

Sturgis, C.  
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1 EXECUTIVE COMMITTEE MEETING

2 SATURDAY, JULY 2, 1994

3 U.S. Senate,

4 Committee on Finance,

5 Washington, DC.

6 The meeting was convened, pursuant to recess, at 9:43  
7 a.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: Mr. Chuck Konigsburg, Chief Counsel;  
18 Mr. Joseph Gale, Chief Tax Counsel; Ms. Jane Horvath,  
19 Professional Staff Member; Mr. John Buckley, Joint Tax  
20 Committee, Christine Ferguson, Assistant Staff Director  
21 for Senator Chafee; Will Sollee, Tax Counsel; and Mark  
22 Mullet, Tax Counsel.

23

24

25

1           The Chairman. A very good morning to the committee,  
2 to our guests, and to our many experts. We are here to  
3 conclude our business with care, but dispatch. I would  
4 like to ask if members would submit their amendments to  
5 the Clerk by 10:00 under last evening's ruling.

6           We have a five minute rule that Senator Dole properly  
7 proposed and the bill is open to amendment.

8           Senator Packwood. I have an amendment.

9           The Chairman. Senator Packwood.

10          Senator Packwood. It is a relatively simple  
11 amendment and I can explain it. Under the Chairman's mark  
12 it requires health plans to enroll pre-existing  
13 conditions. This is in the first open enrollment. Any  
14 person who applies for enrollment during the first open  
15 enrollment period -- and there is only one at the start,  
16 and they have only 30 days to do it. When your plan goes  
17 into effect and you finally have an effective day, then  
18 you say all right, now, for the first and only open  
19 enrollment you have 30 days. You have a pre-existing  
20 illness. I do not think that is a long enough period, Mr.  
21 Chairman. I think we ought to make it 90 days considering  
22 it is only one period.

23          The Chairman. A very thoughtful amendment that is  
24 useful on its face. Thirty days is not a long time to get  
25 used to a new deadline, a new time period. Do I hear any

1 objection to Senator Packwood's amendment?

2 (No response.)

3 The Chairman. All in favor will say aye.

4 (A chorus of ayes.)

5 The Chairman. Those opposed?

6 (No response.)

7 The Chairman. There is none opposed. Mr. Packwood's  
8 amendment is agreed unanimously.

9 The bill is open to amendment.

10 Senator Grassley. Mr. Chairman?

11 The Chairman. Senator Grassley and then Senator  
12 Roth.

13 Senator Grassley. I have what should be passed  
14 around that is called an anti-discrimination amendment,  
15 meaning no discrimination because of a particular academic  
16 degree that you might hold, directly related to health-  
17 related degrees.

18 This amendment prohibits a plan that already provides  
19 coverage for certain services, for instance surgery for a  
20 jaw fracture as a result of an automobile accident, a lot  
21 of other examples that could be given, from discriminating  
22 against a provider solely because of his or her academic  
23 degree.

24 Now this amendment is not what is sometimes thought  
25 of as any willing provider provision. And let me

1 emphasize, it would not require a plan to hire an  
2 individual provider or it would not require a plan to  
3 reimburse any type or category of provider.

4 This amendment would not require payment for any new  
5 services. Let me emphasize, it is not going to require  
6 payment for any new services and so it is cost neutral. I  
7 would like to give you an example if I could what the  
8 amendment is aimed at correcting.

9 Suppose a relative of yours is in a serious  
10 automobile accident, who is taken to a shock trauma unit  
11 with major facial injuries. In any case the surgery to  
12 fix those injuries will be performed by an oral surgeon  
13 who holds a degree in dental surgery, rather than an M.D.  
14 degree. This might be particularly true in rural areas.

15 So my point is that I want to make certain that when  
16 an identical surgical procedures are done that oral  
17 surgeons are not discriminated against solely because they  
18 do not hold an M.D. degree, oral surgeons generally  
19 complete four years of dental school and receive either a  
20 doctor of dental surgery or doctor of dental medicine  
21 degree; and after dental school they complete four years  
22 of hospital-based surgical residency programs where they  
23 learn to be surgeons in exactly the same way that M.D.s  
24 learn to be surgeons. During their residency they take  
25 the same rotations as M.D.s doing appendectomies and other

1 things.

2 Then they specialize in surgery of the mouth, the  
3 neck, jaw areas. Equal treatment is consistent. Now this  
4 is pretty important because we have precedent for this.  
5 Equal treatment is consistent with Medicare and Medicaid  
6 laws. The Physicians Payment Review Commission has  
7 studied the issue at our direction and found that oral  
8 surgeons are equally skilled in their area of specialty  
9 and should be paid on the same relative value scale as  
10 M.D.s.

11 The bill as it now stands does not adequately deal  
12 with this problem and it is especially important for  
13 patients' access in rural areas to specifically include  
14 this language.

15 The Chairman. Thank you, Senator Grassley.

16 Now, we are going to have quiet and we are going to  
17 conduct ourselves like the Finance Committee and get done  
18 quickly. All right?

19 Thank you, Senator Grassley.

20 The bill does address this issue. From the point of  
21 view of managed competition, it is felt to be important  
22 that health plans be able to choose the physicians and the  
23 specialties that they believe to be important. It is now  
24 the practice.

25 In our bill we eliminate restrictions on such choice

1 as may now exist from state-to-state. I see Senator  
2 Durenberger is nodding in what I hope is agreement,  
3 because he has so much more experience in this matter than  
4 I do.

5 Senator Durenberger. Mr. Chairman, I understand the  
6 purpose of the amendment and I think we have all discussed  
7 with certain of the proponents of the amendment,  
8 particularly the oral and maxillofacial surgeons, the  
9 discrimination that they sense that they are feeling.

10 But I think you have stated correctly that the  
11 purpose of the quality standards that have been prescribed  
12 so that we have a set of national rules and we have, as I  
13 understand it, anti-discrimination provisions that have  
14 been built into the quality standards.

15 The Chairman. We do.

16 Senator Durenberger. I am not sure where the notion  
17 of the academic degree comes into in all of this. I am  
18 sure that that would be implicit in the quality standards  
19 that we have already put in.

20 So you have to, if you follow the rules that you have  
21 laid out in the amendment, you have to permit the plans to  
22 take responsibility for the outcome; and, therefore, you  
23 have to permit them to make judgments about who can best  
24 meet those commitments.

25 The Chairman. Thank you, sir.

1 I see no other Senator wishing to be heard. Senator  
2 Grassley?

3 Senator Grassley. I would like 30 seconds to give  
4 response to both Senator Moynihan and to Senator  
5 Durenberger.

6 The Chairman. Please.

7 Senator Grassley. First of all, my amendment does  
8 not change quality standards at all. We are not affecting  
9 quality standards at all.

10 And second, with regard to what you said, Mr.  
11 Chairman, the answer is no. The amendment that was  
12 discussed last night is helpful in ensuring that the Board  
13 does not specify particular types of providers when  
14 specifying covered services, and the definition of health  
15 professionals is also helpful.

16 But neither of these provisions adequately address  
17 situations where a licensed professional is performing an  
18 identical surgical procedure, but is reimbursed in a  
19 different manner solely because of his or her academic  
20 degree.

21 In other words, if you have exactly the same  
22 training, exactly the same residency, exactly the same  
23 specialty, why are you going to let the snobbery of a  
24 specific initials after your name make a determination of  
25 what you are going to be paid.

1 Senator Durenberger. Mr. Chairman?

2 The Chairman. Senator Durenberger?

3 Senator Durenberger. Mr. Chairman, I do not have the  
4 language, unfortunately, and I do not know how much time  
5 you want to take on this. But I do not want to be in a  
6 position of opposing my colleague from Iowa because I can  
7 sense what he is after. Since I do not have the language  
8 of the underlying bill in front of me, I would rather work  
9 with him to try to accommodate this so that we do not run  
10 into the problem that we anticipate what is the so-called  
11 any willing provider provision.

12 So if we have to put it to a vote, I would oppose it.  
13 But I would rather try to work with him to get the right  
14 language.

15 Senator Conrad. Mr. Chairman?

16 The Chairman. Senator Conrad.

17 Senator Conrad. Mr. Chairman, I think I understand  
18 Senator Durenberger's concern and I also think I  
19 understand Senator Grassley's amendment because I have  
20 worked with him on it.

21 I do not believe that it goes to the question or the  
22 issue that the Senator from Minnesota is concerned about  
23 -- that is, to break down the ability of these networks to  
24 hire whom they choose so that they can manage the costs of  
25 the system, which is central to the whole strategy of



1 reducing costs system wide.

2           Instead what Senator Grassley seeks to do is to  
3 prevent somebody from being told they cannot be part of a  
4 system simply because they are an oral surgeon, only  
5 because, solely because, they are a CRNA. That is an  
6 anti-discrimination clause separate and different from the  
7 any willing provider language that I think is of greatest  
8 concern to the Senator from Minnesota.

9           Senator Chafee?

10          The Chairman. Senator Chafee.

11          Senator Chafee. I have like many here a little -- I  
12 am ill at ease at this amendment, not really knowing  
13 exactly what it does. One of the things that worries me  
14 is there would be a whole series of lawsuits. In other  
15 words, if so and so with such and such a degree is not  
16 entitled to being reimbursed in such and such a fashion,  
17 he or his group might sue.

18          I wonder if this is the kind of thing that Senator  
19 Grassley and you, Mr. Chairman, or perhaps Senator  
20 Durenberger, or somebody who knows a lot more about it  
21 than I do could try and work on rather than us having an  
22 up and down vote on it now.

23          The Chairman. I would very much prefer that. We  
24 might take it as a committee amendment to the floor. The  
25 facial surgeons have some concerns here, which I am

1 practically not familiar enough with.

2 Senator Grassley, could we make a good faith effort,  
3 Senator Durenberger, you and I, to work this out? And  
4 anybody else.

5 Senator Grassley. Instead of voting on it now?

6 The Chairman. Yes.

7 Senator Grassley. Well, I believe so, because I  
8 think that sort of spirit of cooperation is what it takes  
9 to get these difficult things worked out. If you are  
10 expressing your willingness to be personally behind an  
11 effort toward a compromise, that is okay with me.

12 The Chairman. Fine. I mean, to this morning I did  
13 not know what maxilo meant.

14 Senator Wallop. Mr. Chairman, I would make the  
15 observation though that it is very reassuring to find that  
16 some are now beginning to be concerned by not knowing  
17 exactly what an amendment does.

18 The Chairman. Well, I just said I did not know what  
19 the word meant.

20 Senator Wallop. That is very reassuring. It is the  
21 first time since we have started this markup.

22 The Chairman. Then you have all been under a  
23 misapprehensive.

24 Senator Grassley. All right. So I would withdraw the  
25 amendment.

1           The Chairman. Thank you, Senator Grassley, for the  
2 good faith undertaking and we appreciate that.

3           Senator Packwood asked for an amendment.

4           Senator Packwood. Well, I have another simple  
5 amendment and I think it may have just been inadvertent in  
6 the drafting of your mark.

7           At the moment, and you have lowered your threshold to  
8 100.

9           The Chairman. Yes.

10          Senator Packwood. At the moment, if you work for an  
11 employer over 100 and the employer has a plan -- I mean  
12 offers a plan -- but does not pay anything, you are still  
13 obligated to sign up with that plan or you can purchase  
14 from an insurance company with an experience rating.

15          The problem is, if the employer is not paying  
16 anything, just says here are the three plans, the employer  
17 obviously is not overwhelmingly concerned. They are not  
18 paying a penny. If you have a pre-existing illness and  
19 you have to go out and buy an experience rated plan, you  
20 are just in a devil of a situation.

21          So I would just like to suggest that in that  
22 situation, in a firm over 100 -- they pay nothing, you are  
23 buying the whole policy -- that you should have the option  
24 of being able to purchase through the co-op the same as  
25 you would if you were unemployed.

1 The Chairman. Did you say the co-op?

2 Senator Packwood. Well, through the community rates.

3 The Chairman. Through the community rates.

4 Senator Packwood. Through the community rates, yes.

5 And I say again, the employer obviously does not care very  
6 much. They are paying nothing. So I think that option  
7 ought to be open to people in that situation.

8 The Chairman. Is there comment from the other  
9 Senator?

10 Senator Chafee. Well, if I understand this, if  
11 somebody works for -- currently the cutoff limit that we  
12 have as I understand it is 100. Is that correct?

13 The Chairman. That is right.

14 Senator Chafee. And if you are in 100 you go into  
15 the community rated pool.

16 The Chairman. Yes.

17 Senator Chafee. What you are saying, Senator  
18 Packwood, is if you work for a company that has more than  
19 100 --

20 Senator Packwood. They are paying nothing toward the  
21 plan.

22 Senator Chafee. Who is paying nothing?

23 Senator Packwood. The employer.

24 Senator Chafee. The employer is paying nothing.

25 Senator Packwood. Nothing.

1           Senator Chafee. So the individual is, if he chooses,  
2 is paying 100 percent.

3           Senator Packwood. And has to choose from the three  
4 plans offered by the employer.

5           The Chairman. He has to choose.

6           Senator Chafee. And you are saying he should have  
7 the option of going into the pool if he wishes.

8           Senator Packwood. If he chooses to. Another choice  
9 is to go to the insurance, combined insurance company  
10 plan. But if you are experience rated and have a pre-  
11 existing illness, that really is not an option for all  
12 practical purposes.

13          Senator Durenberger. Excuse me, Mr. Chairman.

14          The Chairman. Senator Durenberger.

15          Senator Durenberger. It seems to me that all  
16 employers, if I understand this correctly now, all  
17 employers are required to offer plans to their employees.  
18 They are not required to pay for it.

19          Senator Packwood. Not required to pay for them.

20          Senator Durenberger. The cutoff at 100 now is  
21 established to distinguish between plans that can self-  
22 insure and experience rate or employers, if they are going  
23 to contribute and then cut a deal. Normally, they would  
24 not just be offering a plan, they would be offering a plan  
25 with a contribution to the premium at the over 100 market.

1           If your amendment says, if the employer is making no  
2 contribution at all the employee ought to be able to go  
3 into a pool to buy, I would think that would make some  
4 sense. I mean, it makes no difference whether you are  
5 over 100 or under 100 under those circumstances.

6           Senator Packwood. That is correct.

7           Senator Durenberger. You are an individual without  
8 subsidized access and it seems to me you ought to be able  
9 to buy in the plan.

10          Senator Packwood. You have it exactly.

11          The Chairman. Senator Mitchell?

12          Senator Mitchell. Might I ask a question of Senator  
13 Packwood? I do not know if any of the staff could  
14 comment.

15          Would not the inevitable result of this be adverse  
16 selection with respect to the pools? That is to say the  
17 very reason you advanced, the very example you advanced,  
18 that is a person who is employed in this circumstance  
19 whose cost would be very high because of a pre-existing  
20 condition would like then join and the result would be  
21 serious adverse selection with respect to the plan.

22          Senator Packwood. Well, I put them in the same  
23 position in essence as somebody who is unemployed.

24          Senator Mitchell. That is correct. But, see, the  
25 whole purpose of community rating is to spread the risk

1 among a large group so that the cost to any one person is  
2 not excessive. If the person's entering the community-  
3 rated pool are smaller and as a result of an amendment  
4 like this much more likely to be people who are high risk  
5 in terms of potential cost and claims, then we do have the  
6 adverse consequences of adverse selection. I think that  
7 is the inevitable result.

8 That is one of the reasons why, of course --

9 Senator Packwood. Otherwise we lock the person into  
10 plans the employer does not care much about, obviously.  
11 Or having to buy through an insurance company the  
12 experienced rates that may be a financial impossibility  
13 for many people.

14 Senator Mitchell. Yes, I know we have already  
15 decided the issue. But, of course, that is part the  
16 rationale for the original administration plan, to have  
17 the largest possible community ratings with everyone  
18 covered. Then you achieve both of the desired results  
19 without any of the negative consequences.

20 The negative consequences there flow from the fact  
21 that you have a limited number of persons entering the  
22 pool and not everyone required to participate.

23 Senator Durenberger. Mr. Chairman?

24 Bob, let me ask you a question if I may, Mr.

25 Chairman? Suppose this case, suppose Jay Rockefeller's

1 coal miners, just the small coal companies, not the big  
2 ones, there are 150 people in the unit or something like  
3 that, relatively small. Their insurance is breaking their  
4 backs. So they just cancel their policy. They have a lot  
5 of older high risk people and they cancelled their  
6 contributions. They make their minimum contribution to  
7 the plan.

8 And by design, although the folks then go into the  
9 community-rated pool -- I am following up, I think, on  
10 George's example, if, in fact, the purpose of this reform  
11 is to encourage more employer participation in the system,  
12 I am wondering without some change to this if this is not  
13 achieving the opposite end, which would be to encourage  
14 certain high risk groups, employer groups, at 100 or over  
15 to defund their plans and just let the employees go into a  
16 community-rated pool.

17 Whereas, in that same community, a healthier group  
18 over 100 is obviously going to experience rate and get a  
19 better price and ensure; whereas, the higher, the older,  
20 sicker groups may be encouraged to disengage, the employer  
21 will disengage, and let the folks go into the community  
22 rating.

23 Senator Packwood. My guess is that the bulk of these  
24 are going to be relatively lower paid workers in larger  
25 companies that simply have no plan that the employer pays



1 anything for. And we are going to lock them into what the  
2 employer says, fine. These are your three choices, pay  
3 your money and take your choice among the three. That is  
4 it.

5 The Chairman. Senator Mitchell, then Senator  
6 Rockefeller. Ms. Horvath is here for any expert witness  
7 testimony anybody might want to have.

8 Senator Mitchell?

9 Senator Mitchell. Well, Mr. Chairman, then I raise  
10 another question which perhaps Ms. Horvath can answer. In  
11 the example Senator Packwood gave, he suggested the  
12 individual would be experience rated. It is my  
13 understanding that individuals employed in firms are not  
14 individually experience rated, but that the entire firm is  
15 experience rated. Is that correct?

16 So that the individual would not have the problem  
17 with respect to the insurance provided by the employer.

18 The Chairman. Senator Rockefeller?

19 Senator Rockefeller. And thereon follows the point  
20 that I think Senator Durenberger was making. That is that  
21 in companies of 100 or above the employer might very well  
22 encourage the sick employee to go on into another pool.  
23 In other words, the sicker employee would be directed in  
24 the wrong direction.

25 The Chairman. Senator Chafee?

1           Senator Chafee. Mr. Chairman, somebody can correct  
2 me because I am not sure of this. But I think when an  
3 employer does not pay anything and offers some plans and  
4 the employees do not want those plans, that they have the  
5 right to require a different plan. Am I correct in that?

6           Ms. Horvath. Senator, I believe the Chairman's mark  
7 for group businesses of smaller or the community rating  
8 threshold --

9           Senator Chafee. No, I am talking the 100 or more.

10          Ms. Horvath. No, Senator.

11          Senator Chafee. There is not that? I thought that  
12 was there. I guess perhaps I am mistaken.

13          Senator Packwood. If you have 100 or more, the  
14 employer cannot say to the employees, Sally and Jim, you  
15 cannot participate in my plan.

16          Ms. Horvath. The intent was to keep two distinct  
17 pools, to keep the risk pool separate, the community rated  
18 pool for some of the concerns that have already been  
19 mentioned.

20          Senator Packwood. I understand that. But if you are  
21 over 100 your plan is available to everybody. It may not  
22 be a very good plan, but it is available to everybody.  
23 The employer cannot exclude people from it.

24          Ms. Horvath. That is correct. And the employer has  
25 to offer three plans. All employers must offer three

1 plans; and small employers below the community rated  
2 threshold have the option of offering the co-op to their  
3 employees.

4 Senator Chafee. Mr. Chairman, could I just follow-up  
5 on that?

6 The Chairman. Of course, you can, Senator.

7 Senator Chafee. I think you could get the situation  
8 that has been pointed out by several of the Senators here  
9 where, let us say it is a coal mining company where the  
10 employees are not in the best of health and the employer  
11 is paying 80 percent of the coverage. The employer might  
12 well be encouraged to say to his employees, go join that  
13 pool and that is a lower cost pool, and I will give you  
14 the 80 percent that I am currently paying now in cash that  
15 will cover your entire premium in the pool.

16 So the employer gets out of it. The employees are  
17 happy because they get full coverage in the pool and the  
18 pool is the one that suffers. So I think there is this  
19 danger that has been pointed out by others of shuffling  
20 those that represent higher risk into the pool. That is  
21 the danger in my judgment.

22 The Chairman. Senator Packwood, would you like to  
23 respond?

24 Senator Dole?

25 Senator Dole. Everybody into the pool.

1           The Chairman. You are going to put everybody into  
2 the pool.

3           Senator Packwood. I am ready for a vote, Mr.  
4 Chairman.

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. No.

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. No.

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. No.

24          The Clerk. Mr. Conrad?

25          Senator Conrad. No.

1 The Clerk. Mr. Packwood?

2 Senator Packwood. Aye.

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. No.

9 The Clerk. Mr. Chafee?

10 Senator Chafee. No.

11 The Clerk. Mr. Durenberger?

12 Senator Durenberger. No.

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 Wallop. Aye.

19 The Clerk. Mr. Chairman?

20 The Chairman. No.

21 The vote is 14 nays and 6 yeas. The attendance is  
22 perfect, but the amendment fails.

23 Senator Breaux, did you wish to offer an amendment?

24 Senator Breaux. Thank you, Mr. Chairman. I have an  
25 amendment to offer on behalf of myself and Senator Conrad

1 as well. It deals with the risk pools that various States  
2 have created. There are about 28 States now in our  
3 country that have created high-risk pools for their  
4 citizens. It basically covers people who have pre-  
5 existing conditions and who cannot buy insurance anywhere  
6 else.

7 The IRS in the past have said some are tax exempt,  
8 some are not, and is very, very unclear as to any type of  
9 consistency in how they are deciding these cases. This is  
10 really a transitional rule. Because when the health  
11 reform language in bill comes into effect, you are not  
12 going to need these State high risk pools any longer  
13 because insurance reform will necessitate and clear up,  
14 but you cannot prohibit people from getting insurance  
15 because of pre-existing conditions.

16 But the 28 States have all types of different  
17 rulings. So this specifies that these State high risk  
18 pool programs would continue to be tax exempt if they are  
19 subsidized by the State. There are no private benefits to  
20 any of their Board members or Directors. The State is  
21 involved in the governance and running of these things.  
22 These are not profit organizations. They are State-run  
23 operations merely designed to provide insurance to the  
24 citizens of the State in high risk pools.

25 The administration does not oppose the amendment.

1 Again, it is a transitional rule, which it appears because  
2 of all of these type of State high risk pools would  
3 disappear when health reform comes into effect.

4 Senator Dole. Would the Senator yield?

5 Senator Breaux. I would be happy to.

6 Senator Dole. I think the Ways and Means Committee  
7 passed this. But it sunsets when community rating sets  
8 in.

9 Senator Breaux. We have the same sunset provision in  
10 here.

11 Senator Dole. It is only about \$50 million.

12 Senator Breaux. Over 10 years. But it is not going  
13 to be 10 years, because when health reform passes these  
14 things would cease to exist.

15 Senator Conrad. Mr. Chairman.

16 Senator Breaux. It is the same type of sunset  
17 provision in the Ways and Means bill.

18 The Chairman. Mr. Conrad?

19 Senator Conrad. Mr. Chairman, I would just point out  
20 for the interest of our colleagues that Iowa, Kansas,  
21 Louisiana, Maine, Minnesota, Missouri, Montana, North  
22 Dakota, South Dakota, Utah and Wyoming, who are all  
23 represented on this committee, all have these high risk  
24 pools.

25 You have a very confusing contradictory situation out

1 there where some jurisdictions have said they are tax  
2 exempt, others have not. This is an attempt to clarify  
3 that.

4 The Chairman. It seems to me a constructive effort  
5 and at a negligible cost. We estimate \$50 million over 10  
6 years. This with luck will not require more than three or  
7 two.

8 Those in favor will say aye.

9 (A chorus of ayes.)

10 The Chairman. Those opposed?

11 (No response.)

12 The Chairman. The ayes have it. The amendment is  
13 agreed to. Thank you, Senator Breaux and Senator Conrad.

14 Senator Roth?

15 Senator Roth. Mr. Chairman, my amendment would  
16 provide employees with the option of obtaining a --

17 The Chairman. Could I interrupt? I am sorry to  
18 interrupt. Is your amendment being passed out?

19 Senator Roth. I think it is, Mr. Chairman.

20 The Chairman. I am sorry. Then go right ahead.

21 Senator Roth. As I was saying, my amendment would  
22 provide employees with the option of purchasing a  
23 catastrophic health plan together with a medical savings  
24 account.

25 The primary objective of the proposal, of course, is



1 to give an employee a worker choice regarding the purchase  
2 of health insurance. I want to stress that the way this  
3 proposal is structured, it is revenue neutral. It is  
4 revenue neutral because the deductibility of the proposal  
5 would be tied to the cost of the other available insurance  
6 plan.

7 In other words, Mr. Chairman, only a worker who has a  
8 certified standard health plan would have the option of  
9 buying a catastrophic health plan. Now in the case of  
10 self-employed individuals, he would qualify for such a  
11 plan because under the Chairman's mark he would be  
12 eligible for a federal employee health benefit plan. So I  
13 want to stress that the self-employed, as well as other  
14 employees, are covered.

15 The catastrophic health plan would be defined as one  
16 with a maximum deductible limit for single coverage of  
17 \$3,000 and in a case of family, \$5,500. In other words,  
18 the catastrophic insurance for the individual would kick  
19 in at \$3,000 or could be no higher than that; in the case  
20 of a family, \$5,500.

21 Now I mentioned that this plan does not lose any  
22 revenue. That is because the medical savings account is  
23 treated exactly the same as deductions are handled in the  
24 case of a certified standard health plan. In other words,  
25 if an employee could obtain a certified standard health

1 plan for \$5,000 that \$5,000 is deductible to the employer  
2 and, of course, does not account as income for the  
3 employee.

4 If he should choose to obtain the catastrophic health  
5 plan and medical savings, the same situation works out.  
6 The employer would pay the cost of the insurance, let us  
7 say that was \$3,000. That would be deductible. And then  
8 the employer could pay \$2,000 to the medical savings plan,  
9 which would also be deductible. So that totals \$5,000,  
10 just as in the case of a certified standard health plan.  
11 So there would be no loss of revenue. I think that is  
12 important to understand.

13 Let me mention some of the positive health care  
14 policy benefits that would result from this proposal. It  
15 provides for affordability. If an employee would change  
16 jobs or lose his job, the money in his medical savings  
17 plan would go with him. So it would help him to maintain  
18 health care coverage in that interim period.

19 As I have already mentioned, MSAs would promote  
20 consumer choice. It would allow patients to shop around,  
21 choose their own doctor, tailor their health care  
22 expenditures to suit their own need.

23 I would also stress that most importantly that the  
24 medical savings plan would facilitate cost containment.  
25 In other words, if an employee has a medical savings plan

1 and knows that this money can be retained and rolled over  
2 the next year, he is only going to use medical services  
3 when he finds it is necessary. He has an incentive to try  
4 to keep his health costs down. It will thereby act as a  
5 -- it will facilitate cost containment.

6 So, Mr. Chairman, I think that this is a good  
7 proposal. It maximizes the choice of the employee. It  
8 does not cost any money. And most importantly, it does  
9 promote cost containment.

10 The Chairman. Thank you, Senator Roth.

11 Senator Rockefeller?

12 Senator Rockefeller. Mr. Chairman, it does indeed  
13 provide incentives for cost containment and it does so by  
14 strenuously giving people an incentive not to get  
15 preventive care, which is meant to be the basis of what we  
16 are doing here.

17 It is interesting that people on the marketplace, the  
18 free marketplace where catastrophic has been offered,  
19 people have not wanted it. They have not purchased it  
20 historically in this country or recently in this country.  
21 That is because they do not want to have to purchase  
22 something just before they get sick, and they know that.

23 A choice of catastrophic and comprehensive plans  
24 could, and in my judgment would, lead to risk selection,  
25 which is what we are trying to avoid, even in our age

1 adjusted community rating.

2 I will leave it there. It is a bad idea.

3 The Chairman. Senator Breaux?

4 Senator Breaux. Well, I had introduced a bill with a  
5 number of co-sponsors from this committee, as a matter of  
6 fact, I guess in the last Congress to establish a medical  
7 savings account. I thought it was a real good idea at  
8 that time. I think it still has a great deal of value. I  
9 think, however, there are some concerns about it.

10 One is the fact that it may discourage people from  
11 getting preventative care. Another problem is it may  
12 isolate only healthy people into this type of system  
13 outside of the larger risk pool.

14 And the last point I would ask maybe Senator Roth.  
15 In the Chairman's mark, the amendment on page 3, we have a  
16 provision that really allows for the creation of  
17 catastrophic plans. We talked about that yesterday. It  
18 says, you know, there will be at least two options for  
19 certified standard health plans and both would have the  
20 same categories of covered service. However, one would  
21 contain higher cost sharing and/or fewer covered services.  
22 That refers to a catastrophic type of plan.

23 I know that Senator Roth's amendment specifies what  
24 the deductible is and how much of a maximum deductible  
25 limit would be. It really specifies it in legislation. I

1 think our approach was to leave it more flexible as to  
2 what type of catastrophic health plan was being devised.  
3 Could maybe you comment on why you are trying to use this  
4 approach?

5 The Chairman. Senator Roth?

6 Senator Roth. Well, my proposal is in addition to.  
7 It does not in any way change what the Chairman has in his  
8 mark. But for the specific proposal of encouraging people  
9 to buy catastrophic plus a medical savings plan we have  
10 spelled out what deductibility would be allowed.

11 But it in no way modifies what the Chairman has in  
12 his mark otherwise.

13 The Chairman. Senator Mitchell?

14 Senator Mitchell. Mr. Chairman, I would yield to  
15 Senator Dole.

16 Senator Dole. No, I will follow you.

17 Senator Mitchell. Fine.

18 Mr. Chairman, it seems to me that two things on which  
19 there is common agreement is that we should be trying to  
20 eliminate or substantially reduce massive cost shifting  
21 that occurs in our system and we should be encouraging a  
22 much higher level of preventive care.

23 Unfortunately, adoption of this amendment would move  
24 us in the wrong direction in both respects. First, as  
25 Senator Rockefeller noted, the experience with

1 catastrophic policies is that they are not attractive to  
2 most people. But the experience also is that where they  
3 are purchased, and then where the person does have a  
4 serious injury or illness, they get the care uncompensated  
5 and the cost shifting which we are trying to end occurs.

6 Second, clearly people with very high deductibles are  
7 not going to expend money on preventive care which we are  
8 trying to encourage. So I will oppose the amendment and  
9 believe strongly that it moves us in the wrong direction  
10 in two very important respects.

11 The Chairman. Thank you, Senator Mitchell.

12 Senator Dole?

13 Senator Dole. Mr. Chairman, I think this is the  
14 fundamental difference in the two sides here. We want  
15 people to make choices and they want government to make  
16 choices. That is the problem here.

17 This gives the employee an option to go out and do  
18 what he or she may want to do. I remember Mr. Pat Rooney  
19 seated here one day. He has Golden Rule Insurance  
20 Company. They have 1,300 employees. Ninety percent now  
21 choose medical savings account along with catastrophic.  
22 It is first dollar coverage. I do not know why as far as  
23 prevention is concerned. But it gives the employee the  
24 option instead of the government the option.

25 It has also been used, I think longer than that, by

1 Dominion Resources in Virginia where it has held down the  
2 cost about one percent a year. On the average it was  
3 about 13.8 percent.

4 I mean, what is wrong with letting people make  
5 choices? Why is it always we have to make choices for  
6 everybody in America? I am going to offer an amendment  
7 later on the standard benefit package. This is in all the  
8 Republican bills. This is in what used to be the Chafee  
9 bill, et al., and it is in other Republican options. I  
10 think some on the other side have co-sponsored this.

11 It just seems to me that this is a clear example  
12 where the choice is, do the consumers have any rights. Do  
13 they have a right to choose or are we going to tell them  
14 this committee and this Congress and this administration,  
15 you cannot do that? The government is going to make your  
16 choices. We do not trust you. We do not think you will  
17 spend your money wisely. And, therefore, you have to do  
18 it our way.

19 Senator Breaux. Would the Senator yield? Would  
20 Senator Dole yield just for a question?

21 Senator Dole. Yes.

22 Senator Breaux. I think I am really concerned about  
23 the point I tried to raise. That is, what prevents all  
24 the healthy people just getting into the catastrophic plan  
25 because of the high deductible. They are very healthy.

1 Then you lose all those healthy people from the larger  
2 risk pool. I think it is a real problem.

3 I like the idea, but I never have been able to answer  
4 that question as to what happens if we just suck all the  
5 healthy people into this type of a plan.

6 Senator Dole. Well, this one company has 1,300  
7 people and 90 percent now choose this. I do not know  
8 whether they are all healthy or not. I assume there are  
9 some in that group who may not be in perfect health. But  
10 it is catching fire. It really is. It is really growing  
11 across the country.

12 I think Senator Roth had a list of supporters. We  
13 now have a coalition that represents over 900,000  
14 businesses nationwide that want to start offering or are  
15 offering MSAs. I have to believe that that problem would  
16 take care of itself.

17 Senator Mitchell. Mr. Chairman?

18 The Chairman. Senator Mitchell.

19 Senator Mitchell. If I may just respond briefly.  
20 Senator Dole's argument is very appealing, of course, that  
21 individuals should have choice. But we should also  
22 understand that the consequence of this is that those who  
23 choose to be uninsured or under insured force upon those  
24 who are insured the involuntary choice of paying for the  
25 uninsured and the under insured.



1           So that millions of Americans now pay more than the  
2 actual cost of the services provided to them because the  
3 providers increase the cost by a factor sufficient to  
4 cover the cost of the uncompensated care that they provide  
5 to those who are uninsured or under insured.

6           Senator Wallop. Mr. Chairman, where is the  
7 uncompensated care? Where does that materialize?

8           Senator Mitchell. Because if many persons who  
9 purchase the high deductible catastrophic and counter an  
10 illness or injury and cannot meet their payments, they  
11 still get the care and the cost is shifted on to those who  
12 pay in the same manner as uninsured persons to a lesser  
13 degree but in the same manner.

14          The Chairman. Senator Wallop, we will put you on the  
15 list if you would not mind.

16          Senator Packwood?

17          Senator Packwood. Mr. Chairman, this indeed is a  
18 philosophical threshold. Let us take the evidence of  
19 Golden Rule itself, because their President, Mr. Rooney,  
20 testified. There are other variants of this plan, but  
21 this is what he discovered. He had been buying a  
22 comprehensive insurance policy for his employees. I  
23 believe he was paying the full amount for it.

24          And he finally decided to make them an offer. I  
25 asked him, are they mostly low wage. Well, he did not

1 want to quite say low wage, but when you have a company  
2 that is heavily clerical, the bulk of them are not highly  
3 paid employees.

4 If you were single, he would give you an option. You  
5 could have the full plan and he would continue to pay it.  
6 Or if you were married or had dependents, you could do it.  
7 If you were single, he would give you an option though.  
8 He would buy a policy that had a \$2,000 catastrophic and  
9 he could buy it for about -- the prices were just about  
10 the same as the catastrophic exclusion. For an individual  
11 it was about \$2,000 a year for a full policy, about \$3,000  
12 for a family.

13 Let us take the family. He said, I will take the  
14 \$3,000 and I will buy you a catastrophic policy. For a  
15 \$3,000 deductible it costs about \$1,000. He said, I will  
16 take the other \$2,000 that I have been paying for your  
17 insurance policy and I will put it in an account. You can  
18 draw on that to pay medical expenses. But you realize you  
19 are at risk up to the \$3,000. After that, the  
20 catastrophic kicks in. Ninety percent of his employees  
21 chose the catastrophic.

22 So now you are married or you are single with  
23 dependents. You choose the \$3,000 catastrophic policy.  
24 \$2,000 is put in your account. You have \$2,000 to draw on  
25 to pay the bills. What he discovered is this, and he

1 commonly eats in the cafeteria, the employees began to  
2 shop around to see what kind of value they could get for  
3 the money they were going to pay.

4 Mr. Rooney himself discovered that a prescription he  
5 had been paying \$37 or \$38 a month for for medicine he  
6 needed continually he could find for \$12 or \$13 when he  
7 started to look around also.

8 But here was the fascinating thing. I am assuming  
9 that the bulk of his people would be in the 18 to 20 tax  
10 bracket because I am just guessing at the wages. On  
11 average -- and remember, when this money goes into that  
12 account they have to pay taxes on it if they do not use it  
13 for health expenditures. Paying taxes on it and paying  
14 whatever health expenses they had, at the end of the year  
15 the average employee was taking out of the account \$602.

16 Now maybe you conclude from that they were not taking  
17 care of themselves. They would not undertake any  
18 preventive services because they wanted the money. That  
19 presumes that people do not want to take care of  
20 themselves. But more fundamentally it says, we know  
21 better than they do. We are going to take care of you,  
22 damn it, whether you like it or not.

23 There was almost no uncompensated care in this  
24 particular kind of situation. Now, think again. \$3,000  
25 is going for your policy, if it is a fully comprehensive

1 policy. The company says, we will make you a deal.  
2 Instead of paying \$3,000 to the insurance company we will  
3 pay \$1,000 to them, which will give you a \$3,000  
4 deductible catastrophic policy. We will give you \$2,000,  
5 all of which you can pay for your medical expenses if you  
6 want. So you are really only at risk for \$1,000.

7 You can afford the \$1,000 if you had to. But the  
8 situation was not that there was uncompensated care that  
9 somehow was being shifted off to somebody else. The  
10 situation was that the employees were paying for all the  
11 care they felt they wanted, were then paying taxes to the  
12 government. Do you realize this makes money for the  
13 government?

14 If the employer pays that entire \$3,000 for health  
15 insurance, that is not taxable to the employee. If the  
16 employer pays \$1,000 for a catastrophic policy and puts  
17 \$2,000 in an account and says at the end of the year if  
18 you have not used this for health, you can draw it out,  
19 that is taxable income to the extent you do not use it for  
20 health costs. To the extent they pay taxes on it, we make  
21 money that we would not otherwise make with a catastrophic  
22 policy, money we can use to subsidize poor.

23 But what it does mean, if you took money out of that  
24 account, after you had paid taxes and took out your  
25 average \$602, you had paid for all of the health expenses

1 you had. So the real choice that we have on this is, do  
2 we have enough confidence that people who are employed or  
3 self-employed have enough sense to take care of themselves  
4 or are we saying they are too dumb and they will not do  
5 it.

6 That is an interesting, philosophical difference as  
7 to which you believe. Is an individual who has enough  
8 money smart enough to take care of themselves or are they  
9 so uncaring and so dumb that they just will not do it and  
10 they need just not our help they need our compulsion? I  
11 think this is an excellent amendment.

12 The Chairman. Thank you, Senator Packwood.

13 Senator Daschle?

14 Senator Daschle. Mr. Chairman, I would just like an  
15 explanation from Senator Roth. On his handout on the  
16 second point he has an explanation that says, only a  
17 worker who has a certified standard health plan available  
18 to him or her could choose the option of buying a  
19 catastrophic health plan or MSA. I am not sure I  
20 understand how that interfaces with what Senator Packwood  
21 has just described to be this plan.

22 Senator Roth. Well, what we are saying under this  
23 plan is that you have the choice, the option, of a medical  
24 savings account. You do have to have a certified health  
25 insurance plan available to you.

1           Senator Daschle. So what you are saying is that the  
2 \$3,000 that the employee has in his or her savings account  
3 would have to be applied to another account, another plan  
4 in order to be eligible for the catastrophic MSA?

5           Senator Roth. No, no. What we are saying is this.  
6 If an employee that works for a company that offers a  
7 certified health plan, then the employer and the employee  
8 have the option of offering a proposal that includes  
9 catastrophic insurance and a medical savings plan.

10           The reason we have limited it to that group is that  
11 so there is no revenue loss. In other words, if it costs  
12 an employer \$5,000 for a standard plan, instead of using  
13 that \$5,000 for the standard plan it could be used for  
14 catastrophic insurance, plus a medical savings plan. So  
15 it is a wash as far as tax revenue is concerned. We think  
16 that is important under the circumstances.

17           We are trying to keep this proposal to be revenue  
18 neutral. That is what we have achieved here.

19           I would like to go back to the point that was made by  
20 Senator Packwood. This does represent a very, very  
21 important difference in philosophy. What we are saying  
22 here is that we have confidence in the individual  
23 American. That the American ought to make that decision,  
24 not the government, as to what kind of coverage he is  
25 going to have.

1 I would just point out that this kind of a proposal  
2 will, in fact, act as an incentive to get young people  
3 into a plan because it has many good reasons from the  
4 point of youth to enact it. First of all, under our plan  
5 let us just say you have a medical savings plan worth  
6 \$2,000 a year. That could be rolled over to the extent it  
7 is not used, so that it gives an incentive for the long  
8 term.

9 And down the road it means it helps make possible  
10 long-term care because what funds are not used for health  
11 care from year to year will be rolled over, accumulate;  
12 and by accumulating those funds are available when a  
13 person becomes a senior citizen and available to help  
14 long-term care.

15 So I go back to the point that we think this is a  
16 good proposal. It does not cost the government any money  
17 beyond what is now being proposed under the Chairman's  
18 mark. It gives choice. It will attract young people. We  
19 think this is the way to go.

20 Just let me point out that a similar proposal was  
21 adopted in the House plan and I think we should do the  
22 same.

23 The Chairman. Thank you, Senator Roth.

24 Senator Wallop, did you want to go next?

25 Senator Wallop. No, Mr. Chairman.

1           The Chairman.   Senator Bradley?

2           Senator Bradley.   Thank you very much, Mr. Chairman.

3           I think, Senator Roth, your objective is to provide  
4 the availability of catastrophic coverage. We have in the  
5 underlying bill a high deductible which is pretty much the  
6 equivalent. So I mean if you wanted to have that  
7 available to people to take, you can take it now.

8           There is a reason though that we are not only doing  
9 catastrophic coverage. This is not just health insurance  
10 that is catastrophic coverage, this is universal, trying  
11 to get to universal with a standard benefit, and with a  
12 real emphasis to encourage prevention and to cover those  
13 nagging health care costs that emerge as you move into  
14 middle age that are not at above the high deductible.

15           It seems to me that the effect of your amendment  
16 would be to encourage people to take only the catastrophic  
17 because right now you can take catastrophic if that is all  
18 you want into the bill. But you are saying now if you  
19 take only catastrophic we will also give you some money.  
20 That, I think, would bias this dramatically in the  
21 direction of only catastrophic leading to all the  
22 repercussions related to adverse selection and reduce  
23 prevention expenditures and for that reason I would oppose  
24 the amendment.

25           Senator Mitchell.   Mr. Chairman?



1           The Chairman.   Senator Mitchell?

2           Senator Mitchell.   I will let others who have not  
3 spoken.

4           The Chairman.   Yes.   Senator Baucus?

5           Senator Baucus.   Mr. Chairman, just building on the  
6 point of the Senator from New Jersey.   As I understand it  
7 there are maybe 900,000 such plans now.   Is that right?

8           Senator Dole.   Nine hundred thousand businesses.

9           Senator Baucus.   Nine hundred thousand businesses now  
10 participate in this, some kind of catastrophic medical IRA  
11 under current law without the tax preference.   My  
12 suggestion would be that we continue current law.   That  
13 is, if this works currently, let firms continue to do it  
14 if they wish to do so and we can at a later date --

15          Senator Roth.   Well, the degree to which --

16          Senator Baucus.   If I might continue, proceed.

17          I second wonder if there are any estimates here.

18          That is, if we do make this change in the law, how many  
19 more businesses will do so compared with the current  
20 900,000 who apparently do.

21          I just think that it is, you know, if presently there  
22 are 900,000 who do wish to take advantage of this kind of  
23 proposal, this kind of root under current law, we will  
24 have to continue to do so and then if there is a greater  
25 need in the future, let us address it in the future.   But

1 I do not see at this point why we want to add additional  
2 tax preference to encourage even more than the present  
3 900,000 who choose to do so.

4 Senator Roth. Well, what you are proposing is to  
5 penalize those that want a medical savings plan, plus  
6 catastrophic. The point I am trying to make is that our  
7 proposal is revenue neutral. It is not costing the  
8 government any more money.

9 What it seems to me the opposition is saying, they  
10 really want the government to be the public nanny. What  
11 we are saying is we want the public, the individual  
12 American, to have the choice. We think this is a good  
13 piece of legislation. It was adopted by the House.

14 I really do not understand the concern about cost  
15 containment. I thought the whole purpose, or one of the  
16 principal purposes of our health reform, was to promote  
17 cost containment. That is exactly what this proposal  
18 does. By letting a person have a medical savings plan, he  
19 or she can decide whether or not it is necessary to go to  
20 a doctor.

21 I cannot believe the typical American is going to put  
22 his health at risk under a medical savings plan. They are  
23 going to be more prudent, more careful. On one hand we  
24 are saying that is the whole point of health reform, that  
25 we want to contain costs; and here we develop a plan that

1 gives the individual the incentive to be careful, to be  
2 prudent.

3 We think this is the way to go and we would hope that  
4 the Senate would adopt this proposal.

5 The Chairman. Thank you. Senator Durenberger? I  
6 want to hear from everybody.

7 Senator Durenberger. Mr. Chairman, just briefly.

8 The Chairman. Can I say, sir, that you are on a  
9 list. You are going to want to wrap up.

10 Senator Durenberger. On a what?

11 The Chairman. You are going to wrap up.

12 Senator Durenberger. Then I definitely will be  
13 brief.

14 Senator Mitchell. Mr. Chairman, I would like to ask  
15 one question before we wrap up.

16 The Chairman. Yes. No, no. I said in that list  
17 Senator Durenberger is the final.

18 Senator Durenberger. Basically, I think, Mr.  
19 Chairman, we are both talking about choice. It is a  
20 question of choice of what. The way the plan works, say,  
21 in Indianapolis with Golden Rule is, the doctors will  
22 discount their services to the employees at Golden Rule  
23 and then they make up the dollar difference by seeing some  
24 other patient in some other plan twice or something like  
25 that.

1           We have gone through this kind of experience on this  
2 committee with Medicare before. Where it is one-on-one  
3 with a doctor, when you do not really know whether or not  
4 you need the service or not, there is always basically a  
5 replacement income.

6           That leads to what Senator Bradley said about the way  
7 in which we try to combine -- the original Chafee bill  
8 actually combined this concept of the medical savings  
9 account with a choice of an accountable health plan.

10           If, in fact, you are buying an accountable health  
11 plan rather than the Golden Rule individual plan, which is  
12 an important part of the current market, but if you are  
13 buying an accountable health plan, when you reach that  
14 catastrophic level, the plan is at risk to hold down the  
15 cost.

16           That is the main difference here. It is not whether  
17 we are denying people choice. It is that with an  
18 accountable health plan purchase, the plan is at risk to  
19 hold down the volume if you do not need it. To hold down  
20 the costs in much the same way that Bill Roth described  
21 that this plan does.

22           As far as choice is concerned, people have a choice  
23 of health plans. We have deliberately built that in here.  
24 At the urging of Bob Dole and others, we built in a high  
25 deductible alternative, so that people will actually be

1 combining the spending of their own tax subsidized money  
2 or their own money with the purchase of an accountable  
3 health plan. It is for that reason that this particular  
4 motion I cannot support.

5 The Chairman. I am trying to have everybody heard.  
6 Senator Mitchell, you wanted to hear from Mr. Buckley and  
7 Mr. Gale?

8 Senator Mitchell. Yes. The example Senator Packwood  
9 gave which is appealing, if I understood it, was that  
10 there is a \$3,000 policy, that is the cost of a policy,  
11 and the employer says to the employee, I will reduce the  
12 cost of the policy to \$1,000 and set the \$2,000 aside in  
13 an account and there would be a \$3,000 deductible.

14 Now, it is a little confusing because the figure  
15 \$3,000 describes both the premium cost and the deductible.  
16 Now, I know that was an example, but the reality is that  
17 it is highly improbable, I believe, to urge -- I think it  
18 is highly improbable that you would get a \$2,000 reduction  
19 in premium on a \$3,000 policy, just by having a \$3,000  
20 deductible.

21 That is to say the premium savings would be much less  
22 than \$2,000 if you had a deductible of only \$3,000 or you  
23 would have to have a much, much larger deductible in order  
24 to take the premium cost from \$3,000 to \$1,000. I want to  
25 ask the staff if I am correct in my understanding.

1           Mr. Buckley. Senator, I believe you are correct.  
2           What the exact premium difference, we do not know, but it  
3           is probably not that large.

4           Senator Mitchell. That is the point. I mean, the  
5           example was appealing, but I do not think it describes the  
6           reality.

7           Senator Packwood. No, and I was using it only for  
8           theoretical principles. Let me ask you a further question  
9           as long as you are here. Let us just stick with my  
10          figures for the moment. If an employer buys you a \$3,000  
11          health insurance policy, a comprehensive policy, and pays  
12          \$3,000 to MetLife, none of that \$3,000 is taxable as  
13          income to the employee; is it?

14          Mr. Buckley. That is correct, Senator.

15          Senator Packwood. Now, if the employer takes the  
16          same \$3,000, takes \$1,000 of it and buys a catastrophic  
17          policy, that is not taxable income to the employee; is it?

18          Mr. Buckley. That is correct.

19          Senator Packwood. If the employer takes the \$2,000  
20          and puts it in a savings account and says, here, you can  
21          spend this for health --

22          Mr. Buckley. Correct.

23          Senator Packwood. -- and the employee spends none of  
24          it for health, that \$2,000 is taxable income.

25          Mr. Buckley. Not under this amendment. He can

1 retain it in the account. Under existing law, you are  
2 correct.

3 Senator Packwood. Yes, I meant I am talking about  
4 existing law.

5 Mr. Buckley. That is correct.

6 Senator Packwood. This would allow it to be rolled  
7 over.

8 Mr. Buckley. That is correct.

9 Senator Packwood. In the Dole-Packwood bill, we  
10 allow the rollover, but we do tax the inside build up.

11 Mr. Buckley. That is correct.

12 Senator Packwood. But under current law, the Federal  
13 Government would actually pick up money under this. The  
14 worse that we could do is break even, and that is assuming  
15 an employee spent the entire \$2,000 for health. But to  
16 the extent they do not, this is a revenue raiser.

17 Mr. Buckley. Well, Senator, this would permit the  
18 money to stay in the account. We still see it as  
19 negligible.

20 Senator Packwood. I am talking about current law.

21 Mr. Buckley. All right, you are correct.

22 Senator Packwood. Under current law, there is no way  
23 the government can lose money unless -- the worse we could  
24 do is break even if everybody spent every penny in their  
25 account for health.

1           Mr. Buckley. Viewed strictly from the tax system,  
2 you are correct.

3           Senator Packwood. Yes. Thank you very much.

4           Senator Mitchell. But, Mr. Chairman, my point is  
5 that going from a \$3,000 premium to a \$1,000 premium you  
6 would get a much different and lesser coverage than just  
7 saying, well, you would get a \$3,000 deductible. The  
8 implication was, you would get the same policy with a  
9 \$3,000 deductible. You would get much, much, much less in  
10 the way of coverage and a much higher deductible than a  
11 \$3,000 deductible.

12           Senator Packwood. Let us say the \$3,000 catastrophic  
13 cost \$2,000.

14           Senator Mitchell. But my point is, Bob, when you  
15 gave the example, you said there would be no uncompensated  
16 care because the amount in the account would be equal up  
17 to the -- you could spend it up to the deductible. My  
18 point is that the deductible would be much, much higher  
19 than the amount in the account at that price.

20           Senator Packwood. But you are hard pressed at least  
21 under the Golden Rule example to figure out where there is  
22 uncompensated care, if on average the employee at the end  
23 of it is taking out \$602 in income which means they could  
24 only have taken it out if they have not paid all their  
25 medical bills with it.



1           The Chairman. Fine. Now there comes a time.

2           Senator Roth. Could I just make one additional  
3 point?

4           The Chairman. Senator Roth.

5           Senator Roth. The question of portability, I think  
6 that is an important one to recognize.

7           The Chairman. Senator Roth, I was trying to  
8 introduce Mr.Mullet and say if you had any comment, sir.

9           Mr. Mullet. Well, I just might mention, Senator  
10 Mitchell's concerns, that you are not fully covered  
11 because you do not have enough money in your medical  
12 savings account annually to cover your full deductible.

13           That may be the case, but a couple points on that.  
14 For instance, if you have a \$3,000 deductible on your  
15 catastrophic policy and you have \$2,000 in your MSA, as an  
16 annual matter, so you are \$1,000 short of covering that  
17 deductible, essentially. I think that is addressing your  
18 concern, that you do not cover all those out-of-pocket  
19 expenses if you have to spend all your money and kick into  
20 the catastrophic plan.

21           That may be the case, but it is also the case under  
22 current law. Of course, most insurance policies require a  
23 20 percent co-payment. In addition, most insurance  
24 policies have a certain deductible, say \$500. So you may  
25 very well be in a case where you would actually be worse

1 off under today's policy as far as out-of-pocket expenses  
2 than you would be in comparison to Senator Roth's plan.

3 The Chairman. Thank you, Mr. Mullet.

4 Senator Mitchell. Mr. Chairman, that is why we are  
5 trying to change the law.

6 The Chairman. That is right, that is why we are  
7 trying to change the law. And that is why I am about to  
8 recognize Senator Rockefeller for a few remarks.

9 Senator Rockefeller. Mr. Chairman, I do not think  
10 you want me to comment. Senator Dole and Senator Packwood  
11 said two things. Senator Dole said, that is what we want  
12 to do over here, is the government makes all the  
13 decisions; and on their side, the people make all the  
14 decisions.

15 Then Senator Packwood said, the people on this side  
16 think the poor people are dummies because they would not  
17 know how to spend their money on health care as opposed to  
18 something else. I am just sorry. This is an enormously  
19 philosophical point. I think this is a very bad  
20 amendment. I have already said that.

21 But to say we want the government to do it and you  
22 want the private people to make the selection is to  
23 suggest that there are no consequences for private people  
24 making selection, which is the point Senator Mitchell  
25 made. Back in 1986 you voted for a tax package, I think

1 you voted for it, which eliminated the investment tax  
2 credit, which was at that time \$40 billion.

3 Well, as a result of the voluntary system that we  
4 have in this country now, the industries, business, not  
5 people, but business, are paying \$40 billion in an  
6 involuntary tax on uncompensated care because of a  
7 voluntary system which allows you to say, we will let the  
8 people do what they want.

9 But the fact is, there are enormous financial  
10 consequences that involve the people themselves being  
11 taxed on an involuntary basis and business also. And as  
12 for people being too dumb, Senator Packwood, I think that  
13 is a very, very -- I am sorry -- not a good thing to say,  
14 because it is not true. People happen to be poor and they  
15 have to make choices. And if they have catastrophic or if  
16 they have some other kind of health care plan but they do  
17 not have the money or they do not have health insurance,  
18 they have to choose between things. They really do. They  
19 really do have to choose between food and health care  
20 plans. I have seen it in West Virginia. I have seen it  
21 many times in West Virginia.

22 It is not a question of being dumb, it is a question  
23 they do not have the options that the rest of us who are  
24 wealthy or healthy do have. So, Mr. Chairman, I strongly  
25 object to those two statements. I think they should not

1 be left unrebutted.

2 The Chairman. They have been.

3 Senator Dole. Mr. Chairman?

4 The Chairman. Yes, of course.

5 Senator Dole. I just want to make the point that I  
6 am glad he repeated what we said earlier. But eight  
7 States now have enacted legislation. It is pending in 16  
8 State Legislatures. This is very important to the  
9 Governors. The State of Ohio saved \$29 million in health  
10 care costs in one year with this option.

11 Now, you know, we may have a lot of wisdom in this  
12 committee. There are 20 of us. But I think the Governors  
13 are out there every day, they are working with the people  
14 every day. I think they understand, too, how much appeal  
15 this has. I hope we would put it in the bill as they did  
16 in the Ways and Means Committee.

17 Twenty-four States are going to have this very soon.  
18 I bet 50 States will have it in the next two or three  
19 years and we ought to be helping them.

20 The Chairman. Thank you, Senator Dole.

21 Senator Conrad?

22 Senator Conrad. Mr. Chairman, I just recently  
23 received a detailed study that was done by Ohio Blue Cross  
24 and Blue Shield with respect to medical savings accounts.  
25 I think perhaps it would be useful to our colleagues just

1 to look at the study they conducted, a real world study on  
2 39,000 families in Ohio.

3 The Chairman of Blue Cross/Blue Shield there said he  
4 started out being a believer in medical savings accounts.  
5 I must say I have been very attracted to the concept of  
6 medical savings accounts. But after undertaking an in  
7 depth, real world study using the health care experiences  
8 of 39,000 real Ohio families, they were converted to the  
9 opposite view.

10 The reason they conclude is simple and onerous.  
11 Medical savings accounts would create a large financial  
12 shortfall that would bankrupt our health care system.  
13 Now, again, this is not some think tank study, this is not  
14 some theory. This is based on a real world study of some  
15 39,000 Ohio families.

16 What they found is that there were total costs in the  
17 system of \$159.3 million because what happens is a very  
18 small percentage of the families incur a very large  
19 percentage of the cost. It is exactly what was reported  
20 to us at our retreat. About 10 percent of the families  
21 use 70 percent of the money.

22 In this study they found 10 percent of the study use  
23 about 55 percent of the system costs. Total system costs  
24 were \$159 million. Now when they looked at what the  
25 catastrophic premiums paid and what the MSA accounts paid,

1 they found that the total funding for the system was \$109  
2 million, a \$50 million shortfall.

3 Mr. Chairman, when that was then calculated as to a  
4 national result, there is an \$83 billion shortfall in the  
5 system -- money available to costs incurred.

6 Senator Dole. Would the Senator yield?

7 Senator Conrad. I would be happy to yield.

8 Senator Dole. They lost some business, too, Blue  
9 Cross/Blue Shield. So that is a special interest report.

10 Senator Conrad. Well, they freely acknowledge that  
11 they are a third-party payer. They also say this is a  
12 detailed analysis of the factual implications of 39,000  
13 Ohio families and they invite us to have someone else do  
14 this study, an objective third party, so we do not have a  
15 question about whether or not the analysis is correct.

16 They just found the results so shocking with respect  
17 to their own analysis of 39,000 families in Ohio that they  
18 wanted to alert us that this may be one of those things  
19 that sounds good and is appealing. I must say, I was very  
20 taken by Mr. Rooney's testimony. But I am also sobered by  
21 this analysis.

22 The Chairman. Thank you, Senator Conrad.

23 Senator Hatch. Mr. Chairman?

24 Senator Hatch. Senator Hatch is going to have the  
25 last statement in this five-minute debate.

1 (Laughter.)

2 Senator Hatch. Well, thank you, Mr. Chairman, I will  
3 not be long. I think this is one of the single most  
4 important amendments in the whole debate, because it  
5 really does come down to whether we are going to continue  
6 a system where this is really no incentive to save money.  
7 There is not as much incentive to take care of yourself;  
8 and there is every incentive to over utilize the system.

9 That is really what is bankrupting America. In this  
10 particular amendment, all we are saying here is that, look  
11 -- and these individuals who have to make up the  
12 difference between what they pay for the catastrophic and  
13 the difference between what their employer gives them and  
14 what their actual costs are, they are going to make up  
15 that difference. These are people who understand the  
16 game.

17 This amendment probably would do more for good  
18 preventive health services than anything you can do here  
19 because all the incentives are to keep yourself healthy,  
20 eat good nutritional foods and do all the other things you  
21 have to do to be healthy because you are going to have to  
22 pay out of your own pocket if you do not.

23 Now, I really want to commend Senator Roth for being  
24 willing to push this the way he has been. if we do not do  
25 this, then we are going to go to a government system that

1 literally has no incentives and is going to potentially  
2 bankrupt our country. So it is an option we ought to put  
3 in here and I hope our colleagues will vote for it.

4 The Chairman. Thank you, Senator.

5 Senator Roth. Mr. Chairman?

6 The Chairman. Just a second, Senator Roth. We will  
7 give you the last word. Senator Breaux wished to ask a  
8 question of our staff.

9 Senator Breaux. I just have a question I would like  
10 to ask the staff. In the Chairman's amendment on page 3,  
11 in that first parentheses (2), when we spell out that  
12 there would be at least two options for the certified  
13 standard health plans, both would have the same categories  
14 of covered services; however, one would contain higher  
15 cost sharing and are fewer covered services.

16 The intent of that was to allow for the creation of  
17 catastrophic type of plans with higher cost sharing and/or  
18 fewer covered services. Can the staff interpret or tell  
19 me, does this provision that we have in the Chairman's  
20 amendment allow for the creation of catastrophic plans?

21 Mr. Gale. Yes, it does. It was intended to do that.  
22 Not a medical savings account, but the option to provide a  
23 catastrophic type of coverage with a high deductible.

24 Senator Breaux. So if an employer decided that was  
25 in the interest of setting up that type of provision for



1 his employees, he would be able to do it on the Chairman's  
2 amendment?

3 Mr. Gale. Yes.

4 Senator Breaux. Thank you.

5 The Chairman. Thank you, Senator Breaux.

6 Senator Roth in summation.

7 Senator Dole. The five minutes are up.

8 The Chairman. The five minutes are up says the  
9 author of the Dole rule.

10 Senator Roth. Mr. Chairman, I will be very brief,  
11 but I do want to make a couple of points that have not  
12 been emphasized.

13 First of all is the question of portability. This  
14 particular piece of legislation would help those who loose  
15 their jobs or change jobs because the funds in the medical  
16 savings plan could be used to pay their health insurance  
17 premiums while they are unemployed. Portability has been  
18 a key objective of health reform.

19 And second, we have talked about simplification of  
20 the process. This would help simplify the process because  
21 under the medical savings plan there is no paperwork. An  
22 individual just takes care of it himself, so it achieves  
23 the purpose of simplification. But the important point  
24 is, let us give the American people a choice.

25 This proposal was adopted unanimously in the House

1 Ways and Means Committee and I think we should do the same  
2 thing here in the Senate.

3 The Chairman. Thank you, Senator.

4 The Clerk will call the roll.

5 The Clerk. Mr. Baucus?

6 Senator Baucus. No.

7 The Clerk. Mr. Boren?

8 Senator Boren. Aye.

9 The Clerk. Mr. Bradley?

10 Senator Bradley. No.

11 The Clerk. Mr. Mitchell?

12 Senator Mitchell. No.

13 The Clerk. Mr. Pryor?

14 Senator Pryor. No.

15 The Clerk. Mr. Riegle?

16 Senator Riegle. No.

17 The Clerk. Mr. Rockefeller?

18 Senator Rockefeller. No.

19 The Clerk. Mr. Daschle?

20 Senator Daschle. No.

21 The Clerk. Mr. Breaux?

22 Senator Breaux. No.

23 The Clerk. Mr. Conrad?

24 Senator Conrad. No.

25 The Clerk. Mr. Packwood?

1 Senator Packwood. Aye.

2 The Clerk. Mr. Dole?

3 Senator Dole. Aye.

4 The Clerk. Mr. Roth?

5 Senator Roth. Aye.

6 The Clerk. Mr. Danforth?

7 Senator Danforth. No.

8 The Clerk. Mr. Chafee?

9 Senator Chafee. No.

10 The Clerk. Mr. Durenberger?

11 Senator Durenberger. No.

12 The Clerk. Mr. Grassley?

13 Senator Grassley. Aye.

14 The Clerk. Mr. Hatch?

15 Senator Hatch. Aye.

16 The Clerk. Mr. Wallop?

17 Senator Wallop. Aye.

18 The Clerk. Mr. Chairman?

19 The Chairman. No.

20 There are 13 nays, 7 yeas. The amendment is not  
21 agreed to. I thank our staff.

22 The Senator from Wyoming would like to introduce an  
23 amendment.

24 Senator Wallop. Mr. Chairman, I am grateful to be  
25 placed back in my State.

1           The Chairman. Under the five-minute rule.

2           Senator Wallop. Mr. Chairman, the one to which I had  
3 referred is trying to be worked out. So I have a second  
4 one. It is to be passed out now.

5           On page 17, the automatic general revenue funding is  
6 provided to the --

7           The Chairman. Is the an amendment to the Chair's  
8 mark?

9           Senator Wallop. Yes, it is being passed out.

10          Title III, Section D., page 17. There is automatic  
11 general revenue funding is provided to the health  
12 insurance subsidy trust fund whenever the sources of  
13 funding for the trust fund do not fully fund the benefits.  
14 In other words, this trust fund would have an unlimited  
15 line of credit into general tax revenues.

16          We have a President's Commission that is trying to  
17 avoid having us do that same thing. And I might say, one  
18 hopes it has success. But given the problems that it  
19 faces, it may be limited.

20          This trust fund creates an entirely new entitlement  
21 program for 100 plus million Americans and CBO has not  
22 provided us cost estimates. So we do not know the  
23 ultimate cost of this proposal and the automatic  
24 obligation of funds from general revenue.

25          Automatic general revenue funding is a license, Mr.

1 Chairman, for runaway federal deficit spending and we  
2 should in this committee, of all committees, vigorously  
3 resist it. General revenue funding would simply increase  
4 the federal deficit. Under Title IV, Section B., of this  
5 proposal, a new automatic deficit reduction process is  
6 required under the Budget Act. The existence of this  
7 trust fund financed out of general revenues would ensure  
8 that this deficit reconciliation process is initiated on  
9 an annual basis.

10 In other words, we ought to vote to raise taxes or  
11 lower spending somewhere else or make the decisions in  
12 public to add to the revenue, but not put it on auto  
13 pilot. So what my amendment would do is to eliminate  
14 automatic general revenue funding and subject it to annual  
15 appropriations as is needed.

16 The Chairman. Thank you, Senator Wallop.

17 Mr. Konigsburg, would you wish to explain the  
18 provision in the mark to which Senator Wallop refers?

19 Mr. Konigsburg. Mr. Chairman, the provision provides  
20 that the trust fund would be funded by the taxes provided  
21 for in this measure as well as the Medicaid savings. And  
22 when there is a shortfall, the shortfall would be covered  
23 by general revenues.

24 The Chairman. And the purpose? There is a mechanism  
25 for restoring the system to balance; is there not?

1           Mr. Konigsburg. That is correct. There is a deficit  
2 fail safe mechanism which prevents any increase in the  
3 deficit resulting from this bill.

4           Senator Wallop. Mr. Chairman?

5           The Chairman. Senator Wallop?

6           Senator Wallop. May I point out that the Medicaid  
7 savings of which he speaks is just a paper transfer and it  
8 does nothing to reduce the deficit. It is a formality,  
9 but it is a fraud on the American people. This would be  
10 as well.

11          The Chairman. Thank you, sir.

12          Senator Dole?

13          Senator Dole. It comes in general revenues, but how  
14 do you get it in the general revenues?

15          Mr. Konigsburg. Whenever there is a shortfall in the  
16 trust fund there would be an automatic deposit from  
17 general revenues into the trust fund.

18          Senator Dole. Sooner or later you have to raise  
19 taxes though, I assume.

20          Senator Wallop. No, it just comes out, adds to the  
21 deficit and it is permanent unless we find a way to  
22 resolve the deficit in some other dimension. That is  
23 exactly what the Entitlement Commission is wrestling with  
24 now.

25          Senator Dole. Vote.

1           The Chairman. Vote. Senator Wallop, I think you  
2 would like a roll call vote, would you not?

3           Senator Wallop. Yes, Mr. Chairman.

4           Senator Breaux. Mr. Chairman?

5           The Chairman. Just a second. Senator Breaux?

6           Senator Breaux. The provision of the Chairman's mark  
7 has a provision that would require certain things to  
8 happen if the health spending became more costly than the  
9 revenues that were raised to finance it.

10          The Chairman. Precisely.

11          Senator Breaux. We in our Mainstream Coalition have  
12 an even stronger mechanism for making sure that --

13          The Chairman. That is a mechanism that is in the  
14 present bill.

15          Senator Breaux. Well, I think it will be an  
16 amendment. I think Senator Chafee has it, which is to  
17 offer an even stronger fail safe provision, which we will  
18 be offering, which calls for automatic reductions in the  
19 subsidies or tax adjustments to make sure that whatever  
20 health plan we pass does not have the affect of increasing  
21 the deficit.

22          Now I think that that type of a mechanism will be a  
23 formal preferable way of assuring that we do not increase  
24 the deficit by the health plan that we passed today.

25          Senator Dole. Does tax adjustment mean a tax

1 increase?

2 Senator Breaux. It could result in a decrease in the  
3 subsidies to poor people; and there are a number of  
4 options that would be required in addition to the  
5 possibility of any type of a tax mechanism.

6 Senator Conrad. Now, slowing down. I think with  
7 respect to Senator Dole's question, the moving up to 100  
8 percent deductibility, for example, that would be slowed  
9 down.

10 Senator Danforth. Mr. Chairman?

11 The Chairman. Senator Danforth?

12 Senator Danforth. Mr. Chairman, Senator Wallop has  
13 touched upon one of the most important issues that is  
14 before us. I would say one of the two, because one of  
15 them is the overall cost of health and the need to contain  
16 it. That was the purpose of the premium tax concept that  
17 we discussed a couple of days ago. But the other issue  
18 and the related issue is the affect on the federal budget  
19 deficit.

20 I certainly agree with Senator Breaux that the so-  
21 called fail safe provision in this legislation is not  
22 adequate. It is unworkable. We do have a proposal that  
23 we have come up with which we think is a better proposal  
24 and it was touched on briefly by Senator Breaux and  
25 Senator Chafee will have an amendment to deal with that.



1 I do not believe that the Chafee amendment is  
2 inconsistent with the Wallop amendment. I believe it is  
3 essential that we adopt the Chafee amendment when it is  
4 offered. But I think that Senator Wallop is exactly  
5 correct.

6 When the President first addressed Congress a year  
7 ago last February on the question of health care, he told  
8 us that it was absolutely necessary for the purpose of the  
9 federal budget to control the cost of health care. In  
10 fact, he said it so strongly that he repeated himself. He  
11 repeated the same sentence to Congress.

12 The book that the administration put out at that time  
13 said that health care reform was going to save us \$300  
14 billion over five years. That amount was changed over the  
15 next year-and-a-half and now it is supposed to be a \$74  
16 billion additional cost. We cannot do that.

17 Senator Kerrey and I have been asked to be the  
18 Chairman and the Vice Chairman of the this Entitlement  
19 Commission. Senator Wallop is on that commission. And  
20 the point that we are trying to make is that entitlements  
21 are totally out of control. And everybody who talks about  
22 it says, oh well, do not worry about the retirement  
23 programs, they are not the problem. Well, the retirement  
24 programs are a part of the problem.

25 But the cost of health care is a huge part of the

1 problem and it absolutely has to be brought under control.  
2 I cannot imagine how we are going to bring it under  
3 control if there is an open-ended draw on the federal  
4 Treasury.

5 So I compliment Senator Wallop for this amendment and  
6 I will vote for it.

7 The Chairman. And you anticipate an amendment from  
8 Senator Chafee that Senator Breaux mentioned.

9 Senator Danforth. Yes.

10 The Chairman. The Clerk will call the roll.

11 The Clerk. Mr. Baucus?

12 Senator Baucus. Aye.

13 The Clerk. Mr. Boren?

14 Senator Boren. No.

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. No.  
6 The Clerk. Mr. Packwood?  
7 Senator Packwood. Aye.  
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. Aye.  
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 Wallop. Aye.  
24 The Clerk. Mr. Chairman?  
25 The Chairman. No.

1           There are 11 yeas, 9 nays. The amendment of the  
2 Senator from Wyoming is agreed to.

3           Senator Conrad has the next amendment.

4           Senator Conrad. Thank you, Mr. Chairman.

5           The Chairman. Another five minutes. I think we were  
6 admirably concise in the last amendment.

7           Senator Dole. Four minutes.

8           The Chairman. Senator Conrad.

9           Senator Conrad. Mr. Chairman, I, too, will hope to  
10 be brief. I would just remind my colleagues of the Coal  
11 Act of 1991 that established a combined fund to provide  
12 life time health benefits.

13           Could we have order, Mr. Chairman?

14           The Chairman. The Senator is entitled to be heard  
15 and courtesy must be extended to him.

16           Senator Conrad. I thank the Chairman.

17           I ask my colleagues to pay close attention because we  
18 have not had a discussion or debate with respect to this  
19 issue in some time. So I think it is important for them  
20 to hear the points.

21           The Coal Act of 1991 established a combined fund to  
22 provide life time benefits for United Mineworker retirees.  
23 My colleagues will recall that the funding mechanism of  
24 the Act required contributions from operators which signed  
25 the 1988 contract with the UMW, as well as what were

1 called reach back companies. I think my colleagues will  
2 remember this controversy over reach back companies.

3 Reach back companies are those firms which signed a  
4 United Mineworker's contract at any time since 1950 and  
5 employed at least two UMW miners for just one day. Those  
6 are the so-called reach back companies.

7 My colleagues, it is now clear that there is a  
8 surplus in the fund. Projections of surpluses which I  
9 received in a study from GAO just two days ago show that  
10 the surpluses will range from \$103 million in 1995 to \$311  
11 million in the year 2001.

12 Therefore, the amendment that I am offering does  
13 three things. One, allows the fund to relieve reach back  
14 companies of a portion of their premium payments on a  
15 prospective basis but only if there is a surplus in the  
16 fund.

17 Two, if there is a shortfall in the combined fund,  
18 the annual premiums of all assigned operators, including  
19 the reach back companies, will be increased by the amount  
20 of the shortfall.

21 And three, requires the fund trustees to provide  
22 information on the status of the funds to companies  
23 required to contribute to the fund, which seems like a  
24 fair thing.

25 My colleagues, this committee has an opportunity

1 without jeopardizing the miner's benefits which we ought  
2 to insure to save more than 400 small companies from  
3 bankruptcy. Let me make clear to my colleagues, these  
4 reach back companies which consist of some 600 firms, 400  
5 of them are not making any payments under the reach back  
6 provisions. Why not? Because they cannot. They will go  
7 broke. Four hundred companies are making no payments,  
8 even under the threat of a \$100 penalty per day per  
9 worker. And yet 400 companies are making no payments.

10 They are not making them because they cannot. They  
11 are going to go broke. So my amendment says, my  
12 colleagues, if there is a surplus in the fund, only if  
13 there is a surplus in the fund, we will give relief to  
14 those reach back companies.

15 The Chairman. A question from Senator Boren.  
16 Remember, we are under a five-minute rule.

17 Senator Boren. Senator Conrad, let me ask you about  
18 the non-reach back companies, which we have been very  
19 concerned about in the past. They were never were parties  
20 to these contracts if they not be saddled with additional  
21 obligations. Would your amendment in any way put any  
22 additional obligations on those companies?

23 Senator Conrad. Absolutely not. There would be no  
24 additional obligation on those companies.

25 Senator Boren. Thank you, Mr. Chairman.

1           The Chairman. Thank you, Senator Boren.

2           Senator Riegle?

3           Senator Riegle. Just a question because I think I  
4 respect Senator Conrad very much, but I do not support his  
5 point of view on this. It seems to me you are going to  
6 need a surplus in there because you are talking about  
7 people out over a stretch of time in the future.

8           So in effect you have to have a surplus. You have to  
9 build one up and maintain it and brought down over time.  
10 The other thing that worries me is, we do not have any  
11 early retiree provisions now in the bill. I mean, you  
12 have this pre-Medicare population problem in here, just in  
13 terms of the basic structure.

14          Senator Conrad. Well, let me see if I can in answer  
15 to Senator Riegle's question.

16          The Chairman. Quickly now.

17          Senator Conrad. He is exactly right. There is a  
18 legitimate concern, which we think has been addressed by  
19 the GAO report, because it provides for a 10 percent  
20 surplus, which is as they say is all that is required.

21          The Chairman. Senator Wallop. We have not heard  
22 from anyone on this side. Then we will vote.

23          Senator Wallop. Mr. Chairman, I was a part of this  
24 original thing. I have three questions that I want to ask  
25 because the original interest that I had was to limit the

1 public financial involvement in a private benefit program  
2 and to ensure that western States are not forced to  
3 finance a problem that occurs primarily in the eastern  
4 States.

5 The GAO report states that the current level of  
6 Medicare funding is partly responsible for the existing  
7 surplus. Since Medicare funding will be reduced in coming  
8 years by this and other means, the surplus could shrink or  
9 disappear. What will happen to the surplus as Medicare  
10 allocates less funds to the program?

11 Senator Conrad. Well, nothing will happen because  
12 there is only a reduction for anyone if there is a surplus  
13 in the fund. Many of these people, most of them are  
14 Medicare eligible. That will be part of the calculation.

15 Senator Wallop. What is the current status -- if an  
16 abandoned mine transfers to the program and how will they  
17 be affected if the surplus is reduced through payouts to  
18 reach backs or other contributors?

19 Senator Conrad. If you would look at the amendment  
20 itself, I direct you to the note at the bottom of the page  
21 of the amendment, after unassigned beneficiary costs have  
22 been reduced by the amount of any transfers received from  
23 the abandoned mine land fund as is presently provided for,  
24 no more money is taken from the AML than the unassigned  
25 beneficiaries actual cost, up to the limits presently



1 contained in the Act.

2 Hence, no portion of any surplus can come from the  
3 AML fund.

4 Senator Wallop. And third, quickly, the National  
5 Journal article on this issue yesterday indicated that  
6 many reach backs have not yet contributed and that is what  
7 you have mentioned. Who has contributed to the program  
8 and would the payouts be limited to existing contributors?

9 Senator Conrad. No, it would not be listed to  
10 existing contributors. But the point the Senator raises  
11 is a good one. I think it goes back to the point I was  
12 making.

13 We have a situation here in which we are  
14 unintentionally going to bankrupt hundreds of small  
15 companies. We got hit with a liability they did not  
16 anticipate, never expected to have, and those companies  
17 were not signatories to the 1988 agreement, many of them.  
18 Many of them were not signatories to the 1978 agreement  
19 which, of course, contained the evergreen clause.

20 The Chairman. The five minute.

21 Senator Wallop. A last question on that as a follow-  
22 up to this, Mr. Chairman. What worries me is those reach  
23 backs who do not pay or have not contributed, will they be  
24 having some kind of an entitlement to get a pay back on  
25 your amendment?

1 Senator Conrad. No, absolutely not.

2 Senator Wallop. If it is not limited to the  
3 companies that are contributing, then those who are not  
4 contributing must be able to gain some benefit.

5 Senator Conrad. No, we do not believe so.

6 The Chairman. There is a germaneness issue here. In  
7 any event, I would like to recognize the Senator from West  
8 Virginia.

9 Senator Rockefeller. Thank you, Mr. Chairman.

10 If the Senator from North Dakota is using Medicare to  
11 pay for this money, it is subject to a point of order. I  
12 have a letter from Leon Panetta which I can distribute so  
13 saying.

14 Senator Conrad. We removed those provisions.

15 Senator Rockefeller. Then still, in that case, my  
16 point remains the same. This is nine months old. This is  
17 a tax bill, not a health care bill. We have not even  
18 begun to see how the managed care, which is mandated under  
19 this agreement would work and, therefore, cut costs back.

20 People who feel they have been aggrieved, and I have  
21 all of their lists here, have sent their names into the  
22 Social Security Administration, many of them are being  
23 exempted because mistakes were made because of this reach  
24 back program. The list is all here. Many of these people  
25 will be exempted.

1           But my four points would simply be this. Four points  
2 not to vote for this amendment. The Social Security  
3 appeals process has not yet been completed. It is  
4 aggressively being pursued.

5           Number two, the cost containment mandated in the Coal  
6 Act has not had any chance yet to take effect. So we are  
7 acting if we were to on an incredible premature basis.

8           We do not know what health care reform will do, for  
9 example, with respect to the affect on this amendment and  
10 this Act. That is important.

11           Finally, we should be doing all of this on an accrual  
12 basis like other health care plans, not on a cash basis.  
13 The Senator does his on a cash basis. I strongly hope  
14 that the amendment is defeated.

15           The Chairman. I thank the Senator from West  
16 Virginia.

17           The Clerk will call the roll. Wait. The Senator  
18 from Kansas.

19           Senator Dole. I think you take care of the Senator  
20 from Wyoming's concern with this minor modification. If  
21 you have not paid in, you are not going to get anything  
22 back. You do are not going to get a windfall. Is there  
23 any objection to that?

24           Senator Conrad. I would be glad to accept that, to  
25 make clear.

1           The Chairman. The Senator has the right to modify  
2 his amendment. Do you so modify it?  
3           Senator Conrad. I do.  
4           The Chairman. The Clerk will call the roll.  
5           The Clerk. Mr. Baucus?  
6           Senator Baucus. No.  
7           The Clerk. Mr. Boren?  
8           Senator Boren. Aye.  
9           The Clerk. Mr. Bradley?  
10          Senator Bradley. No.  
11          The Clerk. Mr. Mitchell?  
12          Senator Mitchell. No.  
13          The Clerk. Mr. Pryor?  
14          Senator Pryor. No.  
15          The Clerk. Mr. Riegle?  
16          Senator Riegle. No.  
17          The Clerk. Mr. Rockefeller?  
18          Senator Rockefeller. No.  
19          The Clerk. Mr. Daschle?  
20          Senator Daschle. No.  
21          The Clerk. Mr. Breaux?  
22          Senator Breaux. No.  
23          The Clerk. Mr. Conrad?  
24          Senator Conrad. Aye.  
25          The Clerk. Mr. Packwood?

1 Senator Packwood. Aye.

2 The Clerk. Mr. Dole?

3 Senator Dole. Aye.

4 The Clerk. Mr. Roth?

5 Senator Packwood. Aye, by proxy.

6 The Clerk. Mr. Danforth?

7 Senator Danforth. Aye.

8 The Clerk. Mr. Chafee?

9 Senator Chafee. Aye.

10 The Clerk. Mr. Durenberger?

11 Senator Durenberger. No.

12 The Clerk. Mr. Grassley?

13 Senator Grassley. Aye.

14 The Clerk. Mr. Hatch?

15 Senator Hatch. No.

16 The Clerk. Mr. Wallop?

17 Senator Wallop. Aye.

18 The Clerk. Mr. Chairman?

19 The Chairman. No.

20 There are 12 nays, 8 yeas. The amendment is not  
21 agreed to.

22 And the hour of 11:30 approaches. Senator Chafee,  
23 you are said to have an amendment that you would like to  
24 offer.

25 Senator Chafee. Yes, I do, Mr. Chairman. I would

1 ask that Ms. Ferguson sit out at the table if she may.

2 The Chairman. Ms. Ferguson, we have not seen you  
3 before.

4 Senator Chafee. This, Mr. Chairman, deals with the  
5 so-called fail safe. This was commented upon by Senator  
6 Wallop in connection with the Chairman's mark which begins  
7 on page 4, Budget Control, Pay As You Go, Fail Safe.

8 Mr. Chairman, this is a little bit complicated and I  
9 will move as quickly as possible. CBO has consistently  
10 stated that all estimates should be taken with a grain of  
11 salt. All of us, I believe, are uneasy about leaving the  
12 Federal Treasury door open.

13 So we believe that this amendment brings some equity  
14 to the automatic actions to prevent deficit spending.  
15 That is the whole idea of this so-called fail safe  
16 approach. Under the Chairman's mark, there is a delay in  
17 phasing in the subsidies. That is what the Chairman's  
18 mark does in connection with the fail safe.

19 Ours goes further than that and I will touch on those  
20 in a minute. What we do, Mr. Chairman, is establish the  
21 so-called fail safe mechanism in the following manner. We  
22 take current health spending base line. In other words,  
23 that would include, Medicare expenditures, Medicaid  
24 expenditures, health related tax expenditures, the  
25 employee exclusion, the employee deduction for health

1 insurance premiums and the 7.5 percent floor for deduction  
2 of medical expenses.

3 All right, so that all establishes your spending base  
4 line. Then we take the health reform spending estimates.  
5 In other words, everything included in the base line, plus  
6 the deduction for the purchase of qualified health plans  
7 by all individuals -- the cigarette excise tax, the  
8 vouchers for the purchase of a qualified health plan, and  
9 the high cost plan assessment, the so-called Bradley bill  
10 that we mentioned previously.

11 Now, all right.

12 The Chairman. Bradley tax.

13 Senator Chafee. All right, the Bradley tax.

14 In any year now when the Director of OMB tells  
15 Congress that the spending estimate will exceed the base  
16 line, in other words you have the base line, if any year  
17 the spending estimates are going to get up to that, in  
18 other words if we have not done any good in constraining  
19 costs, then a series of automatic actions occur  
20 proportionately.

21 There are four of these to prevent deficit spending.  
22 What are they? One, the voucher phase-in is delayed.  
23 Two, the expanded tax deduction phase-in is slowed down.  
24 In other words, now you know you can deduct 25 percent.  
25 We move up to 100 percent. We slow that down.

1 The Chairman. This is self-employed?

2 Senator Chafee. Yes.

3 The Chairman. Right.

4 Senator Chafee. And each of these takes 25 percent  
5 of the pain, if you would.

6 The out-of-pocket limits in the standard and basic  
7 benefit package are increased. And finally, starting in  
8 the year 2004 an employer may no longer exclude  
9 supplemental benefits paid to employees and contributed to  
10 by employers.

11 The Chairman. Supplemental?

12 Senator Chafee. Yes, that is right. That is the  
13 same as the President's.

14 Now Congress can act on alternative recommendations  
15 made by the Health Commission to avoid these actions. So  
16 there you are.

17 Ms. Ferguson, are you going to be there to answer any  
18 tough questions?

19 Ms. Ferguson. Yes, sir.

20 The Chairman. Bill, do you want to be first?

21 Senator Bradley. Yes.

22 The Chairman. Senator Bradley.

23 Senator Bradley. As I understand this, Mr. Chairman,  
24 if there was a shortfall, there would be certain measures  
25 that would be taken to assure that the deficit did not go



1 up.

2 Senator Chafee. That is right.

3 Senator Bradley. And among those measures, as I read  
4 it, is not the high cost premium. It is in the base line,  
5 but it is not subject to automatic tax increase.

6 Senator Chafee. That is right. That was in an  
7 original proposal. But that has been removed.

8 The Chairman. That has been changed, yes.

9 I thank the Senator. Senator Mitchell?

10 Senator Mitchell. Mr. Chairman, I am not certain I  
11 fully understand this proposal, but I would like to make a  
12 comment on it. If my comment is based on a  
13 misunderstanding, then I would invite Senator Chafee's  
14 correction.

15 My understanding, Mr. Chairman, is that your  
16 amendment includes a provision which insures that the cost  
17 of this legislation, this health reform initiative that we  
18 are now considering, stays within the budget. Your  
19 proposal is quite simple. If the new initiatives in the  
20 bill are not offset by the proposed offsets in the bill,  
21 that is if in fact the offsets are insufficient, then any  
22 new subsidies and tax deductions are reduced.

23 The Chairman. That is correct.

24 Senator Mitchell. That is in the Chairman's bill.

25 Now my understanding of the Chafee amendment contains

1 a similar fail safe mechanism, but with one important  
2 difference. My understanding that while both the Chairman  
3 and Senator Chafee's proposal compare pre- and post-reform  
4 spending base line, some of the problems, and of course  
5 most notably Medicare, existed before reform and will  
6 exist after.

7 Under Senator Chafee's proposal, if the health reform  
8 initiatives are completely budget neutral, that is to say  
9 if the projected offsets meet our real and as anticipated,  
10 but if Medicare spending rises for a completely  
11 unanticipated reason and an unrelated reason above the  
12 projected base line, the subsidies in this program would  
13 have to be reduced to offset the rise in unrelated and  
14 unanticipated spending under Medicare.

15 Now that is my understanding and I ask Senator Chafee  
16 whether my understanding is correct in that regard.

17 Senator Chafee. That is right. I will check with  
18 control here.

19 (Laughter.)

20 The Chairman. Ms. Ferguson?

21 Ms. Ferguson. That is correct, Senator Mitchell.  
22 The provision assumes -- the entire package assumes  
23 Medicare/Medicaid savings as part of the payment mechanism  
24 for subsidies. And because of that, and the fact that it  
25 is difficult, if not impossible according to the people we

1 have talked to, to isolate specific spending cuts for a  
2 long time or for many years in the future, it needs to be  
3 a complete, an overall Medicare/Medicaid.

4 This also means that if there are savings from  
5 Medicare, from health care reform that accrue to  
6 Medicare/Medicaid that are not related to specific cuts,  
7 those are also included and subsidies could be speeded up.

8 Senator Mitchell. Well, Mr. Chairman, I have a real  
9 concern about that because I think putting in a fail safe  
10 mechanism to ensure that any new initiatives pay for  
11 themselves is one thing. But holding any new initiatives  
12 responsible for any changes in Medicare, which are  
13 unrelated to this, is another thing.

14 I understand the importance of this to Senator Chafee  
15 and the Mainstream Group and I will vote for this on that  
16 basis. But I want to express my profound concern over  
17 that because in effect we are potentially making great  
18 changes in Medicare for reasons that are not directly, at  
19 least not directly, related to Medicare. I think there is  
20 a distinction. I hope the Senator understands the point I  
21 am making. I understand his. I know it is a serious  
22 effort.

23 But in order to move the bill along, and I understand  
24 the importance to the authors of the amendment, I will  
25 support it. But I have very great reservations on the

1 amendment.

2 The Chairman. Senator Chafee?

3 Senator Chafee. There is one problem here unrelated  
4 to anything we have been discussing. That is that the  
5 Wallop amendment inadvertently or maybe advertently but  
6 the way the system works out, has all the savings going  
7 into the general fund. Is that correct? Ms. Ferguson,  
8 you just outlined to me a problem that we did not  
9 anticipate from the Wallop amendment before we got into  
10 this.

11 Ms. Ferguson. My understanding of the Wallop  
12 amendment is that no funds could be taken from the trust  
13 fund that is established in the Chairman's proposal to be  
14 used for subsidies if the savings did not accrue. This  
15 fail safe mechanism, we think, achieves the same goal.

16 Senator Wallop. Mine is no automatic general revenue  
17 appropriation to the trust fund.

18 Ms. Ferguson. I am sorry?

19 Senator Wallop. My amendment is solely that there is  
20 no automatic general revenue transfers to the trust fund.

21 Ms. Ferguson. The only problem that it might create  
22 is a period of time before which action can be taken when  
23 the base line is crossed, so that subsidies could be  
24 funded until the cutback occurs.

25 Senator Wallop. I suggest that the only problem is

1 that Congress would have to make a choice in that matter.  
2 That is a different proposal.

3 The Chairman. Right. May I say I understand that  
4 the author of the amendment, the distinguished Senator  
5 from Rhode Island, having in mind this question would like  
6 a moment just to --

7 Senator Chafee. What we might do, Mr. Chairman, is  
8 just to set this aside.

9 The Chairman. Yes.

10 Senator Chafee. And see if we can straighten out  
11 this situation.

12 The Chairman. I sent in effect a message to Mr. Gale  
13 and Mr. Konigsburg asking about the Wallop amendment and  
14 they were not sure.

15 Senator Dole. Could I just ask, is this permanent?

16 Ms. Ferguson. Yes, sir.

17 Senator Dole. As the Chairman, I guess, disappears  
18 and through all three or something.

19 Ms. Ferguson. This would be a permanent provision.

20 The Chairman. Now just a second. How would Senator  
21 Chafee like us to do this? Do you want to continue the  
22 debate or do you want to go to another amendment and come  
23 back?

24 Senator Chafee. Well, I think perhaps if they can  
25 wrestle with this little problem -- this problem -- I will

1 not designate little problem, that arises from the Wallop  
2 amendment that has been adopted, and then perhaps we could  
3 come back. Let us set it aside.

4 The Chairman. Senator Rockefeller urgently wants to  
5 say something.

6 Senator Rockefeller. Mr. Chairman, it just has to be  
7 said. Look, the Medicare is a separate program. I am  
8 Chairman of the Subcommittee so obviously I care about  
9 that; and Medicaid is too. If they increase, then why is  
10 it that we do not just fix Medicare rather than, you know,  
11 delaying the voucher phase and expanding the tax deduction  
12 phase-in, increasing out-of-pocket limits, et cetera. I  
13 mean, it is just --

14 The Chairman. It is a complex amendment. The  
15 amendment is set aside until the author asks that it be  
16 brought up again.

17 Senator Chafee. Thank you.

18 The Chairman. We could have a coffee break because I  
19 cannot imagine there are any more amendments.

20 Senator Wallop. Mr. Chairman, I have one that I  
21 think would qualify in less than the red light time.

22 Senator Baucus. Are we going to keep going?

23 The Chairman. Of course we are going to keep going.  
24 But I just thought maybe we had kind of run out of  
25 amendments.

1 Senator Dole?

2 Senator Dole. I wonder if we might get an idea of  
3 how amendments are left.

4 The Chairman. Yes, that would be a good idea.  
5 Senator Wallop has a brief one. He was brief the last  
6 time, rather devastatingly brief.

7 Senator Durenberger. Mr. Chairman, I think I have  
8 four amendments. Two of them will be pretty brief.

9 The Chairman. Just let me here make a little list.  
10 All right? David Durenberger, four.

11 Senator Boren. Mr. Chairman, I have four. But they  
12 will be short.

13 The Chairman. Senator Boren.

14 Senator Hatch?

15 Senator Hatch. I have four, but they will be short.

16 The Chairman. They will be brief.

17 Senator Hatch. I think a number of them will be  
18 accepted.

19 Senator Dole. Four you can offer in five minute?

20 Senator Hatch. I think so. Pretty close to it.

21 The Chairman. All right. Senator Grassley?

22 Senator Grassley. I do not have a new amendment, but  
23 the one that you and I talked about at the very first this  
24 morning has been worked out. I would hope you would take  
25 the lead in offering our compromise.

1           The Chairman. Fine. We will do that.

2           Senator Danforth?

3           Senator Danforth. Mr. Chairman, I do not have an  
4 amendment. But I have about a two or three minute comment  
5 on what was going to be an amendment.

6           The Chairman. Sure.

7           (Laughter.)

8           The Chairman. We would be happy to have all of those  
9 you would like.

10          Senator Pryor?

11          Senator Pryor. Mr. Chairman, I have talked about an  
12 amendment on prescription drugs. I will not offer that  
13 amendment here.

14          The Chairman. But you would like to comment on it?

15          Senator Pryor. I do not even have comments. I will  
16 wait until we get to the floor, Mr. Chairman.

17          The Chairman. Good. Thank you. Thank you very  
18 much. I think that shows us. That is about how much time  
19 we have. Senator Dole has two.

20          Senator Dole. Probably two that probably will be  
21 accepted.

22          (Laughter.)

23          The Chairman. Senator Chafee?

24          Senator Chafee. One in addition to the pending.

25          The Chairman. All right. I am just going to have to



1 do something that is not agreeable, but the time comes  
2 when a bill has to be finished. I am going to say with  
3 that we will close. The list of amendments is now closed.  
4 We will finish our work and we will go off and celebrate  
5 the 4th of July.

6 Senator Grassley. What does it add up to?

7 Senator Dole. Too many.

8 The Chairman. It adds up to 13.

9 Senator Dole. You had better add one. That is an  
10 unlucky number.

11 The Chairman. Take one off. All right, Senator  
12 Wallop. We are going to follow a five-minute rule, else  
13 it is not fair to Senators who understood we would be out  
14 of here by about 1:00.

15 Senator Dole. 12:30.

16 The Chairman. 12:30. Senator Wallop.

17 Senator Wallop. Mr. Chairman, the Inspector General  
18 of Health and Human Services has issued regulations  
19 regarding limitations on patient referrals to medical  
20 facilities owned in whole or in part by physicians doing  
21 the referrals.

22 Mr. Chairman, could I try to have some committee  
23 attention?

24 The Chairman. Listen, we cannot finish this if we do  
25 not listen to our colleagues. Senator Wallop.

1           Senator Wallop. It is very brief and I think very  
2 understandable. Congressman Stark has offered amendments  
3 to the Medicare law which parallel the IG's program in  
4 attempting to limit self-referral. Both proposals have  
5 safe harbors which exempt facilities in rural areas. The  
6 safe harbors do not have all rural situations with limited  
7 medical resources.

8           In a frontier health care system like Wyoming, there  
9 are several reasons that are classified by the Census  
10 Bureau as urban areas, such as Casper, Wyoming. But they  
11 are still very isolated and their economic and medical  
12 resources are completely limited and all medical  
13 facilities are vital to the city and the surrounding rural  
14 population.

15           The need for an exemption for the rules is just as  
16 imperative in these areas as in frontier rural areas. Mr.  
17 Chairman, the solution to that, and my amendment would be  
18 to adapt the definition --

19           The Chairman. Would the Senator withhold a second?  
20 The Senator is making a very important proposal with  
21 respect to his part of the country. Now let us listen to  
22 him.

23           Senator Wallop. My amendment would adapt the  
24 definition of sole community provider under Medicare as a  
25 definition for medical facilities and their equipment

1 owned by physicians in a particular area which has limited  
2 medical resources.

3 This would include urban areas situated in a sense a  
4 frontier environment and the exceptions that are there in  
5 existence now are located more than 100 miles like other  
6 entities, no less than 50 percent of the patient users in  
7 the entity service area utilize the entity, and because of  
8 local topography or periods of prolonged severe weather  
9 conditions other entities providing like services are not  
10 readily accessible for at least 30 days in two out of  
11 three years.

12 The Chairman. Could I ask, this is one of those  
13 matters where we turn to Senators who have experience in  
14 similar topography.

15 Senator Wallop. This is specifically in an area like  
16 Casper, Wyoming which is a statistical urban area, but  
17 which is cut out of this and has not got the resources to  
18 found such things as health centers.

19 The Chairman. Are there Senators who would like to  
20 speak to this matter who come from --

21 Senator Dole. I think it ought to be adopted.

22 The Chairman. The Senator from Kansas has suggested  
23 this be adopted. Those in favor of the amendment will say  
24 aye.

25 (A chorus of ayes.)

1           The Chairman. Those who dare to oppose?

2           (No response.)

3           The Chairman. Once again, the law of the frontier  
4 has held its way. The amendment is adopted.

5           Senator Danforth? No, no. Senator Durenberger, you  
6 have four amendments, sir.

7           Senator Durenberger. Thank you, Mr. Chairman.

8           Let me try a brief one first. It is Section 457  
9 would be amended to provide a limit on tax-free deferred  
10 compensation shall not apply to an excess benefit  
11 arrangement maintained by a group medical practice exempt  
12 under Section 501(c)(3).

13           The bottom line is that a number of not very many, I  
14 guess, relatively large medical group practices are  
15 organized under 501(c)(3). The Mayo Clinic happens to be  
16 one of them. But I think a number of other clinics in the  
17 country are like that.

18           There is a \$7,500 year limit on deferred compensation  
19 subject to tax for this group of practitioners, whereas if  
20 they were a for-profit group or they were individuals,  
21 they could defer their tax without a \$7,500 limit.

22           So it is trying to do equity for doctors or other  
23 medical providers who are organized in a 501(c)(3) setting  
24 with --

25           The Chairman. This amount of equity. Mr. Gale, Mr.

1 Sollee, Mr. Buckley, do you have any comments?

2 Mr. Buckley. Mr. Chairman, this would exempt this  
3 group of people from the 457 limits. It is true, it would  
4 permit them the same limitation on the exclusion as the  
5 taxable corporations. However, the taxable corporations  
6 have their deduction disallowed so that in effect this  
7 puts them in a more favorable position than taxable  
8 corporations.

9 The Chairman. This would put them in a more  
10 favorable position?

11 Mr. Buckley. That is correct.

12 Mr. Sollee. It is a pension plan amendment.

13 The Chairman. Mr. Gale, your view on the matter?

14 Mr. Gale. Well, there is a difference between the  
15 taxables and the tax exempts here, in that the tax exempt  
16 is going to be indifferent to whether or not it gets the  
17 deduction delayed because deductions would mean nothing to  
18 the tax exempts. So in that sense there is a different  
19 treatment under the Code.

20 The Chairman. Fine. I am going to, in the sense of  
21 moving along, this is a rather -- it is not clear what the  
22 better view is. I am going to ask those in favor to say  
23 aye.

24 (A chorus of ayes.)

25 The Chairman. Those opposed?

1 (No response.)

2 The Chairman. The ayes have it.

3 Senator Durenberger. Mr. Chairman?

4 The Chairman. Senator Dole, did you want to offer an  
5 amendment?

6 Senator Dole. I just had a little technical  
7 amendment that is not --

8 The Chairman. Sure, let us just hear it. Senator  
9 Dole.

10 Senator Dole. I think, Senator Pryor, I think  
11 yesterday when you got the independent contractor issue  
12 you said there is going to be a study by the IRS, they are  
13 going to determine and then they are going to report back  
14 to us.

15 All I am suggesting, that in the meantime this  
16 Commission does not have that authority to make that  
17 determination. I do not think anybody here would dispute  
18 that the Commission's primary role is to look at health  
19 care. But we do not want them to determine how the tax  
20 structure should be changed.

21 This gets into the definition of employ for tax  
22 purposes. As I said before, the controversy is around the  
23 taxation and ought to remain so, and ought to remain  
24 before this committee. I do not think it should be turned  
25 into a health care issue; and it should not be left up to

1 some commission. All this would do is not authorize a  
2 commission to address issues relating to defining an  
3 employee for tax purposes.

4 The Chairman. Defining.

5 Senator Dole. Including, but not limited, to  
6 discussing these issues with the Internal Revenue Service  
7 or the Department of Treasury. I think this is a follow-  
8 on of the amendment offered by Senator Pryor and he is a  
9 co-sponsor.

10 The Chairman. Senator Pryor is not here.

11 Senator Mitchell. I believe Senator Pryor supports  
12 the amendment.

13 The Chairman. This the word, all in favor will say  
14 aye.

15 (A chorus of ayes.)

16 The Chairman. Those opposed?

17 (No response.)

18 The Chairman. Amendment agreed to. You have one  
19 amendment left, Senator Dole.

20 Senator Durenberger, you have your third.

21 Senator Durenberger. Yes, sir. I have an amendment  
22 with Senator Danforth and others. This is on the issue of  
23 benefits claims denial procedures and remedies. The  
24 background works like this. All of us buy our health  
25 insurance from different sources, different private plans

1 or Medicare or the Federal Employee Health Benefit Plan or  
2 whatever.

3 Each of the plans has a different procedure for  
4 resolving benefit claims. For example, is this a covered  
5 benefit or not or is the care appropriate or not?

6 What the Chairman's mark does is to treat all  
7 individual and employer group health plans equally. All  
8 can now go directly to State Court, but it does not  
9 address the varying dispute procedures and remedies that  
10 are available to FEHBP or Medicare in particular.

11 In addition, by allowing all claims disputes to go to  
12 State Court, the cost of insurance will begin to rise, not  
13 because of medical expenditures but because of legal  
14 costs.

15 Instead of limiting venue, the mark will let you go  
16 forum shopping. Instead of promoting stability,  
17 uniformity and reduced costs, it creates, uncertainty  
18 disparities and increased cost, needless litigation. And  
19 what we are looking for is some alternative of process. I  
20 say this is being worked on not only by members of this  
21 committee, but of other committees.

22 We have come up with a -- Senator Danforth and I have  
23 developed a grievance procedure which utilizes alternative  
24 dispute resolution and then access to courts if necessary.

25 Individuals would have a choice of entering into



1 binding arbitration in accordance with the rules of the  
2 American Arbitration Association or they could have the  
3 option of electing to file a suit in federal court after  
4 they participated in a form of non-binding mediation.

5 And in effect, what we are trying to do here is to  
6 treat these disputes as contract disputes rather than tort  
7 disputes, but allowing people the option to go either  
8 binding arbitration or the non-binding mediation and then  
9 they can have access to the federal courts.

10 The Chairman. Senator Packwood?

11 Senator Packwood. I do not know if this is a good  
12 amendment or not, Dave. But I wonder, Mr. Chairman, I do  
13 not want to delay you. I have never seen this amendment.  
14 Staff has never seen this amendment. Is there not some  
15 way we can get some little notice? This sounds like a  
16 rather complex amendment.

17 Senator Mitchell. Mr. Chairman, could I ask a  
18 question about it?

19 The Chairman. Senator Mitchell?

20 Senator Mitchell. Dave, I want to inquire because  
21 there may be an effect you did not intend here. Am I  
22 correct that this amendment limits what could be recovered  
23 in court to two times the value of the benefit claimed?

24 Senator Durenberger. Can I have an expert answer  
25 that?

1           The Chairman. Sure. Who would you like at the  
2 table? Mr. Sollee?

3           Senator Durenberger. I am sorry. I want to  
4 apologize to Bob and all the rest of you. If you have not  
5 seen this ahead of time, you should have because there are  
6 charts that go with it and everything else. I regret that  
7 you did not have it.

8           The Chairman. Senator Dole suggests this be offered  
9 on the floor.

10          Senator Mitchell. No, I was just going to say, Dave,  
11 one of the problems would be, if the answer is in the  
12 affirmative, which I think it is, but I am not sure, we  
13 would have a situation where a woman contracts cervical  
14 cancer because of an error or delay in the conduct of a  
15 pap smear and her recovery would be limited two times the  
16 value of the cost of the pap smear. I do not think you  
17 would want to intend that result, if that is, in fact, one  
18 of the consequences.

19          The Chairman. Senator Durenberger, may your many  
20 friends and admirers urge you to bring this to the floor  
21 when we have all had a chance to review it.

22          Senator Durenberger. All right, Mr. Chairman, fine.  
23 May I go on to the other much less complicated amendment?

24          The Chairman. Of course.

25          Senator Durenberger. This is the one entitled State

1 flexibility. I hope you have seen the State flexibility  
2 amendment.

3 Let me begin by saying that much has been said of  
4 shared responsibility between employers and employees.  
5 Bob Packwood and I have always had the discussion relative  
6 to the taxability of employer-paid health insurance and he  
7 has always made the very accurate observation that the  
8 high value of tax-free fringe benefits, and particularly  
9 health insurance, because it helps employees in this  
10 country do for their families what cash wages would not  
11 stimulate them to do.

12 Clearly, over time it has provided access to medical  
13 services at a much lower group price for employees than if  
14 they had to spend -- would somebody please get the  
15 amendment out.

16 The Chairman. We have not seen it yet, but go ahead.

17 Senator Durenberger. I think the amendment is pretty  
18 simple. It just strikes the Chairman's mark. Not all of  
19 it, just part of it.

20 (Laughter.)

21 Senator Durenberger. But the bottom line of this is  
22 that as I think as many of you are aware, we have debated  
23 from time to time over the so-called ERISA preemption,  
24 because the only way in which employers and employees now  
25 have been able to deal with State mandated benefits, State

1 mandated providers, demands, and now taxation of State  
2 benefits is to self-insure.

3           So many companies, literally millions of companies  
4 have gone to self-insurance so that they can take  
5 advantage of the ERISA exemption, self-insure, avoid some  
6 of these State mandates and then begin to negotiate as we  
7 know for better prices, plans like Bob Dole referred to  
8 earlier or Bill Roth referred to the MSA. This variety of  
9 approaches has come about simply because companies have  
10 been able to self-insure.

11           What we have been trying to do with the larger mark  
12 that the Chairman has given us in terms of substituting,  
13 if you will, for this back door, we are going to use the  
14 ERISA preemption in order to get around State benefits, we  
15 tried to establish the theory of some national rules,  
16 national anti-trust rules, medical liability rules, rules  
17 for accountable health plans, which include solvency rules  
18 and so forth, rules for the co-ops which we have debated  
19 here, rules for self-insurance.

20           We have argued 100. Some people argued 500. Bob had  
21 argued two, I think, and go down as low as two. But what  
22 we are trying to do is establish the notion of let us have  
23 a national rule and then let all of these local markets  
24 operate within those rules.

25           In order to do that, we have also preempted in

1 certain cases the authority of State Governments to levy  
2 mandated benefits or provider mandates or so. We have  
3 limited their flexibility to some extent. What the  
4 Chairman's mark does that are included in the particulars  
5 in this provision is to in effect eviscerate a particular  
6 preemption of that portion of the State responsibility.

7 So this is an effort to get back, in effect, to where  
8 we are now and to implement that the other provisions of  
9 this bill that have the national rules for the local  
10 market.

11 Senator Mitchell. Mr. Chairman?

12 The Chairman. Senator Mitchell?

13 Senator Mitchell. Mr. Chairman, this really is an  
14 important issue. There is a real irony here. Understand  
15 that what this amendment says is that we want the Federal  
16 Government to prevent States from doing what States may  
17 want to do.

18 Everybody should understand that that is what this  
19 is. This is a very important issue, the notion of ERISA  
20 waivers. I think all of us have probably been on both  
21 sides of the waiver issue, depending upon the particular  
22 matter that is involved.

23 Dave, most of the States, of course, favor giving  
24 them broader authority and latitude. The same argument  
25 made here earlier, well, does the Federal Government know

1 everything and not the individuals. Well, does the  
2 Federal Government know everything and not the States?

3 Of course, the businesses involved because the ERISA  
4 provisions in effect immunize them from State action want  
5 to keep it. Many of them are usually people who denounce  
6 federal action, except when that federal action, of  
7 course, operates to their benefit.

8 I wish we had more time to discuss it. It is  
9 something that Dave and I and others have been involved in  
10 this debate for a very long time. I have real  
11 reservations about it. Many of the States are moving very  
12 actively and innovatively to deal with health care reform.  
13 We try to encourage them where and when possible.

14 My concern is this will constrain their efforts. I  
15 would prefer, frankly, to let States have the authority to  
16 proceed and we not to tell the States what they cannot or  
17 can do.

18 The Chairman. Senator Baucus?

19 Senator Baucus. Mr. Chairman, I would agree with  
20 that last statement. For example, Oregon has the Oregon  
21 Plan. Minnesota has its approach. Hawaii its approach.  
22 Vermont had its approach. It is now wrestling with the  
23 single-payer, multi-payer. My State of Montana is doing  
24 the same. We are trying to figure out in our State is  
25 there is a better way of doing this.

1           And since this we are passing now is not the  
2 universal coverage bill, I think to some degree we have an  
3 obligation to let States try to see if they could come up  
4 with a way to begin to address universal coverage in their  
5 own States.

6           It is true that big business would not like what I am  
7 saying, but I also think that States have done a pretty  
8 good job. One of the basic theories in our country, the  
9 laboratory of States, let States experiment. I frankly  
10 think that we are better advised not to adopt this  
11 amendment.

12           Senator Durenberger. Mr. Chairman?

13           The Chairman. Senator Durenberger?

14           Senator Durenberger. Mr. Chairman, it is true that  
15 in the last couple, three years States have been  
16 experimenting with ways to get to universal coverage by  
17 imposing taxes, for example, on health plans or  
18 requirements of expanded coverage and so forth. That is  
19 true. But that is in effect more of the same, that has  
20 caused so many companies and so many employers to try to  
21 disengage from State run systems.

22           You are not going to find any multi-State employers  
23 that are going to support this sort of notion that State-  
24 by-State you can experiment with the practice of medicine.  
25 You are not going to find any unions that support the

1 notion because it is the unions and the multi-State  
2 employers that have been in here and in the Labor  
3 Committee constantly saying we need some uniformity of  
4 rules. We do not need a different set of rules governing  
5 our health insurance programs wherever we go.

6 That is what the rest of this bill is trying to  
7 accomplish. We are trying to set some uniformity. What  
8 are the rules for how this market is going to operate?  
9 Not tell the market what it has to produce. Not tell  
10 doctors how to organize.

11 I can show you a chart, as I did in the Labor  
12 Committee, of the way the medical markets for North  
13 Dakota, South Dakota, Minnesota, Wisconsin and Iowa are  
14 organized. They do not respect State boundaries. You  
15 cannot run a State-run Wisconsin system and then another  
16 one in Minnesota. You cannot because we have clinics in  
17 Grand Forks, North Dakota and Fargo, North Dakota that are  
18 serving large areas of Minnesota, you cannot have one kind  
19 of practice running in Minnesota and another in Minnesota.

20 But that is the effect of what some of these State-  
21 by-State approaches will lead you to. The whole argument  
22 for reforming the system is that we have a uniformity of  
23 national rules. So whether it is a Mayo Clinic or a Grand  
24 Forks Clinic, wherever they practice, wherever people live  
25 and buy their health care.



1           They may live in one place, buy their health care in  
2 another State, and work in a third State. There is some  
3 uniformity to the rules of the marketplace. Not telling  
4 people how to practice, not how to organize their  
5 practice, not how much you can charge, not how much they  
6 are going to get paid. And it is only in that area that  
7 we limit State flexibility.

8           Certainly in coverage and providing access in rural  
9 areas, States can do practically anything. That is the  
10 limitation.

11          The Chairman. Thank you, Senator Durenberger. The  
12 Clerk will call the roll.

13          The Clerk. Mr. Baucus?

14          Senator Baucus. No.

15          The Clerk. Mr. Boren?

16          Senator Boren. Aye.

17          The Clerk. Mr. Bradley?

18          Senator Bradley. Aye.

19          The Clerk. Mr. Mitchell?

20          Senator Mitchell. No.

21          The Clerk. Mr. Pryor?

22          Senator Pryor. No.

23          The Clerk. Mr. Riegle?

24          Senator Riegle. No.

25          The Clerk. Mr. Rockefeller?

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

1 The Clerk. Mr. Chairman?

2 The Chairman. No.

3 The vote is 10 to 10 and the amendment accordingly  
4 fails.

5 Senator Durenberger, you have one other amendment  
6 left. Would you like to have someone else go?

7 Senator Durenberger. Yes.

8 The Chairman. Senator Boren, you have an amendment.

9 Senator Boren. I have an amendment on the same  
10 subject, Mr. Chairman, that would strike in Title XIII all  
11 single payer reference. It is really a very  
12 straightforward amendment, although I understand that it  
13 evokes quite a philosophical debate.

14 I think we all know where we are on that particular  
15 divide. But let me say that I just for one do not want to  
16 encourage us to move in a single payer direction in this  
17 country. I think we do not want to move toward a health  
18 system that is completely centralized and with government  
19 control.

20 The other thing that I would point out is that it  
21 really causes havoc again with those, to use the same  
22 argument Senator Durenberger raised, that operate across  
23 State lines. The current language in the current mark  
24 exempts multi-State employers of 5,000 or more. I would  
25 note that it also exempts unions that operate in two or

1 more States without regard to size.

2           There seems to be a double standard here in the  
3 current language that more unions will be exempt than will  
4 be business which does not seem to me to be quite fair.  
5 It is not quite parallel.

6           But I simply think we should not complicate the  
7 situation by having single-payer States. For me this is a  
8 direction I just do not think the country should move.  
9 Therefore, my amendment is very simple, it just strikes  
10 all single-payer references in Title XIII.

11           Senator Mitchell. Mr. Chairman?

12           The Chairman. Senator Mitchell?

13           Senator Mitchell. Mr. Chairman, once again the issue  
14 is whether -- I guess I could paraphrase Senator  
15 Packwood's earlier statement -- whether we think States  
16 are dumb. This measure of the Chairman simply permits  
17 States to take those directions and measures they want in  
18 health care reform.

19           But whether we are now to say that we at the federal  
20 level are going to say to States, even if you want to do  
21 this, you cannot do this. Now, we are all from different  
22 States. New York may choose one course, Oklahoma another,  
23 Maine another. But I do not see why we should be here  
24 saying to States, it does not matter if you have 100  
25 percent of your population wants a certain course of

1 action, you cannot do it because we at the federal level  
2 are going to prevent you from doing it because some of us  
3 have a philosophical disagreement with that type of  
4 approach.

5 I personally feel that States ought to have great  
6 flexibility. What we have learned in health care is that  
7 there is much to learn from States, that they are the  
8 laboratories of reform. They are far ahead of us in many  
9 areas and many of the bills now pending have important  
10 provisions derived from State experience.

11 So I, Mr. Chairman, hope that we will just say that  
12 we trust the people of each State with the intelligence  
13 and the judgment to make a decision that they feel is in  
14 their best interest in this area.

15 The Chairman. Thank you, Senator Mitchell.

16 Senator Daschle?

17 Senator Daschle. Mr. Chairman, I asked to be  
18 recognized prior to the time the Leader finished his  
19 statement. The last part of his statement is what I was  
20 going to say. I think we have learned a lot already from  
21 States all over the country who have functioned really as  
22 prototypes, as workshops.

23 I do not see how it is in our advantage to cut that  
24 off, to terminate the opportunities for States to become  
25 more innovated, to do the things that we are not prepared

1 to do at the federal level. That in combination with the  
2 other arguments the leader made, I think are very  
3 compelling. So I would hope we would defeat this  
4 amendment.

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. No.

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. No.

1 The Clerk. Mr. Packwood?

2 Senator Packwood. Aye.

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. Aye.

11 The Clerk. Mr. Durenberger?

12 Senator Durenberger. Aye.

13 The Clerk. Mr. Grassley?

14 Senator Grassley. No.

15 The Clerk. Mr. Hatch?

16 Senator Hatch. Aye.

17 The Clerk. Mr. Wallop?

18 Senator Wallop. Aye.

19 The Clerk. Mr. Chairman?

20 The Chairman. No.

21 The motion is 10, 10 and it fails. Thank you,

22 Senator Boren, for your courtesy in this matter.

23 Now let us get on with our work. Senator Danforth,

24 you had a comment you wanted to make. Do you want to hold

25 that?

1           Senator Roth. Mr. Chairman, I was anticipating  
2 offering an amendment relating to the child immunization  
3 issue. This is a program that has been established and it  
4 has become quite controversial and in my view botched up.  
5 I had planned to offer an amendment which would improve  
6 it. But I think that given the constraints of five  
7 minutes of discussion there was not enough time to present  
8 it. So I would like to reserve the right to offer that  
9 amendment on the floor.

10           The Chairman. All right.

11           Senator Packwood. Mr. Chairman?

12           The Chairman. Sure. Senator Packwood?

13           Senator Packwood. I want to interject. I want to  
14 make sure I understand what you are saying. This is the  
15 vaccine program where we have already met the goals that  
16 we set, and actually it was based on false in 1986. We  
17 are beyond it and now we are storing all this vaccine in a  
18 warehouse in New Jersey that is not equipped to store it.  
19 It is going to disintegrate there. And we are adversely  
20 affecting the companies that make vaccine. I mean, it is  
21 a lose, lose, lose.

22           Senator Danforth. That is correct. I mean, on the  
23 basis of an understanding that there was about a 60  
24 percent immunization rate, we created a program which  
25 turned out to be a very centralized government program of



1 buying up all the vaccine, providing a national  
2 distribution system out of a warehouse in New Jersey and  
3 really wrecking the private marketplace.

4 It turns out that the numbers were wrong and the fact  
5 of the matter is that the immunization rates are 90 plus  
6 percent. What we do not need is to nationalize the  
7 program. What we do need is to have an outreach program  
8 designed to address the problem where it really exists.

9 Children are brought in to the doctor's office and  
10 the doctor is not immunizing the children. So what we  
11 should do is to try to focus on the problem where it  
12 exists. This is an issue that Senator Bumpers has been  
13 very involved in. I am sure he will be on the floor as  
14 well.

15 It is my hope that we can improve this situation on  
16 the floor. But I do not think there is enough time to  
17 debate it right now.

18 The Chairman. Fine. But I look forward to that  
19 debate, if I may say.

20 Senator Riegle?

21 Senator Riegle. Before you move on, just let the  
22 record show that there is a dispute on the data. The data  
23 that I have indicates that the overall rate of vaccination  
24 is 72 percent, now this is the kids getting all the shots  
25 they need. So there is legitimate room for disagreement

1 on this issue and we can debate it another time.

2 The Chairman. Fine.

3 Senator Hatch, you have a formidable four amendments.

4 Senator Hatch. Mr. Chairman, I will try to be very  
5 short on these. The first one I believe --

6 The Chairman. And in order for him to do so, we  
7 ought to listen to him. Do you not think? Just be a  
8 little quiet now.

9 Senator Hatch. The first one, Mr. Chairman, thank  
10 you. I think we have worked out the language with your  
11 staff and it is on subacute care. As we all know, there  
12 are artificial barriers in Medicare that restrict placing  
13 seniors and other patients in the most cost effective  
14 settings where they can receive quality care services.

15 The inefficiencies of these barriers cost taxpayers  
16 billions of dollars. In fact, Association studies  
17 confirms that billions could be achieved. So what my  
18 amendment would do, simply, is require the HHS Secretary  
19 to study the cost effectiveness of providing subacute care  
20 services to Medicare beneficiaries.

21 The Secretary would determine what would be the least  
22 restrictive institutional setting for patients based on  
23 their diagnosis and the intensity of the services they  
24 would require. I cannot imagine anybody being against it.

25 The Chairman. I defy anyone to be against it at this

1 hour.

2 (Laughter.)

3 The Chairman. All in favor will say aye.

4 (A chorus of ayes.)

5 The Chairman. And those opposed?

6 (No response.)

7 The Chairman. This excellent amendment is approved.

8 Senator Hatch. Mr. Chairman, thank you for your kind  
9 remarks. The next amendment would be simply to add a  
10 demonstrate project to those in the Chairman's mark under  
11 Title VI, Section C., where the Secretary of HHS shall  
12 approve and support State demonstration projects on no-  
13 fault liability with regard to medical liability.

14 In other words, it would be strictly a demonstration  
15 set of projects that could determine whether or not to use  
16 no-fault liability with regard to medical liability.  
17 Again, I cannot imagine anybody not wanting to do that.

18 The Chairman. This is a --

19 Senator Hatch. Kansas for sure, Utah and Kansas. So  
20 I would move that amendment, Mr. Chairman. It is really a  
21 no-fault set of demonstration projects to determine  
22 whether no-fault would assist us in cutting back on the  
23 medical liability problem.

24 The Chairman. By no-fault the analogy is with no-  
25 fault automobile insurance. Is that right?

1 Senator Hatch. Well, it is patterned in a similar  
2 fashion.

3 The Chairman. It reassesses costs.

4 Senator Hatch. I believe your staff has basically  
5 approved that.

6 The Chairman. Can I ask, Senator, would you be  
7 willing to have this say that HHS may approve? It may be  
8 no State comes forward. If no State were to apply, the  
9 Secretary would be --

10 Senator Hatch. I would be willing to modify the  
11 amendment in that regard.

12 The Chairman. Would you modify it, sir?

13 Senator Hatch. Sure. That will save us some time.

14 The Chairman. As modified.

15 Senator Packwood. A good amendment.

16 The Chairman. It is a good amendment. Those in  
17 favor will say aye.

18 (A chorus of ayes.)

19 The Chairman. Those opposed?

20 (No response.)

21 The Chairman. The ayes have it. We thank the  
22 Senator from Utah once again.

23 Senator Hatch. Mr. Chairman, moving right along  
24 here, the next item would be --

25 The Chairman. I must ask that the Senator be heard.

1           Senator Hatch. The next amendment would be a  
2 clarification that ``health professionals`` in the list of  
3 covered services which includes State licensed  
4 professionals that it would include and expand the  
5 clarification or the certification the nurse practitioners  
6 and chiropractors.

7           Now all it does is it clarifies that the definition  
8 of health professionals defined this under the scope of  
9 State licensing laws. This is an amendment to the  
10 Mainstream Coalition, but I think it is acceptable, at  
11 least that has been my impression. I hope that it will be  
12 because I think it is only fair.

13           Senator Durenberger. Mr. Chairman?

14           The Chairman. Senator Durenberger, speaking.

15           Senator Durenberger. Mr. Chairman, I have not seen  
16 the amendment. And having been through this issue with --  
17 all right. I guess it is all right. Fine. Sorry about  
18 that.

19           (Laughter.)

20           Senator Hatch. I just cannot imagine anybody not  
21 being for it.

22           Senator Durenberger. I cannot either.

23           (Laughter.)

24           Senator Hatch. And especially you, Senator  
25 Durenberger.

1           The Chairman. Do I hear any opposition to this  
2 worthy amendment?

3           (No response.)

4           The Chairman. This is a lot of opposition I am told.  
5 There might be. Those who might be opposed, will they  
6 raise their hands?

7           Senator Hatch. Mr. Chairman, it is important if we  
8 can just get the amendment.

9           The Chairman. I cannot vote for this, but the  
10 Mainstream Coalition can.

11          Senator Hatch. Well, let me set that aside  
12 temporarily.

13          The Chairman. The amendment offered by Senator --

14          Senator Hatch. Let me set it aside temporarily while  
15 they get a copy to all of you.

16          The Chairman. Fine.

17          Senator Hatch. Then we will determine whether I go  
18 ahead with it or not.

19          The Chairman. Fine.

20          Senator Rockefeller. Mr. Chairman, I have one small  
21 amendment.

22          The Chairman. All right.

23          Senator Hatch, you have two remaining, I believe.

24          Senator Hatch. I am still within my time.

25          The Chairman. You have 30 seconds left.

1           Senator Hatch. Yes. Mr. Chairman, we are passing  
2 out a Part B marriage penalty amendment. What this  
3 amendment would do is, it would increase the threshold  
4 from \$115,000 to \$150,000. Now that will affect very few  
5 in my home State of Utah, but it would affect a number of  
6 your States, say in New York a lot of people.

7           What it would do is, it would increase the threshold  
8 for taxpayers who are married filing joint returns for  
9 purposes of the increased Part B Medicare premium  
10 contained in the mark, from \$115,000 to \$150,000.

11           The reason for the amendment is very simple. This  
12 provision creates a new marriage penalty and I want less  
13 in its impact. The Tax Code historically does have  
14 marriage penalties and I do not know how you can get rid  
15 of them, except that you can negate some of the  
16 difficulties of it.

17           I believe that we should do all we can to prevent  
18 incentives against marriage, and against families, and  
19 moving that to \$150,000 I think would solve a lot of  
20 problems. For instance, in other words, if a senior  
21 couple who falls under the provision of the mark because  
22 they make more than \$115,000 were to divorce they would  
23 save money, up to about \$2,000 per year.

24           Alternatively, if two seniors at a certain income  
25 levels were to marry, they would be hit with a tax. So

1 they are discouraged from marrying. Frankly, I think I  
2 could go through a number of illustrations. It is a  
3 reasonable amendment that basically just lifts the  
4 threshold.

5 The Chairman. Could I ask Mr. Buckley and Mr. Gale  
6 their view on behalf of the staff members?

7 Mr. Gale. Mr. Chairman, we have not seen this  
8 amendment as yet.

9 Senator Hatch. Can you get one down there to them?

10 Mr. Gale. I would just make the observation that the  
11 proposal in the Chairman's mark is designed to essentially  
12 means test Medicare Part B premiums and the same issues  
13 may not apply in where one measures tax brackets and that  
14 sort of thing.

15 But the essence of the amendment in the mark is  
16 simply to say at these thresholds, 90 single, 115 couple  
17 you are required to pay 75 percent of the cost of Medicare  
18 Part B.

19 The Chairman. This is a matter of revenue and a  
20 matter of equity.

21 Senator Boren. Mr. Chairman?

22 Senator Bradley. Mr. Chairman?

23 The Chairman. Senator Boren and then Senator  
24 Bradley.

25 Senator Boren. Mr. Chairman, we have been working



1 hard on deficit reduction to be able to afford this plan.  
2 I do not see how in the world we can justify continuing to  
3 pay the Medicare Part B premium for people that can well  
4 afford to pay it for themselves. We are never going to  
5 get spending under control.

6 This proposal was put forward by many of us during  
7 the budget debate. I am very pleased it has been included  
8 in the Chairman's mark. I commend you for putting it in.  
9 I just do not think this is the time when we should start  
10 putting back in subsidies for people who do not need it.  
11 We cannot afford to provide welfare for the wealthy in  
12 this country. I think that is what we would be doing  
13 here.

14 The Chairman. Thank you, Senator Boren.

15 Senator Bradley?

16 Senator Bradley. Mr. Chairman, the marriage tax  
17 penalty issue is a serious tax question. But this is not  
18 the marriage tax penalty issue. This is a question  
19 related to a particular subsidy program and at what income  
20 would you have to pay more. I think, frankly, we are  
21 mixing apples and oranges here and we should not do this  
22 amendment at this time.

23 Senator Hatch. Well, Mr. Chairman, this is related  
24 to the design of the subsidy. Excuse me, the tax.  
25 Frankly, it just is not a fair way to go. All I want to

1 do is get it to where it really does not apply to an awful  
2 lot of people.

3 The Chairman. I think it really is a question -- I  
4 have to share the view of Senator Boren and Senator  
5 Bradley. But I am happy to have a roll call vote.

6 Senator Hatch. Let us just vote on it.

7 Senator Conrad. Mr. Chairman, just before we vote,  
8 could we just inquire what the revenue impact of this is.

9 The Chairman. I do not think we have the least idea.  
10 Mr. Buckley?

11 (Laughter.)

12 Mr. Buckley. We can say it is substantial.

13 The Chairman. It is substantial.

14 Those in favor will say aye? Or, do you want a roll  
15 call vote, sir?

16 Senator Hatch. Yes, let us have a roll call vote.

17 The Chairman. 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 The Chairman. No, by proxy.  
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. No.  
15 The Clerk. Mr. Dole?  
16 Senator Dole. No.  
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 It is 16 nays to 4 yeas.

9 Senator Hatch. I trust that was one not everybody  
10 would agree with.

11 The Chairman. Senator Hatch, you have one last  
12 amendment.

13 Senator Hatch. Let me not do that, but let me just  
14 make a couple of comments. I had several clarifications  
15 that I had listed, but in the interest of time constraints  
16 I will not make any formal proposals. This will dispense  
17 with five or more amendments that I was going to bring up.

18 The Chairman. We really must listen to Senator  
19 Hatch. Please.

20 Senator Hatch. I would like to bring these up on the  
21 floor. Let me just mention a couple of issues that are  
22 important. One is the issue we raised with respect to the  
23 provision. We are reimposing the co-payment for clinical  
24 labs. I know that removing this provision is costly. At  
25 the same time I believe that you have agreed that the

1 policy is flawed and we need to work to remedy that. And  
2 I hope that we can.

3 Second, the second thing, your provisions with  
4 respect to fraud and privacy. I believe in drafting this  
5 you intend to add the Harkin fraud provision and the Leahy  
6 privacy provision we adopted in the Labor Committee. I  
7 did have minor concerns about that language.

8 On fraud it must be clear that the provisions are  
9 prospective. On privacy, law enforcement had some  
10 concerns. And again, I would like to work with your  
11 senior staff, with your staff on this.

12 I also intended to offer an amendment to clarify that  
13 non-profit community blood centers are providers of  
14 services under Medicare. Staff has raised some concerns  
15 about the impact of this on cost and medical services. I  
16 would just like to work together with you to see if we can  
17 resolve those problems.

18 The Chairman. Fine.

19 Senator Hatch. Finally, on anti-trust, I had an  
20 amendment which we have worked long and hard on with  
21 regard to anti-trust relief for providers and other actors  
22 in the health care market. I do not believe you are going  
23 to have true health care reform without facing the  
24 problems of anti-trust.

25 We have worked with a broad base of providers and

1 others who are concerned about it and have modified our  
2 original bill. We now have a bill that we hope will be  
3 acceptable to everybody. We will wait until we get to the  
4 floor to bring that up. But I just wanted to bring it up  
5 here now because it is important to mention.

6 The Chairman. Yes. That is very helpful of you and  
7 we look forward to it. If you can resolve that anti-  
8 trust, that is like Fermat's last theorem.

9 Senator Hatch. We think we can. If we can work out  
10 these other things I have in mind before the floor, I  
11 would sure like to.

12 The Chairman. We will name it for you.

13 Senator Durenberger, you have one remaining  
14 amendment.

15 Senator Durenberger. It is an amendment that would  
16 make clear that church plans which have been certified by  
17 the Secretary of Labor could be treated as employers in  
18 determining whether they are large enough to self-insure.  
19 This provision is both in the mainstream approach, the  
20 original Chafee bill and in the Dole-Packwood proposal.

21 The Chairman. Do we have comments on this matter?

22 Senator Durenberger. It is a pretty good amendment.

23 The Chairman. In that case, the question. Those in  
24 favor of the Durenberger amendment regarding  
25 classification of church health plans would say aye.

1 (A chorus of ayes.)

2 The Chairman. Those opposed?

3 (No response.)

4 The Chairman. That is a very thoughtful amendment.

5 We thank you, Senator Durenberger.

6 Senator Mitchell?

7 Senator Mitchell. Mr. Chairman, I want to ask that  
8 the issue of Senator Durenberger's amendment on ERISA  
9 waiver be taken up again. My views are clear. I spoke  
10 against it and voted against it. I was not aware of the  
11 time of the high priority which our colleagues place on  
12 that amendment.

13 While I personally do not favor it, that is obvious  
14 based upon my remarks and my vote, in an effort to permit  
15 this process to go forward so that we can report a bill  
16 out and move to the next step, I would ask that it be  
17 reopened so that I could change my vote from no to aye.

18 The Chairman. Is there objection?

19 Senator Dole. Would the Senator yield?

20 Senator Mitchell. Yes.

21 Senator Dole. If you do not want to change your  
22 vote, I will change mine.

23 Senator Mitchell. Since I have already voted one way  
24 and committed another way --

25 (Laughter.)

1           The Chairman. In the interests of harmony, the  
2 Majority Leader and the Republic Leader both change?

3           Senator Dole. No, I am going to stay where I am.  
4           (Laughter.)

5           Senator Mitchell. Mr. Chairman, I will just repeat  
6 what I said earlier. The first day we began this, I said  
7 we should all approach with open minds and a give and  
8 take. I did not realize how often I would be forced to  
9 act upon my words. I hope this is the last time.

10          The Chairman. It is the last time today. Without  
11 objection, the vote is changed and the amendment is  
12 adopted.

13          Senator Hatch. Mr. Chairman, we did set aside that  
14 one amendment on nurse practitioners and chiropractors.  
15 If everybody has that amendment, I wonder if I can get  
16 them to agree.

17          Senator Rockefeller. No.

18          Senator Hatch. Well, we sent it out. Everyone of  
19 you should have it now.

20          The Chairman. We did not see it.

21          Senator Hatch. All it says is this. It says,  
22 ``Health professional services'' --

23          The Chairman. Now, let us listen. We are coming to  
24 an end now.

25          Senator Hatch. It says, ``Covered services include



1 the following: Health professional services means  
2 professional services that are lawfully provided by a  
3 physician or another person who is legally authorized to  
4 provide such services in the State in which the services  
5 are provided. That would include nurse practitioners and  
6 chiropractors.' That is all it does. I cannot imagine  
7 anybody voting against it.

8 The Chairman. There is nothing the least the matter  
9 with this amendment.

10 Senator Chafee. Mr. Chairman, I am not sure of this,  
11 how this works. What does it mean when you are  
12 specifically naming these people? Does that designate  
13 them that they are required, be included in the system?

14 Senator Hatch. That is right, in covered services.  
15 All it is is those who are authorized by the State to do  
16 so. The bill has left them out and I do not think the  
17 bill should. This clarifies the bill's language.

18 Senator Chafee. All right. Thank you.

19 The Chairman. Is that acceptable?

20 Senator Rockefeller. But, Mr. Chairman, if it does  
21 not --

22 Senator Hatch. It does not list them.

23 Senator Rockefeller. But I believe that he believes  
24 that the effect will be that they will be.

25 Senator Hatch. Yes, because they are licensed by

1 their respective States.

2 Senator Packwood. Does a plan have to have these  
3 people?

4 Senator Hatch. Excuse me. What?

5 Senator Packwood. Does a plan have to have these  
6 people?

7 Senator Hatch. No.

8 Senator Packwood. No. All right.

9 Senator Hatch. It means the Federal Board cannot  
10 define them out. That is what it means.

11 The Chairman. Those in favor will say aye.

12 (A chorus of ayes.)

13 The Chairman. Those opposed?

14 (No response.)

15 Senator Hatch. I thank my colleagues.

16 The Chairman. Now that is that.

17 Senator Grassley. Mr. Chairman?

18 The Chairman. Just one second, sir. We asked that  
19 there would be an agreement, a modification to Senator  
20 Grassley's amendment. Would you like to read it, Senator  
21 Grassley?

22 Senator Grassley. Well, it is now hopefully the  
23 Grassley-Moynihan amendment.

24 The Chairman. Yes, sir, I would read it if you would  
25 like.

1           Senator Grassley. I have got it worked out with you,  
2 with Senator Durenberger. I think Senator Conrad had an  
3 issue. We have added one sentence that I think takes care  
4 of the problem. Is it okay if I stop there, since you are  
5 in favor of it, Mr. Chairman?

6           The Chairman. Yes.

7           Senator Grassley. All right. All in favor say aye?  
8           (Laughter.)

9           The Chairman. The amendment has carried. This is  
10 clarifying language. I thank the committee for accepting  
11 the clarifying language.

12           Now, Senator Dole and Senator Chafee are the two  
13 remaining Senators. Senator Chafee has an amendment. In  
14 that case, Senator Dole, you will wrap up.

15           Senator Chafee. All right, Mr. Chairman. I have in  
16 effect one-and-a-half amendments, namely a new one, plus  
17 the one we are going to finish up.

18           The Chairman. Yes.

19           Senator Chafee. While they are getting in place out  
20 there, I would like to present my full amendment.

21           The Chairman. Yes, sir.

22           Senator Chafee. That deals with a subject that goes  
23 by the name that many of us are not familiar with, but we  
24 are familiar with the entities. Namely, they are called  
25 Federally Qualified Health Centers, known in the trade as

1 FQHCs.

2 Now what are these? These are community health  
3 centers. They are health centers for the homeless, Indian  
4 service providers. There are 780 of these health centers  
5 across the country caring for 7.8 million people. Most of  
6 them women and children. In every State there is at least  
7 one of these FQHCs. Sixty percent of them are located in  
8 rural areas and 40 percent of them in urban areas. Most  
9 of us know these entities as community health centers.

10 They provide the range of services that all of us are  
11 familiar with in our communities and in the rural areas  
12 likewise. A recent Johns Hopkin study shows that Medicaid  
13 patients can receive care and these FQHCs are much less  
14 likely to inappropriately utilize hospital emergency  
15 rooms. So I think all of us have spoken out in favor of  
16 the community health centers.

17 In your mark, Mr. Chairman, on page 120 you set up a  
18 fund for community health networks.

19 The Chairman. Right. Yes.

20 Senator Chafee. You envision these being established  
21 throughout the country. But part of them would be these  
22 FQHCs.

23 The Chairman. Yes, sir.

24 Senator Chafee. I, and I suspect most of us, in  
25 looking at our community health centers and the other

1 entities in the rural areas have noted that they are in  
2 very serious physical conditions. The ones I see in my  
3 community are operating in quarters that are far from  
4 luxurious.

5 The Chairman. So you would like to?

6 Senator Chafee. What I would like to do, Mr.  
7 Chairman, you have a set aside for an entity in here. I  
8 would ask that 20 percent of this fund that you have set  
9 up be used for the development and operation to award  
10 grants for the development and operation of these  
11 federally qualified health centers.

12 The Chairman. Thank you, Senator.

13 Senator Boren?

14 Senator Boren. Mr. Chairman, I would like to be  
15 added as a co-sponsor of Senator Chafee's amendment.  
16 These centers really do a great job in both the rural and  
17 urban areas. They deal with a lot of underprivileged  
18 people. They provide for advanced care. It is sad, they  
19 prevent intensive use of hospitals and other institutions.  
20 They are really doing a good job. I think this is a very  
21 meritorious amendment.

22 The Chairman. Thank you, Senator Boren.

23 Senator Bradley. Mr. Chairman?

24 The Chairman. Senator Bradley?

25 Senator Bradley. Mr. Chairman, I strongly support

1 this amendment. I think it is one of the few outreaches  
2 in many communities in the country and I strongly believe  
3 it is a good idea.

4 The Chairman. Thank you, Senator Bradley.

5 Senator Rockefeller?

6 Senator Rockefeller. Mr. Chairman, I would hope that  
7 Senator Chafee would allow the inclusion after federally  
8 qualified health centers of rural health clinics. Because  
9 many of them choose not to apply for federally qualified  
10 status, but are equally important within our areas.

11 Senator Chafee. Well, there is a problem there. If  
12 some expert can help me on this. As I understand the  
13 rural health clinics you are referring to are for-profit.

14 Senator Rockefeller. Not necessarily. They are not  
15 at all necessarily.

16 Senator Chafee. Well, then we have a --

17 The Chairman. Senator Baucus has a comment.

18 Senator Chafee. Could you specify the ones that  
19 would be included if they are not-for-profit?

20 Senator Boren. Yes, not-for-profit.

21 The Chairman. That is agreeable to Senator Boren and  
22 Senator Bradley.

23 Senator Baucus. Well, that would be the point I was  
24 going to make, the same one Senator Rockefeller. It is  
25 necessary that rural health clinics be included here.

1 Senator Dole. Not-for-profit ones.

2 Senator Chafee. Not-for-profit ones.

3 Senator Baucus. That is fine with me, so long as we  
4 have rural health clinics in there.

5 The Chairman. Not-for-profit rural health clinics,  
6 Senator Chafee?

7 Senator Chafee. Fine.

8 The Chairman. All in favor?

9 Senator Hatch. Mr. Chairman, could I just say one  
10 thing?

11 The Chairman. Excuse me, Senator Hatch. We are  
12 getting to that moment when people are looking at their  
13 clocks.

14 Senator Hatch. Mr. Chairman, I will not keep us  
15 long. But I am very appreciative of the attention you and  
16 your staff paid to the under served rural and urban areas  
17 in the Chairman's mark. You did a really good job. I am  
18 especially appreciative to the fact that you included  
19 funds for infrastructure development, because I think that  
20 the community-based services must be at the core of any  
21 final proposal. And surely infrastructure is necessary to  
22 achieve that goal.

23 I would like to put some additional remarks in that  
24 hopefully would be entered in the record.

25 The Chairman. Please do.

1           Senator Hatch. But I also want to be listed as a co-  
2 sponsor.

3           The Chairman. You shall.

4           Senator Hatch. And commend Senator Chafee for this  
5 effort.

6           The Chairman. All those in favor --

7           Senator Daschle. Mr. Chairman?

8           The Chairman. I am sorry. Senator Daschle?

9           Senator Daschle. Before we vote, I would really like  
10 us to reconsider whether or not we have to differentiate  
11 between profit or not-for-profit. We have a lot of rural  
12 areas where we are encouraging the private sector to go  
13 out there for the first time and serve these areas.

14           We will preclude them from doing so if they are not  
15 able to play on a level playing field here. There are a  
16 lot of clinics that are just beginning to get started and  
17 it would seem to me in our interest to encourage that as  
18 much as possible by allowing for-profit and not-for-profit  
19 clinics in these frontier areas.

20           The Chairman. Senator Conrad?

21           Senator Conrad. Well, I would just like to make the  
22 point, my staff just advised me that all of the rural  
23 health centers are for-profit. So if you designate only  
24 for non-profit you have pretty well opted them right now.  
25 So I do not think we should be fooled by language here.



1           Senator Chafee. I originally suggested that they are  
2 all for profit.

3           The Chairman. I think it is a fair point, if you  
4 encourage profit, you know, private enterprises.

5           Senator Rockefeller. Mr. Chairman, they would also  
6 then have to be included in the set aside second on the  
7 bottom half of his amendment.

8           The Chairman. Yes.

9           Senator Chafee. Well, Mr. Chairman, I get a little  
10 nervous when what we are using here are public funds. The  
11 idea is to bolster these federally-qualified health  
12 centers that were as we all have agreed are in difficult  
13 shape.

14           Now if somebody is going out there for profit and we  
15 are going to in effect subsidize them, it seems to me that  
16 that involves a whole series of supervisory techniques  
17 that I do not think we quite have with the floor profits.  
18 Can they take a separate set aside of some type?

19           Senator Daschle. Well, in the frontier areas there  
20 is no opportunity for federally-qualified health centers  
21 to participate. They do not qualify in part by  
22 definition. So you would have to have an opportunity for  
23 the private sector to serve in these areas and really in a  
24 sense you are creating a two-tiered system.

25           Those areas in urban settings that will allow for

1 federally qualified health centers will participate. All  
2 of these for-profit areas in these isolated rural settings  
3 are not going to be able to participate. I think that  
4 creates a problem, especially, ironically, when we are  
5 encouraging the private sector to play more of a role.

6 The Chairman. The Chair wonders whether the  
7 legitimate question of public monies into private  
8 enterprises is not an obstacle to a clear desire that we  
9 have more of these centers. Could we not resolve this on  
10 the floor?

11 Senator Chafee. Well, I could I suggest the  
12 following?

13 The Chairman. I do not want to turn it down.

14 Senator Chafee. We were on a roll here until  
15 fortunately --

16 Senator Durenberger. Read the amendment.

17 (Laughter.)

18 Senator Chafee. -- read the amendment. But could we  
19 do the following, could we accept my amendment restricting  
20 it to the federally qualified? And by the way, 60 percent  
21 of them are in rural areas. So it is not that these  
22 things are all in cities.k

23 The Chairman. Yes.

24 Senator Chafee. And if Senator Daschle could then  
25 work out something in connection with the particular

1 problem he raised, fine. We have time.

2 Senator Dole. Why not take out the earmark and just  
3 let it be distributed based on need without earmarking it.  
4 That would help, too.

5 Senator Chafee. Well, the whole purpose was to be  
6 able to have a certain --

7 Senator Dole. They are in Rhode Island. I know the  
8 purpose.

9 (Laughter.)

10 Senator Chafee. They are in all States and we only  
11 have 14.

12 Senator Baucus. Mr. Chairman, I would hope just to  
13 go the other direction, we in Montana have one. We are  
14 very rural. The only way you can get to some of these  
15 very rural areas is the little private enterprise. I must  
16 say, there are a lot of dollars in this bill, public  
17 dollars, going to private enterprises not in rural areas.

18 I urge you to, if we can work this out on the floor.

19 Senator Chafee. All right. Well, why do I not do  
20 that in the interest of comedy and also in the spirit that  
21 you will now enthusiastically support the other amendment  
22 that I have.

23 The Chairman. That is the one-half. If our experts  
24 would come forward? Thank you, Senator.

25 Senator Chafee. Did I get that commitment?

1           The Chairman. You have a commitment to bring this up  
2 on the floor with prayerful attendance.

3           The Chairman. No, no, no, no. Did I get the  
4 commitment for the enthusiasm of the balance of my other  
5 amendment?

6           Senator Wallop. Not yet.

7           Senator Daschle. How about just the commitment?

8           Senator Dole. What is it?

9           Senator Wallop. Mr. Chairman, I might just say, I am  
10 going to resist the entitlement.

11          Senator Chafee. All right. On with the other  
12 amendment.

13          The Chairman. Christine, you have the proposal?

14          Ms. Ferguson. Yes, sir. I believe this has been  
15 handed out to the members on the amendment.

16          The Chairman. This was the matter that was not quite  
17 resolved earlier.

18          Senator Chafee. That is right.

19          Ms. Ferguson. We have added language to the  
20 amendment which is reflected at the bottom of the paper  
21 that you have in front of you that says, ``subsidies may  
22 be paid from the trust fund and the general fund subject  
23 to the deficit controls of the fail safe mechanism.''

24          So in the end you have a zero deficit in either case.

25          Senator Daschle. Mr. Chairman?

1           Senator Wallop. Mr. Chairman, I would move to strike  
2 that and on the basis that it merely reestablishes what is  
3 a paper transfer. It is the same thing that we have  
4 already in Medicaid.

5           The Chairman. Fine, you would move to strike clause  
6 5?

7           Senator Wallop. Yes, sir.

8           Senator Bradley. Mr. Chairman?

9           The Chairman. All right.

10          Senator Wallop. It simply reestablishes the  
11 entitlement nature.

12          The Chairman. Right, I understand that.

13          Senator Bradley?

14          Senator Bradley. Keep in mind that if you -- this is  
15 slightly different than the last vote. If you vote to  
16 strike this provision, then we could have the circumstance  
17 where the trust fund is out of money and the fail safe has  
18 not kicked in, and therefore no subsidies can go and no  
19 health care can be obtained by a large number of people  
20 under 200 to 240 percent of poverty.

21          This is a much narrower, and I think clarifying, use  
22 of general revenue funds.

23          The Chairman. Yes.

24          Senator Bradley. So I would make that as a  
25 significant distinction.

1           The Chairman. A very important statement.

2           Senator Wallop. Mr. Chairman, let me just respond to  
3 that if I may. You are talking about subsidies to over  
4 half the population of America. The other thing that I  
5 must add is that these, notwithstanding language that will  
6 end out a paper transfer, there are other ways of dealing  
7 with it, which is having us in the Congress be accountable  
8 and vote those subsidies if we run out or as in the Dole  
9 bill, limit them as you run out.

10          The Chairman. The bill is amendable on the floor.

11          Senator Daschle, did you want to say something?

12          Senator Daschle. Mr. Chairman, I just would be very  
13 brief. I think we ought to understand what we are doing  
14 here. I am going to support this. But I am very  
15 concerned about costs continuing to go up. As subsidies  
16 go down, you are going to have more people uninsured,  
17 thereby creating the cost shift that we are trying to  
18 avoid.

19          So I think we have to be very careful here about the  
20 ramifications. I do not know how we are going to address  
21 that. But I think for now we ought to pass it and try to  
22 deal with that very serious problem in the future.

23          The Chairman. Right. We have a motion to strike  
24 this one clause.

25          Senator Breaux?

1           Senator Breaux. Mr. Chairman, very briefly, this is  
2 a critical feature if we are going to make this program  
3 work. I think that Senator Wallop's suggestion is one  
4 that we should reject because it is very clear, as I think  
5 Senator Bradley has pointed out, that if this is  
6 eliminated the subsidies, we will not be able to continue  
7 to pay people to be able to buy health insurance.

8           Number three is the real strength. Number three,  
9 Section 3 of this amendment really is the one that ensures  
10 that we will not increase the deficit. Those things will  
11 occur. That is the protection. That is the insurance  
12 that we will not increase the deficit.

13           The Chairman. Fine. I am mindful of the time.  
14 Those in favor of the Wallop --

15           Senator Wallop. Mr. Chairman, I would like a roll  
16 call on that.

17           The Chairman. A roll call.

18           Senator Wallop. We have gone on record as being  
19 opposed to an entitlement.

20           The Chairman. Senator Wallop, you will have a roll  
21 call vote.

22           Senator Chafee. I will say this, Mr. Chairman, if  
23 the Wallop amendment should pass, that that would  
24 viscerate the total subsidy proposal that we have.

25           The Chairman. Yes, I agree. But that debate is

1 ended. Let us call the roll.

2 The Clerk. Mr. Baucus?

3 Senator Baucus. No.

4 The Clerk. Mr. Boren?

5 Senator Boren. No.

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. No.

20 The Clerk. Mr. Conrad?

21 Senator Conrad. No.

22 The Clerk. Mr. Packwood?

23 Senator Packwood. Aye.

24 The Clerk. Mr. Dole?

25 Senator Dole. Aye.



1 The Clerk. Mr. Roth?

2 Senator Roth. Aye.

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. 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 There are 14 nays, 6 yeas; and the amendment is not  
18 agreed to. One remaining amendment.

19 Senator Chafee. Can we adopt the amendment?

20 The Chairman. Oh, forgive me. Those in favor of the  
21 underlying amendment will say aye.

22 Senator Mitchell. Mr. Chairman?

23 Senator Mitchell. Senator Mitchell?

24 Senator Mitchell. I just want to say again, I do not  
25 know the number, but frequently the last time, I have

1 grave reservations about the subject I described earlier,  
2 the impact of this on Medicare and I will vote for it for  
3 the purpose of getting the bill reported to the floor.

4 Senator Rockefeller. Mr. Chairman?

5 The Chairman. Senator Rockefeller?

6 Senator Rockefeller. I strongly oppose this.

7 Senator Dole. Roll call.

8 Senator Rockefeller. And I will vote for it because  
9 it seems to me that that is the only way we are going to  
10 get to the floor with this.

11 The Chairman. The Clerk will call the roll.

12 The Clerk. Mr. Baucus?

13 Senator Baucus. No.

14 The Clerk. Mr. Boren?

15 Senator Boren. Aye.

16 The Clerk. Mr. Bradley?

17 Senator Bradley. Aye.

18 The Clerk. Mr. Mitchell?

19 Senator Mitchell. Aye.

20 The Clerk. Mr. Pryor?

21 Senator Pryor. Aye.

22 The Clerk. Mr. Riegle?

23 Senator Riegle. Aye.

24 The Clerk. Mr. Rockefeller?

25 Senator Rockefeller. Aye.

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

1           The Chairman.   Aye.

2           There are 14 yeas, 6 nays.   The Chairman would like  
3 to note that I have the same apprehensions that have been  
4 expressed by Senators Mitchell and Rockefeller but we have  
5 to get on with our work.

6           I thought there was one last amendment and that was  
7 Senator Dole.   But, Senator Danforth?

8           Senator Danforth.   Mr. Chairman, I apologize, but I  
9 did neglect a short amendment and I hope I could offer it.

10          The Chairman.   Sure.

11          Senator Danforth.   Mr. Chairman, when the new fund  
12 was created for the graduate medical education program,  
13 the 1.7 percent premium tax --

14          Senator Dole.   1.75 percent.

15          Senator Danforth.   -- 1.75 percent premium tax, one  
16 of the issues that was raised in discussions was, well,  
17 how do we know how much this should be and is there ever  
18 going to be a chance to take a second look at it.

19          The Chairman.   I must ask, prayerfully ask, attention  
20 to Senator Danforth who is addressing a very important  
21 proposal.

22          Senator Danforth.   This amendment sets up an  
23 independent advisory committee to study and report to us  
24 how this fund is functioning, whether it is in the right  
25 amount, whether it is doing the intended job.

1           The Chairman. I think this is an excellent measure.  
2 Will the Secretary do this as a matter of departmental?  
3 The Presidential appointments or which? You can have it  
4 either way.

5           Senator Danforth. That is fine with me.

6           The Chairman. Fine. Those in favor say aye.

7           (A chorus of ayes.)

8           The Chairman. And there are none opposed. There is  
9 no opposition. Thank you, Senator Danforth.

10           And I think the final amendment is the distinguished  
11 Republican.

12           Senator Dole. I think they are going to pass out the  
13 amendment. Could I ask just a procedural question while  
14 they are passing out the amendment? Is it the Chairman's  
15 intention today to tentatively approve whatever we are  
16 finished with, or whatever we have, and then would we have  
17 a chance to vote again after we have seen the legislative  
18 language?

19           The Chairman. No, we are going to report this bill  
20 out and the legislative language will be on the floor, at  
21 which time you can have your own merry way with it, as  
22 long as you wish.

23           Senator Dole. All right. Well, I had planned on  
24 offering the President's plan, but I think it has been  
25 rejected here by implication.

1           The Chairman. Do not hesitate.

2           Senator Dole. As well as the Kennedy plan, which I  
3 think probably would not pass either. But what I wanted  
4 to talk about is the standard benefit package. Again, it  
5 is a matter of choice, just a basic idea that I think most  
6 Americans like to have.

7           Let me tell everybody what the current law is,  
8 because the current law does not require a standard  
9 benefit package at all insurers must offer. They may  
10 offer insurance policies to cover any combination of  
11 benefits they consider appropriate. However, current law  
12 does specify a minimum set of benefits that a health  
13 maintenance organization must offer to be federally  
14 qualified.

15           Now the Chairman's mark defines a standard benefit  
16 package which any health plan must offer to be certified.  
17 Furthermore, the mark requires that a consumer must buy  
18 this standard package in order to receive favorable tax  
19 treatment.

20           Finally, the employers must make available several  
21 health plans and only those that offer the standard  
22 package, a catastrophic policy even if offered to  
23 employees is one alternative, along with the standard  
24 package does not appear to satisfy the mark's requirement  
25 for employers. That may have been modified some in the

1 midstream amendment.

2 But I think there is merit in having a standard  
3 benefit package for a couple of reasons -- so you have  
4 something to compare the cost, and compare in contrast  
5 insurers based on their ability to offer cost effective  
6 products. Maybe you ought to have a standard out there  
7 for that reason. And you ought to be competing with  
8 apples with apples, not apples with oranges or something  
9 else.

10 And second, as we do in our other option, with  
11 respect to low-income families we plan to subsidize. We  
12 should assure them that the subsidy is sufficient to buy a  
13 package of specific benefits and that the benefit package  
14 will actually be available.

15 So I think we can accomplish these goals without  
16 compromising the choices that Americans currently have  
17 among the wide variety of plans, like members of Congress.  
18 We had 300 plans nationwide. I guess in this area there  
19 are about 20 options, so we are not limited. And I do not  
20 think Americans want us to limit their choices and I do  
21 not think it is good health policy. I believe we can  
22 achieve these objectives without inhibiting their freedom.

23 Now the Chairman's mark does five things and I think  
24 probably two of them I would agree with. He requires that  
25 all insurers offer a standard benefits package. I would

1 agree with that. Again, you have to have something to  
2 compare if you are going to be competitive. There ought  
3 to be some standard out there. This makes certain that  
4 the product is available to everyone, particularly low  
5 income.

6 It makes certain that no insurer can avoid covering  
7 the low income for those that might have greater  
8 utilization. And it also lets consumers to make this  
9 contrast and make this comparison. But I think finally  
10 where we differ is that we do not leave any choices to the  
11 American people.

12 Let me give you an example. An individual or company  
13 who tries to offer an alternative benefit package, for  
14 example, one that does not include hearing aides or  
15 eyeglasses because they want to offer something else, for  
16 example, dental care, they cannot get favorable tax  
17 treatment.

18 And finally, under no circumstances could an employer  
19 offer a catastrophic policy other than one defined by the  
20 government. In just our amendment, the Dole-Packwood  
21 amendment, would require that a standard plan be offered  
22 and that the subsidy be used to buy the standard plan. If  
23 you are going to subsidize, okay. But I think when you  
24 are out there, individuals and companies can continue to  
25 do what they do under current law and choice is a key.



1 That, I think, makes a big difference.

2 I would just finally say, as we said earlier, on the  
3 same fundamental, philosophical difference, are we going  
4 to have the government decide or are we going to have the  
5 consumers decide. Is it going to be a matter of choice or  
6 is it going to be determined by us, by mandates, by the  
7 Federal Government.

8 And again, whether it is MSAs or whether it is  
9 something else, it seems to me that we ought to let  
10 consumers. I happen to think consumers are very  
11 sophisticated and I think they can make a choice. That is  
12 precisely what this amendment would do. I will not delay  
13 the committee further because I know there are many other  
14 things you would like to do.

15 The Chairman. Fine. Senator Mitchell?

16 Senator Mitchell. Mr. Chairman, I oppose the  
17 amendment and I urge my colleagues to do so. First, let  
18 it be clearly understood that the overwhelming majority of  
19 Americans who have health insurance get it through their  
20 employment and they have no choice.

21 The only practical choice they have is whether to  
22 accept or not accept participation in their employer's  
23 plan. The underlying legislation greatly increases choice  
24 for consumers by requiring a minimum of three plans to be  
25 offered -- fee-for-service, point-of-service, and a

1 managed care plan.

2 So you have a situation where the legislation  
3 substantially increases choice beyond what the  
4 overwhelming majority of Americans now have. That is what  
5 we should be doing. Increasingly, employers are  
6 restricting the plans available to their employees. We  
7 have debated at great length in our private meetings the  
8 value or disadvantage of a standard benefit package. So I  
9 will not bother to restate those points here.

10 I believe there is a great value to it. I encourage  
11 my colleagues to vote against the amendment. The other  
12 third plan I was groping for was an HMO type plan.

13 The Chairman. HMO?

14 Senator Mitchell. Yes. Fee-for-service, point-of-  
15 service or HMO type plan. But I think we should have a  
16 standard benefit package and I encourage my colleagues to  
17 vote against the amendment.

18 The Chairman. Senator Breaux?

19 Senator Breaux. Mr. Chairman, I will be very brief  
20 in stating my opposition to the amendment. The think the  
21 Chairman in mark right now clearly says you can have  
22 catastrophic plans and you can get the deductions that  
23 employers would normally get for offering those plans.

24 Should they be certified by somebody? I think if we  
25 are going to give that type of tax treatment and that type

1 of 100 percent right-off, we ought to have somebody taking  
2 a look at it and saying, yes, this is certifiable. They  
3 do deserve the tax break of 100 percent deductibility.

4 So both the standard plans under the Chairman's mark,  
5 as well as the catastrophic plan that can be offered, can  
6 be fully 100 percent deductible. But there should be some  
7 kind of checkpoint, if you will, to make sure that it is  
8 something that justifies that type of tax treatment.

9 The Chairman. I very much agree.

10 Senator Packwood. Mr. Chairman?

11 The Chairman. Senator Packwood?

12 Senator Packwood. Thirty-five years ago when I  
13 started to practice law, I went with a large Portland law  
14 firm and was assigned to their labor law department. I  
15 had no background in it, but was in their labor law  
16 department. And as the junior most member had only modest  
17 responsibilities, but I did bargain some contracts and was  
18 involved in NLRB representation cases, and arbitrations  
19 and mediations and everything else that goes with the  
20 practice of labor law.

21 Needless to say, much of our practice was bargaining  
22 contracts with unions. Some of it was in representing  
23 companies that did not want to be unionized. Some of it  
24 was advising companies that were not unionized and had no  
25 likelihood they were going to be unionized.

1           In all those cases, I was impressed with the fact  
2 that employees, whether or not they were unionized or not,  
3 and employers, had a reasonably amicable relationship as  
4 to what it was the employees wanted in a health plan. I  
5 do not mean necessarily they agreed about how it was going  
6 to be paid for. But I never found much disagreement  
7 between what the employees thought they wanted and what  
8 the employer at least knew that they wanted.

9           And they wanted different things. Example: We  
10 bargained many contracts with the building trades. Now in  
11 those days the building trades were predominantly men.  
12 And it may have been solely men as far as I can recall.  
13 Most wives did not work in the marketplace if their  
14 husbands were in the trade.

15           Therefore, to those unions sick leave, so that you  
16 could take care of a child, was not much of a bargaining  
17 chip. They had a wife at home. If the child was sick,  
18 the wife was home anyway.

19           We also bargained with what was then the retail  
20 clerks, now the United Food and Commercial Workers, who  
21 had organized most of the food employers in Oregon or in  
22 Portland. Here you had many women. Some single, some  
23 married with children. And the problem of sick children  
24 was a big issue.

25           So in bargaining that contract, sick leave and the

1 ability to take half a day off without loss of pay was a  
2 big issue.

3 If you were bargaining with the Teamsters, if they  
4 were over-the-road truckers or with the Longshoremen, they  
5 all had slightly different needs. And consequently, there  
6 was no standard benefit package because a standard benefit  
7 package did not fit the needs of the different employees  
8 and industries.

9 That is why I would hope we would adopt the Dole-  
10 Packwood amendment. There is no one-size-fits-all. And  
11 there is not going to be in a country as diverse as this.  
12 My experience in those years that I was in that firm  
13 proved it beyond question. And if you look at the  
14 collective bargaining contracts today, you will find the  
15 same changes in coverage, depending upon the demographics  
16 of those who were covered and we should not try to impose  
17 on that system a uniform package that may not serve the  
18 needs.

19 The Chairman. Thank you, Senator Packwood.

20 Senator Boren?

21 Senator Boren. Mr. Chairman, let me say that I have  
22 very mixed emotions about this amendment. I am not going  
23 to vote for it today because I am concerned about the  
24 impact it might have in terms of fostering competition and  
25 providing accountability in the new system that we are

1 setting up and allows the kind of benchmark of comparison  
2 that we need to have the competition that will bring down  
3 costs.

4 On the other hand, I do very much agree with the  
5 statement just made, that one size does not fit all. I am  
6 going to be doing a lot of thinking about this issue  
7 between now and the time we vote on the floor. So I want  
8 to make it clear that I am still wrestling with this  
9 issue. I am going to vote against it today and I hope to  
10 see us move this bill out on the floor. But I am going to  
11 reserve the right to look at it again when it comes to the  
12 floor.

13 The Chairman. Thank you, Senator Boren.

14 Senator Daschle. Mr. Chairman?

15 The Chairman. A very brief statement. Senator  
16 Chafee. I would like to give Senator Chafee the last  
17 word. Senator Daschle?

18 Senator Daschle. Mr. Chairman, very briefly, I  
19 recall vividly one of our witnesses who emphasized that  
20 one of the reasons we have \$70 billion of fraud in the  
21 insurance market today is because we do not have  
22 standardization, that insurance plans contrary to popular  
23 belief are sold. They are not bought. Often times people  
24 buy in good faith and only find out later that they bought  
25 something that they did not realize they had.

1           The second thing is that to the degree we minimize  
2 these plans, we are going to see again people who have no  
3 choice but to pick up through their premiums what other  
4 people are not paying in theirs.

5           The Chairman. Right.

6           Senator Daschle. So the cost shifting will continue,  
7 the fraud will continue, unless we have a standard plan.

8           The Chairman. Thank you, Senator Daschle.

9           Senator Chafee?

10          Senator Chafee. Mr. Chairman, I see two problems  
11 with the amendment. The first is, what we are trying to do  
12 here, or one of the objectives as I see it, is to have  
13 informed consumers, consumers who are going to make  
14 choices based upon something they can clearly understand,  
15 something that they can compare prices to, they can  
16 compare the providers, they can compare the histories and  
17 the quality of the different plans that are presented to  
18 them.

19          Senator Dole. They have to offer it first.

20          Senator Chafee. That is the first thing. The second  
21 thing is, it seems to me that if you are going to have any  
22 kind of a varied plan out there that pretty soon you are  
23 going to have the insurers providing benefits to attract  
24 the young and healthy. In other words, the so-called risk  
25 selection that has been discussed here.

1           It seems to me that would be inevitable that that is  
2 what the insurers would try to gear up for. So that is  
3 why I have great difficulty with this. I really think  
4 that the uniform benefit package is really an essential  
5 part of the whole program.

6           The Chairman. Senator Dole, would you conclude?

7           Senator Dole. I was just going to say that last  
8 cannot happen. You have guaranteed issue and open  
9 enrollment. You cannot do that. That is a bogus  
10 argument.

11          The Chairman. Very well. This is the last amendment  
12 of the bill. Will the Clerk call the roll.

13          The Clerk. Mr. Baucus?

14          Senator Baucus. No.

15          The Clerk. Mr. Boren?

16          Senator Boren. No.

17          The Clerk. Mr. Bradley?

18          Senator Bradley. No.

19          The Clerk. Mr. Mitchell?

20          Senator Mitchell. No.

21          The Clerk. Mr. Pryor?

22          Senator Pryor. No.

23          The Clerk. Mr. Riegle?

24          Senator Riegle. No.

25          The Clerk. Mr. Rockefeller?



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

1 The Clerk. Mr. Chairman?

2 The Chairman. No.

3 Senator Dole. We shall rise again.

4 The Chairman. There are 14 nays, 6 yeas. The  
5 amendment is not agreed to.

6 Do I have a motion to report the bill?

7 Senator Riegle. I so move.

8 The Chairman. The Senator from Michigan makes that  
9 move. Is there a second?

10 Senator Bradley. Second.

11 The Chairman. There is a second from the Senator  
12 from New Jersey. The Clerk will call the roll.

13 The Clerk. Mr. Baucus?

14 Senator Baucus. No.

15 The Clerk. Mr. Boren?

16 Senator Boren. Aye.

17 The Clerk. Mr. Bradley?

18 Senator Bradley. Aye.

19 The Clerk. Mr. Mitchell?

20 Senator Mitchell. Aye.

21 The Clerk. Mr. Pryor?

22 Senator Pryor. Aye.

23 The Clerk. Mr. Riegle?

24 Senator Riegle. Aye.

25 The Clerk. Mr. Rockefeller?

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

1           The Clerk. Mr. Chairman?

2           The Chairman. Aye.

3           The vote is 12 yeas, 8 nays. The bill is reported to  
4 the Senate floor. Before you leave, may I ask unanimous  
5 consent that the staff be given the unusual authority to  
6 make necessary technical drafting.

7           Thank you all.

8           (Whereupon, at 1:02 p.m., the above-entitled meeting  
9 was adjourned.)

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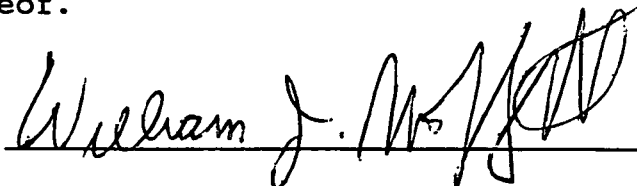
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting held before the United States Senate Committee on Finance on July 2, 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

Finance Republican  
Staff 6-17-93  
9:10 pm

LIST OF POSSIBLE AMENDMENTS

1. Chafee: Strike transfer of 2.5 cent/gallon motor fuels tax to Highway Trust Fund.
2. Chafee: In lieu of the executive compensation proposal in the Chairman's mark, impose a \$1 million cap on the deduction for compensation paid by any taxpayer for services performed by an individual. Personal service corporations will be treated as individuals. Effective: compensation paid on or after January 1, 1994.
3. Chafee: Phase out the annual \$750 cap on Medicare payments for outpatient physical therapy and occupational therapy. Offset by reducing relative values in the fee schedule for physical medicine services.
4. Danforth: Entitlement cap amendment.
5. Danforth: Strike jet fuel used in commercial airlines/cargo planes from the 4.3 cent/gallon transportation fuel tax. Possible offset: Increase tax on remaining transportation fuels.
6. Dole: Increase percentage of ~~intangibles~~ amortizable intangibles to 100% (keep 14 year period and the exemptions in the Chairman's mark).
7. Dole (for Wallop): Exempt from the individual income tax rate increases: income from small businesses (sole proprietorships, partnerships, and subchapter S business income) in which the owner materially participates.
8. Durenberger: With respect to the estate and gift tax rates increase: (a) strike the whole proposal; (b) move the effective date to June 17, 1993; or (c) sunset on 9/30/98.
9. Durenberger: Change the effective date for the repeal of the section 108 stock-for-debt exception for transfers in a title 11 or similar case filed before January 1, 1994.

10. Durenberger: Drop the Treasury study on IRS collection of student loans; and add language from the Labor Committee reconciliation mark-up.
11. Grassley: Medicare reimbursement for nurse practitioners and physician assistants in all outpatient settings at 85 percent of the physician fee schedule amount. Offset by reducing by 10 percent Medicare payments for CATscans and MRIs.
12. Grassley: Nursing home reform.
13. Hatch: Strike the entire business meals and entertainment revenue raiser.
14. Packwood: Strike the revenue raiser that partially repeals deferral for multinational companies.
15. Roth: Sunset all tax increases at the end of 1998.