Government alone for five years is over \$16
9 billion. Let me indicate that if the outlays are greater
10 than the funding source, then we scale back if there is
11 insufficient funding, the phase-in of the benefit is
12 delayed, or the benefits available under the program are
13 scaled back. So, we have a funding source to match the
14 services.

15 Senator Packwood. I understand that. Explain to me
16 the funding source once more.

17 Senator Conrad. I would be glad to do it.

18 Senator Packwood. Because this is the first time I
19 have ever seen this amendment.

20 Senator Conrad. We have spent a considerable amount of
21 time on this, and I think you will find very broad support
22 in many sectors for this because what is happening now is,
23 when somebody is injured in an accident situation, they are
24 getting their health expenses covered in a duplicate way.
25 They are getting covered by their health insurance, and

1 they are being covered by their auto insurance.

2 Senator Packwood. Right.

3 Senator Conrad. What we do is require the auto
4 insurance to pay the health insurance plan.

5 Senator Packwood. Whereas, now the auto insurance
6 company is not paying because they are a second priority?

7 Senator Conrad. No. They are paying the individual.
8 The individual is injured. They get covered under their
9 health insurance.

10 Senator Packwood. Right.

11 Senator Conrad. And their automobile insurance pays
12 them again. There is a duplicate payment.

13 Senator Packwood. They are getting paid twice for one
14 injury.

15 Senator Conrad. They are getting paid twice for the
16 same injury.

17 Senator Packwood. So if they have \$10,000 worth of
18 expenses they collect \$20,000, in essence?

19 Senator Conrad. Exactly. Lewin-VHI estimates the
20 savings to the Federal Government of \$16.7 billion over
21 five years, so we have more revenue in the first five years
22 than the expense of this program. In addition, they
23 estimate the savings to State and local governments of \$5
24 billion, and that employers--employers--would save \$14.2
25 billion under this proposal.

1 The Chairman. Fine. Thank you.

2 Senator Dole?

3 Senator Dole. I just wondered, could we tentatively
4 approve this and see what CBO does?

5 The Chairman. Exactly. I would like to make two
6 conditions. One, after hearing Senator Danforth, if we
7 approve it, that Senator Pryor has to give it to us in
8 language that is a fitting mark so legislative language can
9 be drafted.

10 Senator Pryor. If we could work with your staff on
11 this, because I think we were not quite certain as to the
12 instructions as to what type of language we had to use.

13 The Chairman. Right. That is right. And then would
14 you accept the proposition that CBO has to score the costs
15 and the revenues in the matter that you indicate?

16 Senator Pryor. Well, is this same test being applied
17 everywhere else?

18 Senator Dole. I think the point is, you sort of pay
19 what you save. That is the same test everybody else uses.

20 Senator Pryor. If we could reserve, Mr. Chairman, an
21 option, if CBO was short, to seek out additional revenues.

22 The Chairman. To find other revenue. Yes. But I have
23 to say to you, we have not had our hearing on this, so we
24 do not know.

25 Senator Pryor. Right. I understand.

1 The Chairman. Senator Danforth.

2 Senator Danforth. Mr. Chairman, I like the idea of the
3 collateral source rule, which is the pay-for. It is very
4 difficult to argue against long-term care. Obviously, I am
5 for that idea. But it just seems to me that if money is
6 going to be available through the collateral source rule,
7 or through any other source, it would be better to try to
8 pay for the basic program that we are creating, first,
9 before we start creating yet more programs. So, for that
10 reason, I am going to vote against the amendment.

11 The Chairman. Senator Durenberger.

12 Senator Durenberger. Mr. Chairman, I associate myself
13 with those remarks, and I would ask two things. One, if
14 Bob Packwood is keeping a list of revenue that we are
15 getting rid of, I hope he is also keeping a list of new
16 spending, particularly the entitlement spending that we are
17 doing here tonight.

18 And then I would also remind my colleagues before they
19 vote on this that the Labor Committee adopted this program
20 and decided to spend \$38 billion on it, not the \$15.4
21 billion. So you are talking about a much bigger potential
22 program than you have.

23 The Chairman. Well, we have not had a hearing. This
24 is subject to CBO confirming the revenue offsets, the
25 costs, and if there is a shortfall, Senator Pryor asked if

1 he could not find a way to make up that shortfall. Getting
2 through our work, knowing we are going to the floor. Thank
3 you, Ms. Sachs. It is the first time you appeared before
4 us and we have not even --

5 Senator Pryor. Your testimony was great.

6 The Chairman. Your testimony was great.

7 Would the Senator want a roll call vote? Some Senators
8 wish to be recorded.

9 Senator Pryor. Yes. I think a roll call vote, Mr.
10 Chairman.

11 The Chairman. Is that right?

12 Will the Clerk call the role?

13 The Clerk. Mr. Baucus.

14 Senator Baucus. Aye.

15 The Clerk. Mr. Bradley.

16 Senator Bradley. Aye.

17 The Clerk. Mr. Mitchell.

18 Senator Mitchell. Aye.

19 The Clerk. Mr. Pryor.

20 Senator Pryor. Aye.

21 The Clerk. Mr. Riegle.

22 Senator Riegle. Aye.

23 The Clerk. Mr. Rockefeller.

24 Senator Rockefeller. Aye.

25 The Clerk. Mr. Daschle.

1 Senator Daschle. Aye.
2 The Clerk. Mr. Breaux.
3 Senator Breaux. Aye.
4 The Clerk. Mr. Conrad.
5 Senator Conrad. Aye.
6 The Clerk. Mr. Packwood.
7 Senator Packwood. No.
8 The Clerk. Mr. Dole.
9 Senator Dole. Aye.
10 The Clerk. Mr. Roth.
11 Senator Roth. Aye.
12 The Clerk. Mr. Danforth.
13 Senator Danforth. No.
14 The Clerk. Mr. Chafee.
15 Senator Chafee. Aye.
16 The Clerk. Mr. Durenberger.
17 Senator Durenberger. No.
18 The Clerk. Mr. Grassley.
19 Senator Grassley. Aye.
20 The Clerk. Mr. Hatch.
21 Senator Hatch. Aye.
22 The Clerk. Mr. Wallop.
23 Senator Wallop. No.
24 The Clerk. Mr. Boren.
25 Senator Boren. Aye.

1 The Clerk. Mr. Chairman.

2 The Chairman. Aye.

3 Senator Packwood. Mr. Chairman, if I could just
4 explain my no vote. I have never seen it before. I do not
5 quite understand it.

6 The Chairman. Could I just announce the vote? There
7 are 16 yeas and 4 nays.

8 Senator Packwood?

9 Senator Packwood. I am not sure I am opposed to what
10 Senator Pryor wants to do. I have never seen it. It is a
11 long-term care benefit we do not have in the bill. It does
12 not seem to fit with any of the other medical procedures we
13 have in the bill. I may support this, but I am going to
14 vote no because I do not have the foggiest idea exactly how
15 it works.

16 The Chairman. Well, you will have a specific
17 opportunity on the floor because we have the specific
18 conditions.

19 Senator Packwood. Well, as I recall, you said we do
20 not go ahead until we have revenue estimates.

21 The Chairman. No, we do not.

22 Senator Packwood. And spending estimates.

23 The Chairman. But on this, as a specific.

24 Senator Packwood. Well, and on the bill in general.

25 The Chairman. Oh. The bill in general, yes.

1 The Senate cannot vote, but on this particular matter
2 there will be a special double counting.

3 Senator Baucus. There may be some confusion, Mr.
4 Chairman, between, I think, your interpretation of we do
5 not go ahead, and what I think the Senator from Oregon
6 means by not going ahead. I think, for the sake of
7 clarification --

8 The Chairman. We are going ahead tonight.

9 Senator Packwood. I mean, on the floor.

10 The Chairman. All right. Good. He understands that
11 perfectly.

12 The bill is open to amendment. The Senator from
13 Missouri was first, the Senator from Wyoming is next.

14 Senator Danforth. Mr. Chairman, I would like to
15 offer --

16 The Chairman. Five-minute rule.

17 Senator Danforth. Well, I am going to offer a
18 malpractice amendment, and I hope it can be done in five
19 minutes, but it has a number of parts to it.

20 The Chairman. Well, it might take longer.

21 Senator Danforth. All right. And I would like Peter
22 Liebold to answer the hard questions, please.

23 Mr. Chairman, this is a substitute for what appears in
24 the Chairman's mark and it has the following components.
25 First, similar to the Chairman's mark, it has a requirement

1 that malpractice actions should, first, be subject to an
2 Alternative Dispute Resolution procedure.

3 It has a proposition in it that is not contained in the
4 Chairman's mark, which is that, after final resolution of
5 the ADR, if a party does not accept the resolution in the
6 ADR, that party can take the case to court.

7 However, if the result of the court action is less
8 favorable to the party who took it to court by one-third,
9 then that party pays the costs and the attorneys' fees of
10 the other party.

11 It has a cap on non-economic losses, that is, pain and
12 suffering and punitive damages, of a quarter of a million
13 dollars, indexed annually, yet provides that, in other
14 words, the result of this would be that for the non-
15 economic damages a defendant would only be liable for the
16 ratable share, the allocated share of the cause of that
17 party's responsibility.

18 For punitive damages, it provides that 75 percent of
19 the punitive damage recovery is paid to the State and it is
20 to be used by the State for various activities relating to
21 the prevention of malpractice.

22 With respect to attorneys' fees, similar to the
23 Chairman's mark, it does provide for a limitation on
24 contingency fees. However, while the Chairman's mark has
25 left open what that limitation is, in this amendment we

1 would provide that the limitation would be one-third of
2 recoveries of the first \$150,000, and 25 percent in excess
3 of \$150,000.

4 And, there is a limited preemption of the States, and
5 federal malpractice laws would preempt inconsistent State
6 laws, except to the extent that the State laws impose
7 greater restrictions on attorneys' fees on non-economic
8 damages or punitive damages, or permitted additional
9 defenses to health care malpractice actions, and it would
10 create no right of action in federal court.

11 There are some aspects, Mr. Chairman, of the Chairman's
12 mark which, in the opinion of this Senator, are very
13 desirable, including the collateral source rule which we
14 just discussed in connection with the last amendment.
15 However, in attempting to put together a consensus
16 alternative proposal, we have left that out.

17 The Chairman. I see. Thank you.

18 Senator Breaux. Mr. Chairman.

19 The Chairman. Senator Breaux.

20 Senator Breaux. I just want to ask a question of the
21 Senator from Missouri. Senator Danforth, what you
22 outlined, is that, in essence, the recommendation that was
23 arrived at by our group?

24 Senator Danforth. Yes. Yes, it is.

25 Senator Breaux. Nothing was changed.

1 Senator Rockefeller. Mr. Chairman.

2 The Chairman. I believe the Majority Leader is next.

3 Senator Mitchell. Mr. Chairman, I just want to commend
4 Senator Danforth for putting this forward. I agree with
5 several of the specific provisions, but disagree with
6 others. Presented as a single amendment, I will oppose it
7 on those grounds. I understand, and just will comment on
8 one of them, the several liability with respect to non-
9 economic punitive damages.

10 This is a difficult public policy choice, but everyone
11 should understand the choice being made here. If an
12 innocent person is injured and the damage is caused two-
13 thirds by one party, one-third by another party, and the
14 party who is one-third responsible is insolvent, the
15 question then comes, should that portion of the damages be
16 borne by the other person who caused damage or by the
17 victim?

18 And there are valid public policy arguments both ways,
19 and I think there is reasonable argument advanced for the
20 provision. I think the better policy is that it should not
21 be borne by the victim. That is not good. That is the
22 reason I oppose this. But I think it is a very good
23 effort, particularly with respect to the Alternative
24 Dispute Resolution procedures, and others in this.

25 Senator Danforth. Well, I thank the Majority Leader.

1 Mr. Chairman, I would point out that the provision
2 relating to joint and several liability does not apply to
3 economic damages. That is, in other words, insofar as it
4 is lost wages, out-of-pocket expenses, medical costs, and
5 so forth, on the part of the Plaintiff, that is recoverable
6 against any source you can find it.

7 However, it is our view that if one party is, say, one-
8 third responsible, when it comes to punitive damages, that
9 party should not be nailed for the entire amount of the
10 punitive damages, and the same is true with respect to pain
11 and suffering.

12 Senator Rockefeller. Mr. Chairman.

13 The Chairman. Senator Rockefeller.

14 Senator Rockefeller. As somebody who spent the last
15 several days on the floor arguing for product liability, I
16 have to say that I would oppose this amendment because of
17 the fact that I think putting a cap on non-economic
18 damages, which is pain and suffering -- economic is just
19 getting well, your job, but the pain and suffering is
20 psychological, the whole part of that. I think putting a
21 cap on that is just not sustainable.

22 The Chairman. Fair enough. Well, in accordance with
23 our five-minute rule, somewhat extended, does the Senator
24 wish a roll call?

25 Senator Danforth. Yes.

1 The Chairman. He does. The Clerk would call the roll.
2 The Clerk. Mr. Baucus.
3 Senator Baucus. Aye.
4 The Clerk. Mr. Boren.
5 Senator Boren. Aye.
6 The Clerk. Mr. Bradley.
7 Senator Bradley. No.
8 The Clerk. Mr. Mitchell.
9 Senator Mitchell. No.
10 The Clerk. Mr. Pryor.
11 Senator Pryor. No.
12 The Clerk. Mr. Riegle.
13 Senator Riegle. No.
14 The Clerk. Mr. Rockefeller.
15 Senator Rockefeller. No.
16 The Clerk. Mr. Daschle.
17 Senator Daschle. No.
18 The Clerk. Mr. Breaux.
19 Senator Breaux. Aye.
20 The Clerk. Mr. Conrad.
21 Senator Conrad. Aye.
22 The Clerk. Mr. Packwood.
23 Senator Packwood. No.
24 The Clerk. Mr. Dole.
25 Senator Dole. Aye.

1 The Clerk. Mr. Roth.
2 Senator Roth. Pass.
3 The Clerk. Mr. Danforth.
4 Senator Danforth. Aye.
5 The Clerk. Mr. Chafee.
6 Senator Chafee. Aye.
7 The Clerk. Mr. Durenberger.
8 Senator Durenberger. Aye.
9 The Clerk. Mr. Grassley.
10 Senator Grassley. Aye.
11 The Clerk. Mr. Hatch.
12 Senator Hatch. Aye.
13 The Clerk. Mr. Wallop.
14 Senator Wallop. Aye.
15 The Clerk. Mr. Chairman.
16 The Chairman. No.
17 The vote is 11 yeas, 9 nays. The amendment from the
18 Senator from Missouri is passed.
19 Senator Dole. It cannot be passed, we have one pass.
20 The Chairman. Oh, there was a pass. Well, then it
21 would be 10, 9. Forgive me. And the amendment passes.
22 The bill is open to amendment. The hour is late.
23 Senator Wallop is next.
24 Senator Wallop. Mr. Chairman, I can do this in the
25 five-minute rule, I think.

1 The Chairman. Just one second. We thank Mr. Liebold.
2 We did not have an opportunity to grill him, but thank him
3 anyway.

4 Senator Wallop. Mr. Chairman, my amendment proposes to
5 strike the 1.75 percent premium tax. It is called an
6 assessment, but it is really nothing more than another of
7 the \$325 billion in new taxes that are found in this
8 proposal.

9 The Chairman. I must have quiet. The Senator from
10 Wyoming is offering an amendment.

11 Senator Wallop. I thank the Chair.

12 It amounts to a huge tax like the one the committee
13 adopted yesterday, and the problem with it is that it only
14 results in increased insurance premiums. The proposal
15 alone will result in an overnight increase in the cost of
16 every premium by one and three quarter's percent, and that
17 is before the administrative cost. This is very expensive
18 to administer; it is not quite like a payroll tax. Some
19 have estimated it is almost as much as another 50 percent,
20 or close to three percent tax.

21 CBO says today that all private premiums total \$374
22 billion in 1996, so, with this new tax, premiums would go
23 up by \$6.5 billion, less the cost of administration, in
24 1996 alone. I am hard-pressed to understand how we can
25 have cost containment if this proposed increase, the cost

1 of insurance --

2 The Chairman. Would the Senator be so kind as to --

3 Senator Wallop. I am trying hard.

4 The Chairman. There must be order in the committee
5 room while the Senator from Wyoming is offering an
6 amendment. Senator, that will not be taken from your five
7 minutes.

8 Senator Wallop. Thank you, sir.

9 I would again say that we have had endless comments in
10 this committee about the need for cost containment, yet
11 this proposal does exactly the opposite. It does not
12 contain the costs, but increases them. And for what?

13 I realize, Mr. Chairman, that this proposal is near and
14 dear to your heart, but it would provide more funds for
15 teaching hospitals, graduate medical education, and
16 research, and I understand these needs and certainly am not
17 opposed to promoting them, and I understand your interest
18 in them. But this tax, like others in the plan, is a
19 revenue raiser to pay for government-run health care.

20 If we want to discuss research funding, then we should
21 do that under its own debate, but not be placing a tax on
22 everyone without fully debating the merits of the proposal.
23 In other words, I do not think this is a health care
24 proposition, this is an educational proposition.

25 I am hard-pressed to understand how we can tax premiums

1 to the tune of something in the neighborhood of \$38
2 billion, the costs of which, make no mistake about it, are
3 paid by the consumers, for graduate medical research
4 concentrated in a few institutions, many of whom are not
5 located in the States of those represented on this
6 committee.

7 I certainly cannot justify the tax to the citizens of
8 Wyoming for which they are very unlikely to receive any
9 benefit. So, my proposal is to remove this as an increased
10 cost of health insurance at a time when all of us are
11 saying our objective is to contain those costs.

12 The Chairman. I thank the Senator.

13 Senator Rockefeller?

14 Senator Rockefeller. Mr. Chairman, I would have to
15 oppose the amendment from the Senator from Wyoming, even
16 though I think the Chairman knows that the need to have a
17 parity between generalist family physicians, et cetera, and
18 specialists in this country is very, very important, and
19 that can only happen as we cause it to happen in law. But,
20 to strike out the very funding source for academic health
21 centers just does not make any sense to me, so I would
22 oppose the amendment.

23 The Chairman. I thank the Senator. I would thank the
24 Senator from Wyoming for making clear the purpose of this.
25 If there is one thing this Senator gathered from almost a

1 year of hearings in this field, it is the increasing
2 stressed condition of academic health centers, the need for
3 a steady flow of revenues for medical education, nursing
4 education, and for basic biological research.

5 The Senator from Minnesota--I do not know how he will
6 vote on this measure--has certainly stressed the degree to
7 which rationalization in health care cost delivery has
8 produced great difficulties in this regard. I see the
9 Senator from Oregon, then the Senator from --

10 Senator Packwood. I have a question. I have an
11 academic health center, and they obviously have lobbied me
12 on this. Could I have your attention a second? You do not
13 have an academic health center. Was it your person that
14 testified, you have that unique Statewide arrangement the
15 legislature set up?

16 Senator Conrad. Yes.

17 Senator Packwood. And you are turning out a
18 disproportionately high number of general practitioners.
19 Could you explain that a little bit?

20 Senator Conrad. That is correct. Dr. Jansen, who was
21 here testifying, pointed out that we are producing well
22 over 50 percent who are primary care doctors.

23 Senator Packwood. With no four-year medical school, as
24 I understand it.

25 Senator Conrad. No, a four-year medical school.

1 Senator Packwood. All right.

2 Senator Conrad. There is a four-year medical school.
3 And those doctors, by the way, are staying
4 disproportionately in the State. And, for a State that has
5 had, historically, a difficult time of retaining medical
6 professionals, the fact is, it has worked.

7 Senator Packwood. Now, does this qualify as an
8 academic health center within the definition of this bill?

9 Senator Conrad. Sure.

10 The Chairman. Yes.

11 Senator Packwood. It does?

12 Senator Wallop. Mr. Chairman, Senator Packwood, I
13 would say that Wyoming does a similar kind of thing without
14 a four-year institution. We have a residency in family
15 practice, which would not qualify under this, and we do it
16 without a subsidy, and others could as well.

17 But my point is, really, that this is an
18 educational and not part of the so called 37 million
19 Americans without health care, and I believe that it is, in
20 fact, a tax on the premiums of Americans who now acquire
21 health care, and will acquire in the future.

22 The Chairman. A fair description.

23 If I may just say, I had the great pleasure this
24 morning of meeting Dr. Waller, of the Mayo Foundation, and
25 hearing of these matters from him.

1 Senator Durenberger?

2 Senator Durenberger. Well, and I thank you, Mr.
3 Chairman. I have commented on this in the walk-throughs
4 that we have had before, and, were circumstances different,
5 I might support the amendment by my colleague from Wyoming,
6 not because of my feelings about academic medical centers
7 or the Mayo Clinic, or anything else, but the precedent of
8 starting the tax premiums before we even settle the issue
9 of reform.

10 However, as I have also said before, I am very, very
11 sympathetic to the needs of medical education and we tried
12 during the course of the day today, I will say to my
13 colleagues, to negotiate with the Chairman's staff, a
14 change in the tax, and particularly a change in how this
15 money is going to be spent to try to reflect some of the
16 realities that we expect out there from Wyoming, to
17 Montana, to North Dakota, to whatever, and we were not able
18 to do that. I trust that was because of the shortness of
19 the time, Mr. Chairman, and, hopefully, between now and
20 when we have more serious debate than we can give this,
21 that we will have a continued opportunity to --

22 If we are going to raise this kind of money, \$31.7
23 billion from this tax --

24 The Chairman. We want to spend it well.

25 Senator Durenberger. I think everyone here wants to be

1 sure that that is spent appropriately.

2 The Chairman. Yes, sir.

3 Senator Dole? Oh. Sorry. Senator Mitchell.

4 Senator Mitchell. No, Mr. Chairman. At the risk of
5 redundancy, I would like to repeat what I said earlier this
6 week on the subject. I know how important the research and
7 other efforts of the academic health centers are to you and
8 all of us in the country, so I will vote against the
9 amendment, but I share many of the concerns expressed by
10 the author and the proponents of the amendment.

11 That is why I believe the concerns of those whose
12 populations are largely rural in nature and have a shortage
13 of primary care physicians would be met by work force
14 targets dealing with primary care, the establishment of a
15 National Council on Graduate Medical Education to make
16 recommendations, and authorization for general medical
17 education payments to be made directly to the applicant
18 program. And I ask, Mr. Chairman, again, that you consider
19 that in the context of this.

20 The Chairman. It certainly will be done.

21 Senator Dole?

22 Senator Dole. We have all met with these people from
23 academic centers, and they do a great job, and they are a
24 national resource and we want to preserve it. But
25 everybody ought to pay for it if we are going to do it. We

1 should not just single out one group and say, here is
2 another new tax increase, \$32 billion. Who is going to pay
3 for it? Not the insurance companies.

4 So, it seems to me that people want to vote for new
5 taxes, more taxes, there ought to be other ways to do this
6 to satisfy the needs of the academic centers because we
7 want to preserve them, make them better. But I do not
8 think this is the way to do it, so I hope the amendment
9 prevails.

10 The Chairman. Thank you, Senator Dole. The time has
11 expired.

12 Senator Baucus. Mr. Chairman.

13 The Chairman. Senator Baucus.

14 Senator Baucus. Mr. Chairman, this is a difficult vote
15 for me because I know how much you want this provision. I
16 do believe, however, it is not wise, and the figures that
17 I have are \$168 billion over 10 years, of what this will
18 cost, and it is an entitlement program, a new entitlement.

19 And I understand the problems of academic health
20 centers. I understand, with managed competition and
21 managed care that some of the private contributions to
22 these institutions may be declining.

23 When I asked questions earlier of staff to verify the
24 figures and verify the data, unfortunately, that could not
25 be done. They could not come up with any figures that

1 would verify this as a concern that the academic health
2 centers have.

3 And I believe, frankly, the far better course, the
4 better public policy here, would be for the commissions
5 that we are creating in this bill to study this issue, to
6 report back to the Congress, to the degree to which this
7 worry, in fact, materializes, or, in fact, does happen,
8 rather than here, today, creating a new entitlement
9 program. We all know the problems that we encounter when
10 we have new entitlements. They last forever, they tend to
11 discourage accountability, we do not renew them.

12 Again, Mr. Chairman, I know how much this means to you,
13 but, in good faith and good conscience, I frankly believe
14 that it would be inappropriate for us to create this new
15 entitlement program at this time, so I will support the
16 Senator from Wyoming.

17 The Chairman. Fine. The Clerk will call the roll.

18 The Clerk. Mr. Baucus.

19 Senator Baucus. Aye.

20 The Clerk. Mr. Boren.

21 Senator Boren. No.

22 The Clerk. Mr. Bradley.

23 Senator Bradley. No.

24 The Clerk. Mr. Mitchell.

25 Senator Mitchell. No.

1 The Clerk. Mr. Pryor.
2 Senator Pryor. No.
3 The Clerk. Mr. Riegle.
4 Senator Riegle. No.
5 The Clerk. Mr. Rockefeller.
6 Senator Rockefeller. No.
7 The Clerk. Mr. Daschle.
8 Senator Daschle. No.
9 The Clerk. Mr. Breaux.
10 Senator Breaux. No.
11 The Clerk. Mr. Conrad.
12 Senator Conrad. No.
13 The Clerk. Mr. Packwood.
14 Senator Packwood. Aye.
15 The Clerk. Mr. Dole.
16 Senator Dole. Aye.
17 The Clerk. Mr. Roth.
18 Senator Roth. Aye.
19 The Clerk. Mr. Danforth.
20 Senator Danforth. No.
21 The Clerk. Mr. Chafee.
22 Senator Chafee. No.
23 The Clerk. Mr. Durenberger.
24 Senator Durenberger. No.
25 The Clerk. Mr. Grassley.

1 Senator Grassley. Aye.

2 The Clerk. Mr. Hatch.

3 Senator Hatch. Aye.

4 The Clerk. Mr. Wallop.

5 Senator Wallop. Aye.

6 The Clerk. Mr. Chairman.

7 The Chairman. No.

8 The votes are 13 nays, and 7 yeas. The amendment is
9 not agreed to.

10 Senator Breaux. Mr. Chairman.

11 The Chairman. Let me see. We want to alternate, if
12 that is agreeable. Senator Rockefeller.

13 Senator Rockefeller. Mr. Chairman, I have an amendment
14 on community rating. And, in the Chairman's mark, as in a
15 number of other marks, it is age adjusted. I think it is
16 discriminatory. It affects people, primarily, who are
17 between 50-65, not those who are over 65.

18 Community rating is the way we are using to doing
19 insurance in this country. In other words, community
20 rating means that the sick, the healthy, the wealthy, the
21 poor, the young, the old, everybody gets treated exactly
22 the same. You make money on some, if you are an insurance
23 company, and you lose money on some, but everybody gets
24 charged the same.

25 The federal health plan that we all belong to does not

1 charge older people more than younger people. Large, self-
2 insured companies do not charge older people more than they
3 charge younger people. Medicare does not charge 85-year-
4 olds more than it charges 65-year-olds.

5 But I think the real point is, in the Chairman's mark
6 there is a risk adjustment mechanism to compensate health
7 insurance plans and companies that end up with more sick
8 people than the average plan.

9 Therefore, in that this risk adjustment system is in
10 the Chairman's mark, and in that those who have a more
11 unhealthy population are going to get compensated in the
12 Chairman's mark, I do not see any reason for age
13 adjustment.

14 I mean, since women make 77 percent of what men make,
15 why could you not just charge more to women than to older
16 people? There is no reason for it. It does not strike me
17 as what we should do in America. Ten percent of all the
18 people in this country use 70 percent of all of the cost of
19 health care, and they are not necessarily old people.

20 So, my amendment sunsets in five years, would allow the
21 commission to go ahead and take a look at where we are and
22 what we are doing. But I really think this is a case of
23 discrimination, and I think it is an unnecessary case
24 because of the Chairman's own risk adjustment mechanism
25 which makes sure that those plans that end up with more

1 older people or more unhealthy people are compensated to
2 equalize with those who have better luck. And, thus, I
3 offer the amendment and hope that it will be adopted. I
4 think it is fairly fundamental public health policy.

5 The Chairman. Comment?

6 Senator Dole. As I understand it, it would about
7 double the rate for a 27-year-old. An age-generated
8 premium would be \$788, and this would run it up to \$1,485.

9 Senator Breaux. Mr. Chairman.

10 The Chairman. Is that your comment?

11 Senator Chafee. Mr. Chairman.

12 The Chairman. Yes. Just one second.

13 Senator Breaux, and then Senator Chafee.

14 Senator Breaux. Mr. Chairman, I would oppose the
15 amendment because, I mean, I think, obviously, it is a fact
16 of life that young people have lower costs in health care
17 than older people. If you have a voluntary system, which
18 now we have in the Chairman's mark, it is really important
19 that we have young people in the pool.

20 And, if they are going to be having to pay so much more
21 than what the actual health care costs really reflect, they
22 are not going to voluntarily get into it. We need them in
23 it, and, therefore, I think that a good friends amendment
24 is not a good idea.

25 Senator Rockefeller. And for that reason, Mr.

1 Chairman, I include, during the voluntary period
2 contemplated in the Chairman's mark, that there would be
3 age adjusting during the voluntary period.

4 Senator Chafee. Mr. Chairman.

5 The Chairman. Senator Chafee.

6 Senator Chafee. The result of this is that a young,
7 struggling family, carrying a mortgage, with small
8 children, and all the expenses that a young family has,
9 would pay exactly the same as an executive who is at age 56
10 and earning a fairly good salary, with his mortgage far
11 more paid than the young family. I think it is unfair to
12 that young family.

13 Senator Dole. Vote.

14 Senator Rockefeller. Mr. Chairman, can I close? I
15 just have to respond to that.

16 The Chairman. Of course. Of course.

17 Senator Rockefeller. Because it is not true that older
18 people are richer than younger people. The median income
19 is the highest for people who are between 45-54 years old.
20 And a greater share of 55- to 64-year-olds are near or
21 below the poverty level than 35- to 44-year olds. And, in
22 addition to that, the median income for non-working couples
23 aged 55-64 is only \$20,000. So, this argument that they
24 are more wealthy is not true.

25 The Chairman. Thank you. The time has expired. Does

1 the Senator desire a roll call vote?
2 Senator Rockefeller. Yes, I would, Mr. Chairman.
3 The Chairman. The Clerk will call the roll.
4 The Clerk. Mr. Baucus.
5 Senator Baucus. Aye.
6 The Clerk. Mr. Boren.
7 Senator Boren. No.
8 The Clerk. Mr. Bradley.
9 Senator Bradley. No.
10 The Clerk. Mr. Mitchell.
11 Senator Mitchell. Aye.
12 The Clerk. Mr. Pryor.
13 Senator Pryor. Aye.
14 The Clerk. Mr. Riegle.
15 Senator Riegle. Aye.
16 The Clerk. Mr. Rockefeller.
17 Senator Rockefeller. Aye.
18 The Clerk. Mr. Daschle.
19 Senator Daschle. Aye.
20 The Clerk. Mr. Breaux.
21 Senator Breaux. No.
22 The Clerk. Mr. Conrad.
23 Senator Conrad. No.
24 The Clerk. Mr. Packwood.
25 Senator Packwood. No.

1 The Clerk. Mr. Dole.
2 Senator Dole. No.
3 The Clerk. Mr. Danforth.
4 Senator Danforth. No.
5 The Clerk. Mr. Chafee.
6 Senator Chafee. No.
7 The Clerk. Mr. Durenberger.
8 Senator Durenberger. No.
9 The Clerk. Mr. Grassley.
10 Senator Grassley. No.
11 The Clerk. Mr. Hatch.
12 Senator Hatch. No.
13 The Clerk. Mr. Wallop.
14 Senator Packwood. No, by proxy.
15 The Clerk. Mr. Roth.
16 Senator Packwood. No, by proxy.
17 The Clerk. Mr. Chairman.
18 The Chairman. No.
19 There are 14 nays and 6 yeas. The amendment is not
20 agreed to.
21 Senator Hatch?
22 Senator Hatch. Thank you, Mr. Chairman.
23 Mr. Chairman, the Chairman's mark, as drafted, would
24 have the effect of compelling every working American and
25 his or her employer to pay for abortion on demand

1 throughout the entire nine months of pregnancy.

2 Could I have order, Mr. Chairman?

3 This forced subsidization of abortion would result in
4 the largest expansion of abortion since Rowe vs. Wade. It
5 would upset the modus vivendi that has developed since that
6 time under the Hyde amendment, under which federal
7 taxpayers have not been required to subsidize abortion,
8 except in cases of threat to the life of the mother, rape,
9 and incest.

10 The Chairman's mark would nullify the Hyde amendment
11 and would overrun the laws of 37 States that generally
12 prohibit tax-funded abortions. Incidentally, those 37
13 States include most of the States represented by members of
14 this committee, including, to cite but a few examples,
15 Arkansas, North Dakota, Oklahoma, and South Dakota.

16 My amendment would remove this abortion mandate and
17 preserve the status quo. Under my amendment, the Federal
18 Government would not compel working Americans to subsidize
19 abortion, except in the cases of threat to the life of the
20 mother, rape, and incest. My amendment would also protect
21 existing State laws restricting tax-funded abortion.

22 At the same time, those Americans who want abortion
23 coverage would be free to purchase supplemental policies
24 covering abortion. Employers offering self-insured or
25 certified supplemental policies would be free, but not

1 required, to cover abortion, and States would remain free,
2 as they are now, to establish their own programs to pay for
3 abortion.

4 Now, let there be no mistake about it. The Chairman's
5 mark, like other spinoffs from the Clinton plan, would
6 require every local health plan to provide and pay for all
7 abortions. While the mark gives us the term of art,
8 "medically necessary or appropriate," there is no dispute
9 that, in the context of abortion, this term of art has
10 become Orwellian devil-speak for all abortions at any time
11 during pregnancy. Thus, no one should be misled into
12 thinking that the term "medically necessary or appropriate"
13 refers only to therapeutic abortions.

14 Mr. Chairman, American men and women, by overwhelming
15 margins, oppose the inclusion of abortion in a federal
16 health benefits package. A June 1993 CBS News, New York
17 Times poll found that 66 percent of voters, including 65
18 percent of women, said that abortions should not be covered
19 in a federal health care package.

20 This opposition has remained steady and, in fact,
21 appears to have increased. The May 18, 1994 issue of the
22 Journal of the American Medical Association published a
23 poll showing that 69 percent of Americans, including 68
24 percent of women, oppose including abortion in a federal
25 health benefits package. This opposition to force taxpayer

1 subsidization of abortions is also intense. According to
2 a June 1994 Worthlan poll, 66 percent --

3 The Chairman. Would the Senator desist for one minute?

4 Senator Hatch. Sure will.

5 The Chairman. The Senator is making an important
6 statement about an important amendment. I must ask that
7 the hearing room be quiet so that he may be heard.

8 All right, sir. I did not mean to interrupt you.

9 Senator Hatch. Thank you so much.

10 According to a June 1994 Worthlan poll, 66 percent of
11 Americans would be less likely to vote to re-elect a member
12 of Congress who voted for inclusion of abortion in a
13 federal health care plan, whereas only 23 percent would be
14 more likely to vote for such a member.

15 Moreover, of the 66 percent who said that they would be
16 less likely to vote for someone who supported inclusion of
17 abortion in a federal health care plan, 46 percent said
18 that they would be "much less likely" to vote for that
19 person. Of the only 23 percent who said that they would be
20 more likely to vote for such a member, only nine percent
21 said that they would be "much more likely."

22 So, it is worth noting that, whereas the Chairman's
23 mark would provide coverage of abortion on demand, coverage
24 that Americans do not want in a basic health benefit
25 package, it would not include coverage of such basic and

1 desired items as vision care and dental care for adults.
2 It seems to me that the coverage priorities are more than
3 a bit messed up in the mark. The only way to ensure that
4 Americans are not forced to subsidize abortion on demand is
5 to support this amendment, so I urge my colleagues to
6 support it.

7 I might say that the amendment basically said that,
8 notwithstanding the foregoing, "abortion shall not be a
9 covered service under this act except where," and then it
10 lists the following, "a woman suffers from a physical
11 disorder, illness or injury, that would, as certified by a
12 physician, place the woman in danger of death if the fetus
13 were carried to term, or the pregnancy is a result of rape
14 or incest.

15 This exclusion shall not be construed to remove or
16 diminish coverage of any reproductive health service,
17 family planning service, or service for pregnant women
18 otherwise provided for under this act, except abortion."
19 So all the others will be provided for if that is what the
20 package says, and that is basically what it does. I have
21 taken enough time, and I am happy to answer questions.

22 The Chairman. Thank you, Senator.

23 Senator Mitchell?

24 Senator Mitchell. Mr. Chairman, I know that we are
25 under five-minute rule, and, therefore, time does not

1 permit --

2 The Chairman. The five-minute rule is flexible.

3 Senator Mitchell. Well, I do not want to --

4 The Chairman. Where you are concerned.

5 Senator Mitchell. Well, no. I do not want to abuse
6 the rule, Mr. Chairman. I just believe that the members of
7 this committee know and understand full well that more than
8 two-thirds of private insurance policies now in existence
9 routinely cover such services, and adoption of this
10 amendment would effectively take away from many millions of
11 American women a covered service that they now have the
12 benefit of. We are here trying to increase coverage for
13 people in this country, and this is the only amendment that
14 I know of, the only area, in which an effort is being made
15 to deny coverage.

16 I have great respect for my friend and colleague, and
17 I know the conviction with which he speaks, and which he
18 makes this effort. All of us here, having been many years
19 in public life, have dealt with the issue and understand
20 the tremendous emotions on both sides.

21 I conclude, Mr. Chairman, by urging my colleagues to
22 vote no on this.

23 The Chairman. I thank the Senator.

24 I would like to make the point that the amendment is
25 neutral with respect to this matter. It does not say one

1 thing one way or the other.

2 Senator Packwood?

3 Senator Packwood. Well, Mr. Chairman, almost 25 years
4 ago I introduced an amendment which was basically a freedom
5 of choice act that would have legalized abortion
6 nationally. It was several years before Rowe vs. Wade.

7 Had you told me then that a quarter of a century later
8 we would still be debating this issue -- I mean, we have
9 gone up and down on the Viet Nam War, we have gone up and
10 down on Supreme Court judges, we have gone up and down on
11 a dozen other issues, and this is still here. Maybe there
12 is no point in discussing it further.

13 Abortion is a legal procedure in this country. Some
14 may like that, some may not like that, but it is legal. It
15 is constitutionally legal. It is provided in most
16 employer-provided health plans now. And what this
17 amendment is going to say, because we are going to have a
18 standard benefit package, is that no health plan can
19 provide abortion, except for very limited circumstances.

20 And what that is going to mean is, you are going to
21 have fewer doctors trained to do abortions, and what that
22 is going to mean, is poor women are going to have a very
23 difficult time finding anyone that they can afford that
24 will do abortions. And we are going to effectively go back
25 to pre-Rowe vs. Wade, except for those women who can

1 otherwise financially afford it, and that just is not fair.

2 I know this debate is going to go on. I know this
3 committee is closely divided. But, to be fighting this
4 battle 20 years after Rowe vs. Wade, 23 or 24 years after
5 I introduced the first bill, is beyond belief. I would
6 hope this committee would turn down this amendment, and all
7 of the other abortion amendments that we are going to have
8 tonight and leave people alone. I thank the Chairman.

9 The Chairman. Thank you.

10 Senator Hatch. Mr. Chairman.

11 The Chairman. Senator Hatch.

12 Senator Hatch. We are merely preserving the status quo
13 and not adding to it. The Chairman's mark makes it so
14 abortion has to be a federal benefit everywhere. Frankly,
15 that is not the status quo, that is adding to what the
16 current law is.

17 Now, I understand the very emotional two sides to this
18 issue, and we have tried to be sympathetic with regard to
19 that. What we are basically doing is preserving the
20 current law. And I think the public is there. It is not
21 quite the same as has been explained here.

22 The Chairman. We have to keep under our time limit.

23 Senator Hatch. I understand.

24 The Chairman. I must insist, the Chairman's mark is
25 neutral with respect to this subject.

1 Senator Danforth?

2 Senator Danforth. Mr. Chairman, I regret to differ
3 with you on your assertion that the Chairman's mark is
4 neutral, because it is not. It does provide for medically
5 necessary or appropriate pregnancy-related services, and
6 that has been construed by the courts to include abortion.
7 That is the whole reason for the Hyde amendment.

8 I mean, the purpose of the Hyde amendment was to say
9 that government is not going to subsidize abortion, and
10 that is the same issue that has been raised by Senator
11 Hatch because, insofar as we have a standard benefit
12 package, and insofar as that is subsidized by the
13 taxpayers, the same issue that is before us now is simply
14 an extension of the issue that has been fought over and
15 over again with respect to the Hyde amendment.

16 I would also like to say that, just as a practical
17 matter, I think all of us have recognized that the abortion
18 issue has been the one on which this whole enterprise could
19 founder. It is so strongly held. Senator Packwood has
20 very strong views in favor it; many people have the
21 opposite view.

22 Today, according to the National Journal's Congress
23 Daily, nearly 40 House Democrats are balking at supporting
24 health care reform legislation that includes abortion as
25 part of the benefits package. So, I would say, as a

1 practical matter, it would be a good thing to get it out.

2 Senator Riegle. Mr. Chairman.

3 The Chairman. Yes. But, may I say, I may have to
4 apologize to the Senator from Missouri. I defer to his
5 knowledge of court decisions in this matter, but it was
6 certainly not our intention to have it otherwise.

7 Senator Bradley. Mr. Chairman.

8 The Chairman. Senator Bradley.

9 Senator Bradley. I would like to just ask the Senator
10 from Utah, the point that the Majority Leader made, which
11 is that two-thirds of the women in private plans now do
12 have access to this, how do you respond to that?

13 Senator Hatch. Well, the statistics thrown about by
14 private insurance coverage on abortion are notoriously
15 unreliable. In fact, the arm of Planned Parenthood that
16 produced those numbers has refused to provide back-up
17 material, and its methodology appears to be highly suspect.

18 Senator Bradley. Well, let us say it is off by half.

19 Senator Hatch. Let me just finish.

20 Senator Bradley. What would you say to the 32 percent?

21 Senator Hatch. Let me just finish. In any event --

22 The Chairman. Well, we are not going to resolve this
23 methodology.

24 Senator Hatch. Well, if I could just finish his
25 question, I would appreciate it.

1 The Chairman. Please.

2 Senator Hatch. And I appreciate you allowing me.

3 In any event, anyone who wants abortion coverage is
4 free to acquire it. There is nothing in my amendment that
5 stops them from doing that. But why do we require 65-70
6 percent of all Americans to pay for abortion that they do
7 not believe in, and to do it pursuant to a federal health
8 benefits package? And why do we put it in this particular
9 bill that has got enough controversy attached to it as it
10 is? I think I am trying to help here, not hurt.

11 The Chairman. That is the Senator's question. The
12 Clerk will call the roll.

13 Senator Mitchell. Mr. Chairman.

14 The Chairman. Yes.

15 Senator Mitchell. Could I just make one brief comment
16 on the numbers?

17 The Chairman. Yes, of course.

18 Senator Mitchell. Senator Hatch has brought this chart
19 out.

20 Senator Hatch. It is not mine, it is Senator
21 Danforth's.

22 Senator Mitchell. Senator Danforth, then, to persuade
23 us. I was just struck by the coincidence that the first
24 figure there is 72 percent. That happens to be, according
25 to the most recent poll, the same percentage of Americans

1 who favor an employer mandate.

2 (Laughter)

3 The Chairman. The Clerk will call the roll.

4 Senator Hatch. This is different, of course.

5 Senator Mitchell. A different 72.

6 The Chairman. The Clerk will call the roll.

7 The Clerk. Mr. Baucus.

8 Senator Baucus. No.

9 The Clerk. Mr. Boren.

10 Senator Boren. No.

11 The Clerk. Mr. Bradley.

12 Senator Bradley. No.

13 The Clerk. Mr. Mitchell.

14 Senator Mitchell. No.

15 The Clerk. Mr. Pryor.

16 Senator Pryor. No.

17 The Clerk. Mr. Riegle.

18 Senator Riegle. No.

19 The Clerk. Mr. Rockefeller.

20 Senator Rockefeller. No.

21 The Clerk. Mr. Daschle.

22 Senator Daschle. No.

23 The Clerk. Mr. Breaux.

24 Senator Breaux. Aye.

25 The Clerk. Mr. Conrad.

1 Senator Conrad. Aye.
2 The Clerk. Mr. Packwood.
3 Senator Packwood. No.
4 The Clerk. Mr. Dole.
5 Senator Dole. Aye.
6 The Clerk. Mr. Roth.
7 Senator Roth. Aye.
8 The Clerk. Mr. Danforth.
9 Senator Danforth. Aye.
10 The Clerk. Mr. Chafee.
11 Senator Chafee. No.
12 The Clerk. Mr. Durenberger.
13 Senator Durenberger. Aye.
14 The Clerk. Mr. Grassley.
15 Senator Grassley. Aye.
16 The Clerk. Mr. Hatch.
17 Senator Hatch. Aye.
18 The Clerk. Mr. Wallop.
19 Senator Packwood. Aye, by proxy.
20 The Clerk. Mr. Chairman.
21 The Chairman. No.
22 There are 11 nays, 9 yeas. The amendment does not
23 succeed.
24 Senator Grassley. Mr. Chairman.
25 The Chairman. Senator Grassley.

1 Senator Grassley. I have an amendment that just
2 naturally fits in right after this because it is a little
3 less sweeping than what he has, and I think now would be a
4 good time to consider that.

5 The Chairman. Fine. In five minutes.

6 Senator Grassley. Yes. The amendment that I am
7 offering would ensure that this mark not preempt
8 constitutionally permissible regulations of abortion by the
9 States. My amendment would, for example, preserve State
10 authority to provide for informed consent, parental consent
11 and notification, and brief waiting periods. These are all
12 majors that, incidentally, enjoy overwhelming public
13 support and that are in force in many or most of the States
14 represented by members of this committee, and the whole
15 Senate.

16 This amendment is necessary to prevent the mark from
17 becoming a vehicle for accomplishing a lot that the Freedom
18 of Choice Act might want to accomplish, and, obviously,
19 that measure is not going to be able to get through this
20 Congress and we want to make sure that some other stealth
21 approach that might accomplish the same thing does not get
22 through.

23 So, let me begin by clarifying a legal point that has
24 apparently been confusing. The issue of whether State-
25 informed consent, parental consent and notification and

1 waiting period regulations would be preempted by federal
2 law is entirely distinct from the separate question of
3 whether these State regulations are constitutional under
4 the 14th Amendment.

5 Under clear Supreme Court precedent, there is no
6 question that such regulations are constitutional, but even
7 constitutional State laws and regulations are subject to
8 being preempted or overridden by federal law under the
9 supremacy clause.

10 So, the issue I am addressing is whether or not
11 Congress is going to use a health care bill to preempt the
12 constitutionally permissible regulations of abortion by
13 States, just as some in Congress would do through the
14 Freedom of Choice Act.

15 Therefore, I hope you will not try to point out to me
16 that the Supreme Court has upheld the constitutionality,
17 under the 14th Amendment, of informed consent, parent
18 consent and notification, and brief waiting periods, and,
19 consequently then my amendment would not be needed.

20 While the skeletal language of the Chairman's mark is
21 somewhat obscure, there is no question that the mark, like
22 the Clinton bill, would be used to preempt all
23 constitutionally permissible State regulation of abortion.

24 The president of Planned Parenthood Federation has made
25 this, I think, abundantly clear, in opposing the

1 implementation of Pennsylvania's informed consent, parental
2 consent, and waiting period provisions, the provisions
3 upheld as constitutional in the Casey case. The Planned
4 Parenthood president stated that, "health care reform
5 promised broader access to abortion and would eliminate
6 these State laws."

7 The mark, like the Clinton bill, would use a variety of
8 means to eliminate the modest regulations that the people
9 in the various States, including States represented by a
10 number of Senators on this committee, have seen fit to
11 enact.

12 For instance, a National Health Benefits Board
13 authority to issue regulations regarding categories of
14 covered services would be used to override State abortion
15 laws and regulations, and the specific standards developed
16 by the Secretary of HHS to be used in certification of all
17 health plans would undoubtedly also override these laws.

18 We can also be sure that, as the mark is converted from
19 conceptual statement into legislative language, features of
20 the Clinton plan and other ideas that are on the Hill to
21 accomplish these same goals would provide directly for the
22 preemption of constitutionally permissible State
23 regulations of abortion, and I am afraid that these would
24 be incorporated.

25 These include, for example, prohibitions on States from

1 imposing limitations on benefits included in benefit
2 packages, confidentiality obligations that would override
3 parental consent and notification statutes, and
4 authorization to the National Health Board to ensure
5 national uniformity and application of benefit packages.

6 So, in closing, let me emphasize that this amendment
7 would simply preserve the status quo. It is necessary to
8 ensure that health care reform not become the vehicle for
9 overriding the constitutionally permissible abortion
10 regulations of each of the States. It would not expand one
11 iota the authority that the people of the various States
12 currently have under the Casey case.

13 The Chairman. The Chairman would like to state that
14 there is not a line in the Chairman's mark that preempts
15 any State provision.

16 Senator Mitchell. Mr. Chairman.

17 The Chairman. Senator Mitchell.

18 Senator Mitchell. I will be brief. The supremacy
19 clause invalidates only those State laws which are in
20 conflict with federal, and States are free to regulate in
21 this field. It is redundant to suggest that they must have
22 that right.

23 Health care reform does not address, and will not
24 overturn constitutional State laws such as parental consent
25 and notification laws, mandatory waiting periods,

1 counseling requirements, limits on post-viability
2 abortions.

3 So, I urge, again, my colleagues to vote against this
4 amendment. It is redundant, unnecessary, and it actually
5 an attempt to establish a method of excluding the provision
6 of abortion.

7 The Chairman. Thank you, Senator Mitchell.

8 Senator Packwood?

9 Senator Packwood. I agree totally with Senator
10 Mitchell. The Chairman indicated his bill is neutral on
11 this subject, and it truly is. On the previous amendment
12 when he said his bill was neutral, it really was not,
13 because the bill does permit medically necessary
14 procedures, and abortion falls within that definition, and
15 Senator Danforth was right.

16 But, in this case, this bill says nothing about
17 anything that any State has passed, unwise as it might be
18 in my judgment, nor does it preclude anything else that any
19 State might pass that is constitutional, even though I
20 think it would be unwise, in my judgment.

21 This amendment I regard as a troublemaking amendment,
22 attempting to more or less write into the law a
23 presumption, rebuttable as it may be, but a presumption of
24 encouraging States to go beyond what they have done now.
25 I think if we want to get into that battle, let us get into

1 it in the Judiciary Committee, let us get into it in
2 another bill. But the Chairman's bill does not, one way or
3 the other, touch upon current law.

4 The Chairman. Senator Grassley.

5 Senator Grassley. Thirty seconds. I think it is
6 legitimate to say, as Senator Mitchell and Senator Moynihan
7 have said, that you od not attempt to do this. I want to
8 clarify it. I think it is legitimate to clarify it. I
9 think it is legitimate to clarify it because some of the
10 people who are in the private sector on the other side
11 reading the Casey case, seeing what it does, how it
12 interacts with national health insurance and the goals of
13 those national health insurance proposals, particularly the
14 Clinton, is the basis for our concern. And, if you do not
15 attempt to do it, it seems to me you should not fight any
16 attempt to clarify.

17 The Chairman. Did Senator Danforth wish to speak?

18 Senator Danforth. Well, I would like to raise a
19 question about the comments by Senator Mitchell and Senator
20 Packwood that this is simply redundant, because the bill
21 provides that health plans have to assure that the standard
22 package and any supplemental benefits are available and
23 accessible in all parts of State-defined service areas.

24 Now, let us suppose that a State had a waiting period
25 and that the waiting period is constitutionally

1 permissible, say 24 hours, 48 hours, whatever would be
2 constitutionally permissible.

3 Does that conflict with the requirement in the
4 legislation that abortion is available and accessible? My
5 thought is that there is a likely argument that it would
6 conflict with that, and, for that reason, I do not think
7 this is redundant. And, if it is redundant, why not pass
8 it? But I really do believe that the argument is going to
9 be made that State statutes have been preempted by an act
10 of Congress.

11 The Chairman. Thank you, Senator Danforth. The Clerk
12 will --

13 Senator Mitchell?

14 Senator Mitchell. Well, if I could just respond by
15 saying, those statutes will be tested in the courts and
16 confirmed or rejected on their individual merits, as has
17 been the case for many --

18 Senator Danforth. Well, the question before the court
19 would be, under the supremacy clause, would the State
20 statute be preempted by an act of Congress, namely, what we
21 are trying to pass?

22 Senator Mitchell. I think, given the recent decisions
23 of the court, the answer is likely to be no, but that is a
24 decision that the court will have to make.

25 Senator Danforth. Well, I think, Senator Mitchell,

1 that you are talking about whether it would conflict with
2 the constitution, and it would not. But what I am saying
3 is, in the supremacy clause, if a State statute conflicts
4 with a federal statute, it is preempted. And I think what
5 Senator Grassley is trying to say is, if it is a
6 constitutional State statute, then it would not be
7 preempted by what we are passing.

8 The Chairman. Well, I am going to rule that this is
9 the Finance Committee, not the Supreme Court. And,
10 therefore, the Clerk will call the roll.

11 The Clerk. Mr. Baucus.

12 Senator Baucus. Aye.

13 The Clerk. Mr. Boren.

14 Senator Boren. Aye.

15 The Clerk. Mr. Bradley.

16 Senator Bradley. No.

17 The Clerk. Mr. Mitchell.

18 Senator Mitchell. No.

19 The Clerk. Mr. Pryor.

20 Senator Pryor. No.

21 The Clerk. Mr. Riegle.

22 Senator Riegle. No.

23 The Clerk. Mr. Rockefeller.

24 Senator Rockefeller. No.

25 The Clerk. Mr. Daschle.

1 Senator Daschle. No.
2 The Clerk. Mr. Breaux.
3 Senator Breaux. Aye.
4 The Clerk. Mr. Conrad.
5 Senator Conrad. Aye.
6 The Clerk. Mr. Packwood.
7 Senator Packwood. No.
8 The Clerk. Mr. Dole.
9 Senator Dole. Aye.
10 The Clerk. Mr. Roth.
11 Senator Roth. Aye.
12 The Clerk. Mr. Danforth.
13 Senator Danforth. Aye.
14 The Clerk. Mr. Chafee.
15 Senator Chafee. No.
16 The Clerk. Mr. Durenberger.
17 Senator Durenberger. Aye.
18 The Clerk. Mr. Grassley.
19 Senator Grassley. Aye.
20 The Clerk. Mr. Hatch.
21 Senator Hatch. Aye.
22 The Clerk. Mr. Wallop.
23 Senator Packwood. Aye, by proxy.
24 The Clerk. Mr. Chairman.
25 The Chairman. No.

1 There are 11 yeas, 9 nays. The amendment of the
2 Senator from Iowa is adopted.

3 Senator Grassley. Thank you.

4 Senator Danforth. Mr. Chairman.

5 The Chairman. The Senator from Missouri.

6 Senator Danforth. Mr. Chairman, I do not know what
7 your wishes are with respect to sequencing and going back
8 and forth, but I have three amendments on the question of
9 abortion, and I do not think they will take very long to
10 describe, but I would like to offer them.

11 The Chairman. Well, why do we not stay in this field
12 while we are at it, and let us try not to take too long.
13 Perhaps you could describe all three, and then we can vote
14 on all three.

15 Senator Danforth. All right.

16 Mr. Chairman, the first amendment provides that nothing
17 in this act shall be construed to require the creation or
18 maintenance of abortion clinics or other abortion providers
19 within any State or region. The reason for this, is the
20 same provision in the Chairman's mark that I cited earlier.

21 The Chairman's mark provides that States that have a
22 health plan will be required to have within their network
23 or contract with a sufficient number of distribution and
24 variety of providers to assure that the standardized
25 package and any supplemental benefits are available and

1 accessible in all parts of State-defined service areas,
2 with reasonable promptness, and in a manner which assures
3 continuity.

4 Now, there are two States, and they both happen to be
5 represented on this committee, as a matter of fact, that
6 have one abortion provider in the State. There are a
7 number of States that have a majority of their counties
8 without an abortion provider.

9 And it would be my view that how many abortion
10 providers there are in any State, or in any area, really
11 should be a matter of local determination, but we should
12 not create a situation in this legislation where, in order
13 to meet the available and accessible test, it is necessary
14 for States to go out and recruit abortion providers to come
15 into their State and their area.

16 The Chairman. May I suggest that we ought to vote
17 sequentially on these, because we do not want to mix them
18 up. Is that your proposal?

19 Senator Packwood, then Senator Baucus.

20 Senator Baucus. Well, just to defer to the Senator
21 from Oregon. I just had a question.

22 Senator Packwood. Which one is this, Jack? I have got
23 three amendments here.

24 Senator Danforth. The shortest one.

25 Senator Packwood. The shortest one.

1 The Chairman. The first. That first sentence,
2 "nothing in this act shall be construed to require."

3 Senator Packwood. All right.

4 Well, then just reading the first sentence, do I
5 understand that we have decided that abortion will be in
6 the basic benefit package?

7 Senator Mitchell. Mr. Chairman, can we get a copy of
8 the amendment?

9 Senator Packwood. It is coming right now. It is the
10 first time I have seen it. It is being passed out. The
11 first sentence, "Nothing in this act shall be constructed
12 to require the creation or maintenance of abortion clinics,
13 or other abortion providers, within any State or region of
14 the State."

15 We have decided that abortion is going to be in the
16 basic benefit packages, but it looks to me like the State
17 is free to make sure that, if they want them, they are not
18 going to provide any facilities for carrying out abortions.
19 Do I read it correctly, roughly?

20 Senator Danforth. Yes, I think you do. I think that
21 the question is, is it the intention of this statute to
22 require the opening of abortion clinics in areas which are
23 now where abortion is not readily accessible physically to
24 the people who are there?

25 Senator Packwood. Well, let me put it the other way

1 around. And I suppose you could say that, in that case, of
2 any medically necessary service. Is the State required,
3 and then just put in ... to require medically necessary
4 service in an area where it is not otherwise provided
5 because the State does not want to do it. And you are
6 going to single out only abortions. That, to me, is
7 grossly unfair. I understand why you are doing it, because
8 you and I differ on this subject.

9 But to simply say, well, the State does not want to do
10 it, it is an area where they are not doing it now, and,
11 therefore, they do not have to do it, and this is the only
12 procedure that they do not have to do, because I do not
13 think any other medically necessary procedure that they are
14 required to provide by law they would be allowed to say, we
15 do not want to do it in this area, I do not think we would
16 permit that. So, I would hope this amendment would be
17 defeated.

18 Senator Danforth. The question would be, do private
19 insurance plans have to assure that an abortion facility
20 must be available in their geographic region in order to
21 receive certification?

22 The Chairman. Senator Baucus.

23 Senator Baucus. Mr. Chairman, as I read this, it goes
24 even further than the worries described by the Senator from
25 Oregon. This says, "Nothing in this act shall be construed

1 to require the creation and maintenance of abortion clinics
2 and abortion providers within any State." Anyplace. As I
3 read this, nothing can be construed to require the creation
4 of any abortion clinic in any part of any State. I just
5 think, for that reason, we should not adopt it.

6 The Chairman. Senator Mitchell.

7 Senator Mitchell. Mr. Chairman, I will be brief. We
8 do not have certification procedures for heart surgery,
9 brain surgery, cardiology, any other service. Yet this is
10 an attempt to establish certification procedures in just
11 one area.

12 I think it is rather clear that this is one of a series
13 of amendments to either exclude, or make it more difficult
14 for the provision of a service that, as Senator Packwood
15 has pointed out, has been validated as constitutionally
16 permissible.

17 Senator Danforth. Mr. Chairman, it cannot be said that
18 this provision is neutral, that this bill is neutral on
19 abortion if the result of the bill is to require the
20 creation of abortion clinics where they do not now exist.

21 If the meaning of this statute is to require that new
22 abortion clinics are established in States where they are
23 viewed to be underserved with abortion, that really is an
24 expansion as a matter of law. That would be a very clear
25 expression of intent.

1 Senator Mitchell. Well, Mr. Chairman, may I respond in
2 the following manner? Throughout our country, our
3 population has been notable for its mobility. There are
4 substantial population shifts. The Senator has pointed out
5 that in some States represented here, there is only one
6 clinic now. It is not beyond the realm of possibility that
7 population shifts will occur in such a manner that it may
8 be appropriate, for the provision of services, to construct
9 a facility in the area to which the population is shifted.
10 This would prevent that.

11 Senator Danforth. No, it will not. No. That is not
12 true. It would not prevent it at all. It would simply say
13 that a plan would not lose its certification if it did not
14 happen to have an abortion clinic in that area.

15 Senator Mitchell. But what it says is, if the plan or
16 State then decided that they wanted to establish a facility
17 somewhere else, this would prevent that.

18 Senator Danforth. No, it would not.

19 The Chairman. The Clerk will call the --

20 Senator Boren. Mr. Chairman, could I ask one question?

21 The Chairman. I am sorry. The Senator from Oklahoma.

22 Senator Boren. If a woman were covered by a plan and
23 lived in a State which had no clinic, would that woman,
24 because the plan covered abortions, be able to get that
25 service somewhere in an adjoining State or another region?

1 Senator Danforth. Yes.

2 Senator Boren. The answer is yes, that would be
3 covered by the insurance?

4 Senator Danforth. You can get it somewhere else.

5 The Chairman. The Clerk will call the roll.

6 The Clerk. Mr. Baucus.

7 Senator Baucus. No.

8 The Clerk. Mr. Boren.

9 Senator Boren. Aye.

10 The Clerk. Mr. Bradley.

11 Senator Bradley. No.

12 The Clerk. Mr. Mitchell.

13 Senator Mitchell. No.

14 The Clerk. Mr. Pryor.

15 Senator Pryor. Aye.

16 The Clerk. Mr. Riegle.

17 Senator Riegle. No.

18 The Clerk. Mr. Rockefeller.

19 Senator Rockefeller. No.

20 The Clerk. Mr. Daschle.

21 Senator Daschle. No.

22 The Clerk. Mr. Breaux.

23 Senator Breaux. Aye.

24 The Clerk. Mr. Conrad.

25 Senator Conrad. Aye.

1 The Clerk. Mr. Packwood.
2 Senator Packwood. No.
3 The Clerk. Mr. Dole.
4 Senator Dole. Aye.
5 The Clerk. Mr. Roth.
6 Senator Roth. Aye.
7 The Clerk. Mr. Danforth.
8 Senator Danforth. Aye.
9 The Clerk. Mr. Chafee.
10 Senator Chafee. No.
11 The Clerk. Mr. Durenberger.
12 Senator Durenberger. Aye.
13 The Clerk. Mr. Grassley.
14 Senator Grassley. Aye.
15 The Clerk. Mr. Hatch.
16 Senator Hatch. Aye.
17 The Clerk. Mr. Wallop.
18 Senator Packwood. Aye, by proxy.
19 The Clerk. Mr. Chairman.
20 The Chairman. Aye.
21 There are 12 yeas, 8 nays. The amendment is agreed to.
22 Senator Danforth. Mr. Chairman.
23 The Chairman. The Senator from Missouri.
24 Senator Danforth. Mr. Chairman, the next of the
25 amendments is the conscience clause amendment, and I think

1 it has been passed out. It really speaks for itself. It
2 says that "nothing in this act shall be construed to
3 prevent an individual from purchasing a standard benefits
4 package that excludes abortion if the individual objects to
5 abortion on the basis on religious belief or moral
6 conviction, to prevent an employer from contributing to the
7 purchase of a standard benefit package excluding abortion,
8 to require any health professional or health facility to
9 perform or assist in the performance of any benefit service
10 that the professional health association or health facility
11 objects to doing so on the basis of religious belief or
12 moral conviction, and to require any commercial insurance
13 company, et cetera, to offer a package including abortion
14 if the plan objects on the basis of religious belief or
15 moral conviction."

16 Now, Mr. Chairman, this grows out of discussions that
17 I had with the Catholic Health Association. When we were
18 meeting in the back room and we talked very candidly about
19 how the abortion issue was going to be one that was going
20 to be very difficult as far as this legislation was
21 concerned.

22 And, after that meeting, I met with the Catholic Health
23 Association and asked them exactly what their problems were
24 and they said, look, we are providers of health care, we
25 are employers who buy health insurance for our people, we

1 are involved in health insurance, both as providers,
2 employers, and people who are insured, and, as a matter of
3 conscience, it is totally contrary to everything we believe
4 in if we are forced to buy insurance for people that covers
5 abortion, or if we are expected to provide abortion for
6 them, and we would like a conscience exemption.

7 I might say that the Catholic Health Association has
8 been a very vigorous advocate of the Clinton health
9 program, no less. I mean, they are very, very much into
10 the question of health care reform. But, as a matter of
11 conscience, they are very concerned about what this would
12 require them to do.

13 Senator Packwood. Mr. Chairman.

14 The Chairman. Senator Packwood.

15 Senator Packwood. Well, again, I have not seen this
16 amendment till now. But, if I understand what you are
17 saying, we are now saying a standard benefit will include
18 medically necessary services, and that includes abortion,
19 and we are saying the employer will provide a plan.

20 But, if the employer does not want, he does not have to
21 cover the abortion services. That is the way it looks to
22 me. All the employer has to say is, I have a strong moral
23 conviction. I think that means, i.e., I do not want to
24 pay, and I have a strong moral conviction.

25 The employer may or may not have a strong moral

1 conviction, but it is a way to opt out of paying. I would
2 hope we are not getting to the place where we are going to
3 have standard benefit packages and then say, but if you
4 want to opt out of it, go ahead.

5 You have a constitutional right to an abortion, we have
6 a standard benefit package that says you can have an
7 abortion. We have already voted in this committee that we
8 are going to have it in the standard benefit package, but
9 Mr. and Ms. Employer, if you want out, you can get out. I
10 would hope this committee would not adopt that.

11 Senator Rockefeller. Mr. Chairman.

12 The Chairman. Senator Rockefeller.

13 Senator Rockefeller. Just a question for Senator
14 Danforth. It says here, "each purchaser of insurance would
15 then be given the option of choosing the benefit package
16 which excludes coverage of abortion, et cetera."

17 Senator Danforth. Where are you reading?

18 Senator Rockefeller. Is this the wrong amendment?

19 Senator Danforth. I think you have got the wrong
20 amendment.

21 Senator Rockefeller. My apologies. No, I do not think
22 I am wrong on this, because it says, "amendment to prevent
23 forced subsidization of abortion by those with strong moral
24 conscience, moral objections." Is this not an explanation
25 of the shorter amendment?

1 Senator Danforth. It is another one. It is the wrong
2 one.

3 The Chairman. Senator Durenberger, hold up your
4 amendment. I am sorry. Forgive me. There you are. This
5 is the amendment.

6 Senator Danforth. Yes.

7 Senator Breaux. The one that has the four paragraphs.

8 The Chairman. Senator Danforth. Four paragraphs.

9 Senator Danforth. Right. Right.

10 Senator Packwood. Is this the one you were looking at?

11 The Chairman. Yes, sir. That is the one.

12 Senator Mitchell. Mr. Chairman, may I ask?

13 The Chairman. Senator Mitchell.

14 Senator Mitchell. Mr. Chairman, these are described as
15 conscience clauses and they presume the existence of a
16 conscience of an individual who, in the beginning, were the
17 providers, and a powerful, legitimate, and, I believe,
18 valid argument was made, that no person should be compelled
19 to provide abortion services if that were contrary to his
20 or her religious belief.

21 This is an attempt to extend the conscience provision
22 to plans and organizations which, by definition, do not
23 have consciences. A plan is a coverage and payment
24 mechanism, and, as such, it is clearly part of an effort to
25 further restrict the availability of the provision of what

1 is a constitutionally permissible health service in our
2 country, and I think there can be no doubt or dispute about
3 that. I support the view with respect to individual
4 providers, but I think that this goes far beyond that and
5 I urge it not be accepted.

6 Senator Rockefeller. Mr. Chairman.

7 The Chairman. Senator Rockefeller.

8 Senator Rockefeller. I am back again with the same
9 point.

10 The Chairman. You have the same amendment?

11 Senator Rockefeller. Yes. It is a different
12 amendment, the same point. "Prevent any employer from
13 contributing to the purchase of a standard benefit package
14 excluding abortion, et cetera."

15 Now, there is going to be, depending on what comes out
16 of this health care--and we do not know what it will be--
17 employers who will purchase, and the employees will have
18 nothing to say about what is purchased, so that the
19 employer would be making the decision for the employee, who
20 might not agree with the employer's decision.

21 Senator Danforth. Yes. The employee would have to buy
22 a supplemental policy to cover abortion. But what we are
23 saying is, if the employer, let us say, the Catholic
24 Hospitals, felt that, as a matter of conscience, they did
25 not want to pay for abortions, they did not want to buy

1 abortions for the people who worked for them, we would be
2 saying, you do not have to, you would leave that up to the
3 person who wanted to buy that coverage.

4 Senator Bradley. Would there be a provision that would
5 provide the money to buy the supplemental?

6 Senator Danforth. No.

7 The Chairman. Senator Dole.

8 Senator Dole. What is the penalty for an employer who
9 would refuse to buy insurance if this were not adopted? I
10 happened to meet a man in Cleveland last week who said, I
11 will go to jail before I will provide my employees with a
12 benefit package which includes abortion. He has a very
13 strong moral conviction and he has got a very successful
14 company. Now, does he go to jail if he does not provide
15 abortion coverage?

16 Senator Breaux. Would the Senator yield on that?

17 Senator Dole. Yes.

18 Senator Breaux. We have the situation where we did not
19 have an employer mandate in this bill right now, so if the
20 employer was faced with that decision without this
21 amendment, he may choose not to provide any insurance at
22 all.

23 Senator Dole. One of the choices he would make.

24 The Chairman. Well, the Clerk will call the roll.

25 The Clerk. Mr. Baucus.

1 Senator Baucus. No.
2 The Clerk. Mr. Boren.
3 Senator Boren. Aye.
4 The Clerk. Mr. Bradley.
5 Senator Bradley. No.
6 The Clerk. Mr. Mitchell.
7 Senator Mitchell. No.
8 The Clerk. Mr. Pryor.
9 Senator Pryor. No.
10 The Clerk. Mr. Riegle.
11 Senator Riegle. No.
12 The Clerk. Mr. Rockefeller.
13 Senator Rockefeller. No.
14 The Clerk. Mr. Daschle.
15 Senator Daschle. Aye.
16 The Clerk. Mr. Breaux.
17 Senator Breaux. Aye.
18 The Clerk. Mr. Conrad.
19 Senator Conrad. Aye.
20 The Clerk. Mr. Packwood.
21 Senator Packwood. No.
22 The Clerk. Mr. Dole.
23 Senator Dole. Aye.
24 The Clerk. Mr. Roth.
25 Senator Roth. Aye.

1 The Clerk. Mr. Danforth.
2 Senator Danforth. Aye.
3 The Clerk. Mr. Chafee.
4 Senator Chafee. No.
5 The Clerk. Mr. Durenberger.
6 Senator Durenberger. Aye.
7 The Clerk. Mr. Grassley.
8 Senator Grassley. Aye.
9 The Clerk. Mr. Hatch.
10 Senator Hatch. Aye.
11 The Clerk. Mr. Wallop.
12 Senator Packwood. Aye, by proxy.
13 The Clerk. Mr. Chairman.
14 The Chairman. Aye.
15 The Danforth amendment No. 2 has 12 yeas and 8 nays,
16 and is, accordingly, approved.
17 Senator Packwood. Mr. Chairman.
18 The Chairman. The Ranking Member.
19 Senator Packwood. Let me offer a suggestion. We have
20 15-20 more amendments. That does not mean I agree with
21 them all, but there is 15-20 more amendments on this side;
22 I do not know if there is any on your side. I would
23 suggest we quit for the evening and come back at 8:30 or
24 9:00.
25 Senator Hatch. Why do we not finish this last one?

1 Senator Packwood. Finish the what?

2 Senator Hatch. He has one more to do.

3 Senator Packwood. I have no objection to finishing the
4 last abortion amendment, but I am curious if the Chair
5 would entertain the thought of wrapping up.

6 Senator Baucus. Mr. Chairman, might I ask if you have
7 any idea how long these other amendments are going to take?

8 The Chairman. Could we have the Dole five-minute rule?

9 Senator Riegle. Let us go to the one-minute rule.

10 The Chairman. One-minute rule.

11 Senator Chafee. Mr. Chairman.

12 The Chairman. Senator Chafee.

13 Senator Chafee. Is there any idea of -- obviously you
14 cannot tell specifically, but is there any idea of how many
15 amendments there are tomorrow?

16 The Chairman. I wonder if I could ask my colleagues.

17 Senator Chafee. We are all anxious to get out of here
18 by, certainly, early afternoon, if possible.

19 The Chairman. Yes. Let us grind it out tonight.

20 Senator Baucus. Mr. Chairman. Mr. Chairman.

21 Senator Bradley. We are going to have to be here to
22 vote, anyway.

23 Senator Baucus. Mr. Chairman, I might ask -- I mean,
24 maybe some amendments do not have to be offered tonight.
25 There are plenty of opportunities on the floor to offer

1 some of these amendments. I would just urge us to keep
2 going tonight.

3 Senator Dole. Mr. Chairman.

4 The Chairman. Senator Dole.

5 Senator Dole. Could I just say, we have tried to be
6 very cooperative all day long. We could have objected to
7 meeting today; we did not do that. Senate is still in
8 session. We would not be meeting at 10:00 o'clock.

9 I think we are entitled to -- you know, we have been at
10 it for several hours. We can come back at 10:00 o'clock
11 and try to finish by 1:00 o'clock. I do not think it will
12 take that long, but I think it will be helpful for our
13 staff to take a look at it and see what we can do.

14 The Chairman. Fine. And the Dole guillotine rule
15 remains in effect?

16 Senator Dole. Right. It would be all right with me.
17 I make a motion that it would be five minutes tomorrow.

18 Senator Grassley. Come back at 8:00 o'clock, or some
19 reasonable time.

20 The Chairman. 10:00.

21 Senator Dole. You wake up at 8:00, go back to sleep.

22 The Chairman. 9:30.

23 Senator Packwood. 9:30.

24 You want to do this last abortion amendment?

25 The Chairman. Yes. Could we do that? Senator

1 Danforth has a third amendment.

2 Senator Danforth. Yes.

3 The Chairman. And you wish to offer it?

4 Senator Danforth. Yes, I do, Mr. Chairman.

5 The Chairman. Fine. Can we hear Senator Danforth?
6 And then we will finish.

7 Senator Danforth. This is an amendment which has the
8 intention of trying to utilize the concept of the Hyde
9 amendment with respect to the legislation that we are
10 passing. The question is, let us suppose that a plan does
11 offer abortion.

12 The Chairman. Senator Danforth, I do have to ask you,
13 which one are you on?

14 Senator Danforth. The long one.

15 The Chairman. The two-pager with a different format.

16 Senator Danforth. A different format, and it does not
17 have --

18 The Chairman. It begins, "Amendment to prevent forced
19 subsidization of abortions by those with strong moral
20 objections."

21 Senator Danforth. Right.

22 The Chairman. All right.

23 Senator Danforth. Yes. The question is, if you have
24 a plan that offers abortion, how do you get around the
25 subsidization issue for low-income people? I mean, if we

1 decide that the principle of the Hyde amendment is correct,
2 and that if people have abortion it is not going to be
3 subsidized by the government, it is not going to be
4 subsidized by people who feel that it is abhorrent, how do
5 we get around that? And the concept here is that, if a
6 plan offers abortion as part of its package, it offers, at
7 the same time, an option to purchase a plan that does not
8 include abortion.

9 And the subsidy is computed on the basis of the plan
10 without the abortion, so there would be, in this case, two
11 identical plans, you could buy A or B; one would cover
12 abortion, one would not cover abortion, and the subsidy
13 would be computed on the basis of the one that did not
14 cover abortion.

15 Senator Dole. So, no federal funding.

16 Senator Danforth. There would be no federal funding
17 for abortion under this. That is right.

18 The Chairman. Senator Packwood.

19 Senator Packwood. Jack, I want to make sure I
20 understand this, now. You have got a woman working, low-
21 income, eligible for vouchers. If she receives them, she
22 is essentially barred from receiving abortion coverage, is
23 that right? She cannot choose the plan that has abortion
24 coverage if she has the subsidy.

25 Senator Danforth. That is correct. Her abortion

1 coverage would be paid for by herself, it would not be
2 subsidized by the taxpayer. It would be the same as the
3 Hyde amendment with respect to Medicaid.

4 Senator Packwood. Ye. But now it is also going to
5 apply to others that have plans now. They are working,
6 they have got plans. They are making \$13,000, \$14,000,
7 \$15,000, but they are covered. They are eligible for a
8 subsidy, and now we are saying, you can no longer
9 participate in that plan, your employer has to offer
10 another plan, and you, poor woman, as opposed to a \$25,000-
11 30,000 woman who does not have the voucher, cannot
12 participate in the plan that provides you with abortions.
13 Most people do not go out and purchase abortion coverage
14 ahead of time. They are not presuming they are going to
15 have an abortion.

16 Senator Rockefeller. Mr. Chairman.

17 Senator Packwood. I am not done.

18 The Chairman. Now, just a second, please.

19 Senator Rockefeller. Excuse me. I apologize.

20 Senator Packwood. They are not presuming they are
21 going to have an abortion. And, frankly, they also do not
22 want to go out and say to their employer, here is my
23 private money, I want to choose an abortion package, Mr.
24 Employer. You do not realize this yet, but I am thinking
25 I might want to have an abortion some day, so I want to

1 choose that. This is absolutely unfair.

2 I can marginally understand the other votes we have
3 had. I do not agree with them, but I can understand them.
4 This one, I cannot understand where you are going to take
5 away from that woman the right that she now has, or make
6 her choose not to have vouchers. That just is not fair.

7 Senator Danforth. Now, it is also not correct. The
8 policy that we now have is that the government, through
9 Medicaid, subsidizes low-income people. The program we are
10 creating is going to expand that subsidy to cover more than
11 the Medicaid population. We are going to have a subsidy
12 program now that covers up to 240 percent of poverty, so it
13 is a tremendous expansion of the number of people who are
14 going to be covered by government subsidized health care.

15 The issue is, does the principle of the Hyde amendment
16 apply only to Medicaid, or does the principle of the Hyde
17 amendment apply to government subsidies of health care?
18 And I am saying that the Hyde amendment principle should
19 apply to the concept of whether or not the taxpayer is
20 going to subsidize abortion, whether it is for low-income
21 people or people who are somewhat higher income than the
22 Medicaid beneficiaries.

23 Senator Bradley. Mr. Chairman.

24 Senator Mitchell. Mr. Chairman.

25 Senator Bradley. Mr. Chairman.

1 The Chairman. Senator Mitchell.

2 Senator Mitchell. Mr. Chairman, I think there are at
3 least two ironies in this debate. The first, is that the
4 President's plan was subjected to so much criticism for
5 creating bureaucracy.

6 This amendment would require every health plan in the
7 country to offer two different sets of plans, so,
8 therefore, doubling the number of plans that have to be
9 offered in a Nation of 260 million people.

10 Second, much of the debate on health care has been to
11 provide health insurance, and, through health insurance,
12 health services to all Americans. This takes us back to a
13 two-tiered system, in effect, saying to poor women, you are
14 not going to get the same services that are available to
15 women of means, which, I think, is a direction contrary to
16 that which this entire effort is directed.

17 Finally, with respect to the subsidy argument, this is
18 as old as the Nation. Pacifists who do not like war do not
19 like their taxes going to war-making equipment. That has
20 been litigated by the court. If we adopt, as a principle,
21 that any taxpayer who does not like a particular service
22 provided by the government, even one which is of
23 constitutional dimension as this one is, then where do we
24 stop?

25 Does a person who has preference for mass transit on

1 the highway say, well, I do not want my tax dollars going
2 to build highways? A person who drives but does not take
3 the subway would say, I do not want my money to go for
4 subways, I want them to go for highways.

5 This is a fundamental principle and it is especially,
6 I believe, a fundamental principle with respect to equal
7 treatment for everyone, including those women who are less
8 fortunate than others.

9 The Chairman. I am going to ask for brief remarks from
10 Senators Rockefeller, Chafee, Bradley, and Riegle, and then
11 we will have to close off.

12 Senator Rockefeller. The question to Senator Danforth
13 is, it says here, "no plan is required to include coverage
14 of abortion." Does that mean that the employer has the
15 option, even though there are supposedly an option with
16 abortion and an option without abortion that, in fact, he
17 does not have to offer a plan with abortion?

18 Senator Danforth. I think that is what we just voted
19 on in the last vote.

20 The Chairman. Senator Chafee.

21 Senator Chafee. Mr. Chairman, this is a very unfair
22 amendment because, as you know, under the system that we
23 have here, the individual gets a voucher assistance up to
24 240 percent of poverty.

25 That is a scaled-down subsidy as you get up toward the

1 240 percent, so you could have the bizarre situation of a
2 woman who, indeed, is paying nearly 100 percent, 95
3 percent, for her insurance, and, yet, because she gets five
4 percent subsidy, she is barred from having the normal
5 services that everybody else would receive. And I just
6 think that is very, very unfair.

7 The Chairman. Thank you, Senator.

8 Senator Bradley?

9 Senator Bradley. Mr. Chairman, I will not belabor the
10 points. I think they have been made. There is this cliff
11 problem that Senator Chafee talked about. I was going to
12 mention that. And then I think Jack is right to say that
13 this is somewhat similar to the Hyde amendment in terms of
14 Medicaid funding of abortion. And, if you believe that
15 poor women should have the same right as any other woman,
16 then I do not think that you want to support Senator
17 Danforth's amendment.

18 The Chairman. And, finally, Senator Riegle.

19 Senator Riegle. Mr. Chairman, I have not been part of
20 this debate, but I have listened to all of it. The thing
21 that troubles me, is I think this is an effort by some,
22 however well-intentioned, to take their view of morality
23 and sort of make other people live by it. And I think that
24 really sort of runs counter to what the country is all
25 about. I respect people's rights to make decisions for

1 themselves, but not to make decisions for other people.
2 And we cross that line here, in my view.

3 Senator Danforth. Mr. Chairman --

4 Senator Riegle. May I finish? I listened patiently.
5 I think that is imbedded in this. I think there is a kind
6 of moral superiority in this argument that says that my
7 view, or our view, or somebody's view should be applied to
8 somebody else, even though they may hold a different view.

9 And I am just troubled by that because I think it runs
10 counter to what we say we stand for. I think we have to
11 give people enough room in this country to make their own
12 judgments, and, however strongly we may feel about some
13 moral issue, to reach into somebody else's life and try to
14 interfere with a basic decision that they, under the law,
15 have a right to make, I think is a trespass on that person.

16 The Chairman. All right. Senator Danforth, would you
17 like to make one comment?

18 Senator Danforth. Yes. Mr. Chairman, I agree with
19 Senator Riegle and I adopt his arguments. It is for
20 exactly that reason that this amendment is designed to
21 provide a choice in the purchase of plans so that you are
22 not in a position where you have to buy a plan that covers
23 abortion, so that if you want to do business with whoever
24 the insurer is, you can buy a plan that covers abortion, or
25 one that does not cover abortion.

1 The Chairman. Fine.

2 Senator Danforth. And it is to create that kind of
3 choice that the amendment is offered.

4 The Chairman. And, on that note --

5 Senator Riegle. If I may say, respectfully --

6 The Chairman. Respectfully, sir.

7 Senator Riegle. If you take them all together, it is
8 an effort, I think, to take away from certain people the
9 practical ability to make that decision in real terms. I
10 mean, that is what it is doing.

11 I think it crosses a line to basically erase somebody
12 else's effective right to make that decision for
13 themselves, and, therefore, becomes the imposition of the
14 first person's morality on the other person, and I do not
15 think that is the way America ought to work.

16 The Chairman. Thank you, Senator Riegle.

17 The Clerk will call the roll.

18 The Clerk. Mr. Baucus.

19 Senator Baucus. No.

20 The Clerk. Mr. Boren.

21 Senator Boren. No.

22 The Clerk. Mr. Bradley.

23 Senator Bradley. No.

24 The Clerk. Mr. Mitchell.

25 Senator Mitchell. No.

1 The Clerk. Mr. Pryor.
2 Senator Pryor. No.
3 The Clerk. Mr. Riegle.
4 Senator Riegle. No.
5 The Clerk. Mr. Rockefeller.
6 Senator Rockefeller. No.
7 The Clerk. Mr. Daschle.
8 Senator Daschle. No.
9 The Clerk. Mr. Breaux.
10 Senator Breaux. Aye.
11 The Clerk. Mr. Conrad.
12 Senator Conrad. Aye.
13 The Clerk. Mr. Packwood.
14 Senator Packwood. No.
15 The Clerk. Mr. Dole.
16 Senator Dole. Aye.
17 The Clerk. Mr. Roth.
18 Senator Roth. Aye.
19 The Clerk. Mr. Danforth.
20 Senator Danforth. Aye.
21 The Clerk. Mr. Chafee.
22 Senator Chafee. No.
23 The Clerk. Mr. Durenberger.
24 Senator Durenberger. No.
25 The Clerk. Mr. Grassley.

1 Senator Grassley. Aye.

2 The Clerk. Mr. Hatch.

3 Senator Hatch. Aye.

4 The Clerk. Mr. Wallop.

5 Senator Packwood. Aye, by proxy.

6 The Clerk. Mr. Chairman.

7 The Chairman. No.

8 There are 12 nays and 8 yeas, so the third and final
9 amendment is not agreed to.

10 With great thanks to our committee, to our staff that
11 needs a night's sleep, at 9:30 in the morning we will
12 assemble. There will be coffee in the back room. We will
13 be out of here at noon.

14 (Whereupon, at 10:00 p.m., the meeting was recessed, to
15 reconvene at 9:30 a.m. on Saturday, July 2, 1994.)

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C E R T I F I C A T E

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This is to certify that the foregoing proceedings of an Executive Committee Meeting, Committee on Finance, United States Senate, held on July 1, 1994, were transcribed as herein appears and that this is the original transcript thereof.

WILLIAM J. MOFFITT
Official Court Reporter

My Commission Expires April 14, 1999