

1 EXECUTIVE COMMITTEE MEETING

2 WEDNESDAY, JUNE 18, 1997

3 U.S. Senate,

4 Committee on Finance,

5 Washington, DC.

ORIGINAL

6 The meeting was convened, pursuant to recess, at
7 10:32 a.m., in room SH-216, Hart Senate Office Building,
8 Hon. William V. Roth, Jr. (Chairman of the Committee)
9 presiding.

Gilmour

10 Also present: Senators Chafee, Grassley, Hatch,
11 D'Amato, Murkowski, Nickles, Gramm, Lott, Jeffords, Mack,
12 Moynihan, Baucus, Rockefeller, Breaux, Conrad, Graham,
13 Moseley-Braun, Bryan and Kerrey.

14 Also present: Lindy L. Paull, Staff Director and
15 Chief Counsel; Mark A. Patterson, Minority Staff Director
16 and Chief Counsel.

17 Also present: Dr. Bruce Vladeck, Administrator,
18 HCFA; Julie James, Chief Health Analyst; Dr. Alexander
19 Vachon, Health and Social Security Analyst; Gioia
20 Bonmartini, Dede Spitznagel, and Dennis Smith, Health
21 Care Analysts.

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1 The Chairman. The committee will please come to
2 order. Guests will please take their seats so we can
3 proceed.

4 Let me start out by saying that I am making a third
5 modification to the Chairman's mark. The contents of
6 that modification are contained in a sheet that has been
7 passed to each member.

8 I would point out that we are deleting the provision
9 regarding Medicaid HI taxes for all State and local
10 employees. We are removing that at the urging of the
11 Budget Committee. There is concern that, by its being
12 included in the spending reconciliation, it could be
13 argued that that opens the legislation to tax amendments.

14 Senator Moynihan. Mr. Chairman, we have been
15 involved on the edge of the ridiculous for a very long
16 time in our financing of the Federal Government, but when
17 the Budget Committee tells you cannot correct an absurd
18 error in our social insurance financing that dates back
19 to the 1930s because of some unnamed technicality, then
20 we have reached a degree of absurdity, indeed.

21 We are talking about persons who, from an archaic
22 doctrine, that it was not clear in 1935 whether the
23 Federal Government could tax State governments for this
24 purpose, and only slowly thereafter did States
25 voluntarily have their employees included in social

1 insurance. Now you have some 8 million or so who pay no
2 social insurance taxes.

3 The Senator from Texas will recall an eloquent
4 statement in which he described the circumstances of an
5 employee of a State government or local government who
6 pays no Medicare taxes along their lifetime career, then
7 qualifies briefly on the side at the last moment and has
8 the full benefits of an insurance program for which he or
9 she is paid very little compared to the rest. It is
10 inequitable. It is wrong. It is costly to the system.

11 I hope, sir, that despite the Budget Committee we can
12 expect to revisit this one day, because I do not believe
13 there is any real dispute in the Finance Committee that
14 this is a measure that should have been done long ago.

15 The Chairman. I assure the distinguished Ranking
16 Member that this is a matter we will revisit in the
17 future.

18 Senator Nickles. Mr. Chairman?

19 The Chairman. If I could----

20 Senator Nickles. Mr. Chairman, I would just like to
21 echo what Senator Moynihan stated. If we are not able to
22 do it in this package, kind of like the Earned Income
23 Credit changes we are talking about that really need to
24 be reviewed, this is another area that I hope that
25 Congress will act on this year, and I will look forward

1 to working with other members to try and make it happen.

2 Senator Moynihan. Would you tell your colleague to
3 the left that I was praising his economic discourse on
4 the inequity of the present arrangement?

5 Senator Gramm. Would you repeat it so I can hear
6 it?

7 The Chairman. Once is enough, I would say to the
8 distinguished Senator.

9 Again, I want to emphasize to the members where we
10 are. We have something like 38 amendments which are
11 going to require considerable time to plow through. I
12 cannot emphasize too much two important factors.

13 One, that we continue to reduce the number of
14 amendments so that we can get through this mark-up
15 expeditiously, and second, that the amount of time taken
16 on each amendment is necessarily going to have to be
17 severely limited if we are going to complete the mark-up
18 in a reasonable time today.

19 So I am going to propose that we limit each amendment
20 to 5 minutes. The Chair will enforce that rather
21 strictly, so I want everybody to be on notice. I will
22 say, members on both sides of the political aisle have
23 suggested that this be what we do.

24 Senator Gramm. Mr. Chairman.

25 The Chairman. If I may just complete my statement.

1 I am very concerned. I am very concerned about our
2 staff. They are working night and day. I have to tell
3 you, when we complete the amendment process, that is only
4 the beginning for the staff, because then they have to go
5 back and put into writing all the great things that you
6 and I decide should be done today. So this has been a
7 continuous, almost 24-hour ordeal for days at end.

8 If we are going to proceed and complete the mark-up
9 of spending and taxes this week, take it to the floor and
10 complete actions on the floor next week, we have got to
11 be considerate of these individuals because, at best, it
12 is an amazingly burdensome task.

13 Senator Baucus. Mr. Chairman?

14 The Chairman. Senator Baucus.

15 Senator Baucus. Mr. Chairman, I very much agree and
16 I commend you for making that statement. I think too
17 often too many of us forget that the staff is working
18 many, many more hours than we.

19 Frankly, if we want the draft to have as few mistakes
20 as possible, it is incumbent upon us to spend as little
21 time as possible so they can have more time to write all
22 of this up. I compliment you very much on your
23 statement, because it is very true. We tend to forget
24 it.

25 The Chairman. I would now like to say to my

1 distinguished friend and colleague from Montana that, on
2 his risk adjustment amendment, we are trying to work that
3 out with you so I think we can do it, and we will proceed
4 along those lines.

5 Senator Baucus. All right. Thank you, Mr.
6 Chairman. Thank you.

7 The Chairman. We now, I think, have the Nickles
8 amendment before us.

9 Senator Nickles. Mr. Chairman, thank you.

10 This is an amendment that we laid down kind of late
11 last night, and some people were not familiar with it.
12 But basically it would preserve the rights of States to
13 sanction--in other words, withhold--some welfare benefits
14 if welfare recipients were not acceding to certain
15 behavioral changes that they are trying to make, i.e.,
16 keeping kids in school or making sure that kids are
17 immunized. The welfare bill we passed the last Congress
18 allowed the States to sanction, i.e., hold back, \$25 or
19 \$50, or 25 percent to get some of those changes.

20 This would ensure that they could still do that, in
21 spite of the fact that DOL came up with a regulation
22 saying that they would have to meet certain labor
23 requirements, including minimum wage to do so. I would
24 like to preserve the State's rights to have that sanction
25 authority, and that is the essence of our amendment.

1 The Chairman. Any further comment?

2 Senator Chafee. Mr. Chairman, who makes the
3 decision on the sanctioning?

4 Senator Nickles. The States have the authority
5 under the welfare bill to make that, under the Welfare to
6 Work bill that we passed last year.

7 The Chairman. Are we ready for a vote? Those in
8 favor, signify by saying aye.

9 [Chorus of ayes]

10 The Chairman. Opposed, nay.

11 [No response]

12 The Chairman. The ayes have it. The Nickles
13 amendment is carried.

14 Senator Nickles. Thank you, Mr. Chairman.

15 The Chairman. We will next call on Senator Conrad.

16 Senator Conrad. Thank you, Mr. Chairman.

17 I am offering an amendment to strike the section of
18 the Chairman's mark entitled, "Demonstration Authority
19 for Integrated Enrollment Service Systems for Health and
20 Human Services Program."

21 It sounds innocuous. I believe this is a very
22 significant amendment. The Chairman's mark would require
23 the Secretary of Health and Human Services to approve the
24 privatization of all Federal and State Health and Human
25 Service benefit programs in 10 States, including Texas.

1 This proposal has the potential to affect tens of
2 millions of low-income Americans who rely on Medicaid,
3 food stamps, the WIC program, and more. Another
4 population of Americans that is vulnerable under this
5 proposal is abused and neglected children.

6 Perhaps the chart behind me will demonstrate the
7 magnitude of this proposal. If the top 10 States in
8 population in the United States were included, this is
9 what we would see on Medicaid. Fifty-eight percent of
10 the people in the country on Medicaid would be under this
11 proposal. This is not just a garden-variety
12 demonstration project. You can see on food stamps the
13 same magnitude of this proposal.

14 Mr. Chairman, I want to bring this chart to the
15 attention of my colleagues because I think it illustrates
16 the significance and the compelling national interest
17 that is at stake with this proposal, yet there have been
18 no public hearings. Neither the Finance Committee, nor
19 the Agriculture Committee have held hearings. Members
20 have not been given the opportunity to question
21 witnesses, experts, companies, or advocates on the merits
22 of this proposal.

23 I want to remind my colleagues, we are talking about
24 Federally-funded programs. Medicaid is over 50 percent
25 Federally funded, food stamps and WIC are 100 percent

1 Federally funded. Yet the proposal before us forces the
2 Secretary of HHS to approve, without comment or review,
3 any proposal submitted which includes provisions to
4 contract out for eligibility determinations. I think we
5 have to ask the question, does that make sense?

6 There are serious and legitimate questions
7 surrounding the success of contracting out for certain
8 human service functions. I would present one other chart
9 that just gives you a couple of examples of what has
10 happened.

11 In California with Lockheed Martin: harshly
12 criticized in the California Assembly, slated to cost \$99
13 million, now projected to cost \$260 million. Cost
14 overrun: 163 percent.

15 Virginia, Electronic Data Systems: contract canceled;
16 20 months behind schedule. Error rate of more than 50
17 percent; alleged sweetheart deal. Texas, Anderson
18 Consulting: 559 percent over budget. Over 4 years behind
19 schedule.

20 Mr. Chairman and colleagues, this is a serious matter
21 that deserves serious attention. Those who suggest that
22 there is no serious question, I would just ask them to
23 ask themselves, when you make an eligibility
24 determination, obviously there is subjective judgment,
25 and should this be made in this way?

1 Mr. Chairman, I would like to conclude with a comment
2 about Texas. As I outlined in my amendment description,
3 it is important to note that the Texas request for offers
4 is a procurement document. It is a confidential document
5 which is not legally available for members of Congress,
6 or the general public to review or comment on. As the
7 White House said to me in a communication, "Senators may
8 approve a plan that none of them have seen."

9 Mr. Chairman, I would hope we would remove this
10 provision at this point and give it a chance to have
11 hearings, discussion, and open debate.

12 Senator Gramm. Mr. Chairman?

13 The Chairman. Time is running out, but I recognize
14 the Senator from Texas for 30 seconds.

15 Senator Gramm. Mr. Chairman, first of all, there is
16 nothing secret about this plan because it was adopted by
17 the Texas legislature, signed by the governor. The
18 sponsorship of the amendment was bipartisan. It passed
19 with an overwhelming vote of both Houses of the
20 legislature. In fact, after a denial was made the
21 legislature took the issue up again, and again approved
22 the plan.

23 Now, let me explain to my colleagues exactly what
24 this is and what it is not, and why it is eminently good
25 government. First of all, what the Chairman's mark does

1 is simply sets up authorization to look at similar plans.
2 It does not mandate approval, except in the case of the
3 State which has already submitted the proposal, already
4 passed the bill in the legislature, already got in a
5 position to set up its plan, and that is Texas.

6 So this does not open up any floodgate, unless Texas
7 proves so successful that other States decide to do it,
8 and ultimately that is approved by the Secretary.

9 Now, here is what the Texas plan did, pure and
10 simple. Following on from our welfare reform and
11 following on from our movement toward greater efficiency,
12 Texas decided to consolidate the review process for
13 eligibility, so if somebody wanted to apply for a program
14 they could go to one spot in each area of the State, do
15 the questionnaire, and they would immediately, by
16 computer, be evaluated for all government low-income
17 services.

18 The Chairman. Time on this amendment has run out.

19 Senator Gramm. Well, Mr. Chairman, I ask unanimous
20 consent for two additional minutes.

21 Senator Rockefeller. Objection. If we are going to
22 stand by this, we need to stand by this.

23 Senator Gramm. Well, nobody told me when I was
24 recognized I had----

25 Senator Conrad. Mr. Chairman, could I intercede on

1 behalf of Senator Gramm? I am on the other side of this.
2 I would ask my colleagues, this is a very significant
3 amendment and I would hope he would be extended the time.

4 The Chairman. We will yield two further minutes to
5 you.

6 Senator Gramm. All right. Mr. Chairman, the bottom
7 line is, this was approved on a bipartisan basis, it was
8 not controversial. When Texas got ready to let the bids
9 to get competitive bids to basically do data input----and
10 I remind my colleagues that every Medicare program is
11 contracted out to private processors.

12 In fact, one of the bidders on this process is the
13 same company that does Medicare in Texas. It saves \$200
14 million, it improves the quality of service. It ended up
15 being held up because of a dispute involving the public
16 employee labor union, which decided that there might be
17 fewer State jobs if we had competition.

18 So I urge my colleagues to reject this amendment and
19 stand by the right of a State to try to save \$200 million
20 for itself and for the Federal Government.

21 The Chairman. Time on this amendment has run out.

22 Senator Conrad. Might I have one minute to respond?

23 The Chairman. Well, if we are going to have a 5-
24 minute rule, I think we are going to have to----

25 Senator Kerrey. Mr. Chairman, could you elaborate

1 on the 5-minute rule; what does that mean? On an
2 amendment like this, in order to get recorded as to how
3 we feel about the amendment, is there an opportunity to
4 make any statement at all or do we have to file written
5 comments? I appreciate the timing of this thing, but I
6 do not quite understand. I am about ready to make a
7 statement, and I do not want to----

8 The Chairman. Let me intervene and say, we will
9 give a minute to the distinguished Senator from North
10 Dakota, 4 seconds to the distinguished Senator from Rhode
11 Island, and then we are going to proceed with a roll call
12 vote.

13 Senator Kerrey. Well, Mr. Chairman, I appreciate
14 your wanting to do that. I do not want to gum up the
15 works here.

16 The Chairman. I would say to the distinguished
17 Senator, I announced in the beginning, this was the
18 request that was made by both sides of the political
19 aisle. We will try to, where there is essential need,
20 make exceptions.

21 But if we do not strictly enforce it we are not going
22 to get the job done. That is all I am trying to do. I
23 am not trying to cut off debate, I am not trying to
24 prevent either side from having an opportunity.

25 Senator Kerrey. I appreciate that, Mr. Chairman.

1 But the definition of "get the job done" also includes,
2 when you have an issue where you are not quite sure how
3 you are going to vote, allowing the debate to proceed so
4 we can become informed sufficiently and vote correctly.

5 The Chairman. As I was saying, we are giving the
6 distinguished Senator another minute.

7 The Senator from North Dakota.

8 Senator Conrad. I thank the Chairman.

9 First of all, the Senator from Texas uses the words
10 "approved by the Secretary." This is not approved by the
11 Secretary. This would be approved by us without us ever
12 being able to see the plan. The Senator from Texas says
13 it saves money. That is the company's estimate. There
14 has been no independent review of that.

15 The fact is, if we look at these other cases around
16 the country, there have been dramatic overruns and
17 significant delays. This involves not only Medicaid and
18 food stamps, but it involves foster care, abused and
19 neglected children, determinations on their eligibility.
20 We have never had a hearing on this matter. I would hope
21 my colleagues would reject this.

22 The Chairman. Senator Chafee.

23 Senator Chafee. Senator Conrad, this could affect
24 child welfare?

25 Senator Conrad. Exactly.

1 Senator Chafee. Thank you.
2 The Chairman. The Clerk will call the roll.
3 The Clerk. Mr. Chafee?
4 Senator Chafee. No.
5 The Clerk. Mr. Grassley?
6 Senator Grassley. No.
7 The Clerk. Mr. Hatch?
8 Senator Hatch. No.
9 The Clerk. Mr. Murkowski?
10 The Chairman. No, by proxy.
11 The Clerk. Mr. Nickles.
12 Senator Nickles. No.
13 The Clerk. Mr. Gramm.
14 Senator Gramm. No.
15 The Clerk. Mr. Lott?
16 The Chairman. No, by proxy.
17 The Clerk. Mr. Jeffords?
18 The Chairman. Yes, by proxy.
19 The Clerk. Mr. Mack?
20 Senator Mack. No.
21 The Clerk. Mr. Moynihan?
22 Senator Moynihan. Aye.
23 The Clerk. Mr. Baucus?
24 Senator Baucus. Aye.
25 The Clerk. Mr. Rockefeller?

1 Senator Rockefeller. Aye.

2 The Clerk. Mr. Breaux?

3 Senator Breaux. Aye.

4 The Clerk. Mr. Conrad?

5 Senator Conrad. Aye.

6 The Clerk. Mr. Graham?

7 Senator Graham. Aye.

8 The Clerk. Ms. Moseley-Braun?

9 Senator Moseley-Braun. Aye.

10 The Clerk. Mr. Bryan.

11 Senator Bryan. Aye.

12 The Clerk. Mr. Kerrey?

13 Senator Kerrey. Aye.

14 The Clerk. Mr. Chairman?

15 The Chairman. No.

16 The Clerk. Mr. D'Amato?

17 Senator D'Amato. Aye.

18 The Clerk. The votes are 11 yeas, 9 nays.

19 The Chairman. The amendment is agreed to.

20 Senator Chafee?

21 Senator Chafee. Mr. Chairman, I call up my

22 amendment #27, which is the same as Senator Rockefeller's

23 #253.

24 Mr. Chairman, this is an amendment that deals with

25 adoption and foster care. The goals of this legislation

1 are two-fold: to ensure that abused and neglected
2 children are in safe settings, and to move children more
3 rapidly out of the foster care system and into permanent
4 placements.

5 Now, the current goal of foster care is to reunite
6 children with their biological parents. That obviously
7 is a good goal. However, the trouble is that frequently
8 we are encouraging States to return abused and neglected
9 children to homes that are clearly unsafe. What this
10 legislation does is put the accent on safety and health
11 of the child as the primary factors.

12 What this legislation does, is it requires the States
13 to make decisions about permanently placing children
14 within a year of the child being removed from the home,
15 rather than the current system which leaves the child
16 lingering in foster care for a long time.

17 Now, Mr. Chairman, the contents of this bill are
18 quite similar to legislation that passed the House nearly
19 unanimously and is at the desk. But the problem with
20 that legislation is, it does not provide any money to
21 take care of the overload on the staffs and the heavy
22 case load work that is involved in the States currently.

23 What we do is make some modest increases in funding.
24 It is all right to say that these children have to move
25 out of foster care, but unless you have the staff there

1 to do the research on the families that they are going
2 into, unless you have staff to look into the potential
3 adoptive parents and their background, the whole thing
4 falls apart.

5 So this legislation, we have scaled back the cost to
6 about \$3 billion over 5 years, and we are paying for it
7 with a good government provision that limits the States'
8 ability to shift their administrative costs from the new
9 welfare block grant, the TANF, so-called, to other
10 entitlement programs.

11 So, Mr. Chairman, it is good legislation and I hope
12 it would be supported.

13 Senator Lott. Mr. Chairman?

14 The Chairman. Senator Lott.

15 Senator Lott. Mr. Chairman, if I could, I would
16 like to be heard on the amendment and I have some
17 questions for the sponsor. But if somebody else has been
18 recognized, I will yield.

19 The Chairman. Senator Grassley.

20 Senator Lott. I will withhold.

21 The Chairman. Then I was going to rule on the
22 germaneness.

23 Senator Grassley. Mr. Chairman, on this issue, you
24 cannot be against this bill because there is not a need
25 for reform of foster care programs; there is no doubt in

1 anybody's mind that there has got to be tremendous reform
2 in these programs.

3 But the situation is this, that the Senate, as the
4 deliberative body, is just not functioning in this very
5 important issue the way it should. This bill did not get
6 the consideration in the House of Representatives it
7 should have. I mean, the bill that is at the desk in the
8 Senate.

9 We had a hearing on this issue, of which, I think,
10 three of us attended the hearing in Senator Chafee's
11 Subcommittee of Finance on this. But there has been a
12 deliberative effort somewhere, and not with Mr. Chafee,
13 but that this issue would not get thorough airing.

14 I think this reconciliation process that we are using
15 here was predictable from a meeting on March 24, 1997 at
16 the Washington Court Hotel of the National Association of
17 Public Child Welfare Administrators.

18 That is an affiliate of the American Public Welfare
19 Association. They held a special luncheon plenary on
20 this subject on the issue of issue of doing something
21 about this and the costs, the \$2 billion cost. Well, how
22 are you going to spend \$2 billion?

23 The opinion was, well, we will take care of it in
24 reconciliation and nobody will know that we are spending
25 this kind of money. So we are right here today in June

1 doing just exactly what was planned back there in March
2 to do, and we cannot let this happen.

3 This is an issue that is so important. We have got
4 55,000 kids in the United States that have been
5 determined to be adoptable, but only about 20 percent of
6 them have been adopted. There is too much economic
7 incentive in this program, in this system, to keep these
8 kids in foster care because the States are being paid
9 according to the number of people in foster care.

10 So, outside of the cost, Mr. Chairman, and I know you
11 have a point of order, but this procedure at this point
12 is just not right. We are not deliberating this issue
13 the way the Senate should.

14 Senator Lott. Mr. Chairman, if I could, I would ask
15 for recognition. But I understand that you are prepared
16 to rule and we have a lot of issues to address. I have
17 discussed it privately with the sponsor of the amendment,
18 so I will defer any comments or questions at this time.

19 The Chairman. I appreciate that, because we are
20 trying to expedite.

21 Senator Nickles. Mr. Chairman?

22 The Chairman. Time has run out on the amendment.
23 Let me point out that the purpose of Rule 2-A on
24 germaneness is to prohibit members from bringing up
25 unrelated items that would be a surprise.

1 As we meet to mark-up Medicare, Medicaid, and certain
2 welfare provisions, I must say that a reasonable person
3 reading the entire document would be surprised by a mark-
4 up that completely overhauled the foster care and
5 adoption program. This is not a subject dealt with in
6 this bill.

7 A waiver provision in the bill dealing generally with
8 the administration of several Federal programs which
9 might possibly involve foster care and adoption matters
10 procedurally does not create a sufficient basis of
11 treatment to make germane proposals to inaugurate a new,
12 substantive program, nor does the inclusion of a
13 technical amendment in this area create a basis for
14 members to roam through the entire area touched by a
15 technical amendment and propose all sorts of substantive
16 and controversial amendments. If it were otherwise,
17 future marks would have to severely restrict the scope of
18 technical amendments.

19 It must be remembered under Rule 2-A and under Senate
20 precedent, if any part of an amendment is tainted with
21 non-germaneness, the entire amendment must fall.

22 Overhauling foster care and adoption is not before us
23 and, therefore, I rule the Chafee amendment non-germane.

24 Senator Rockefeller. Mr. Chairman?

25 The Chairman. Senator Rockefeller.

1 Senator Rockefeller. Might I just inquire, we just
2 did the Conrad amendment which related to foster care,
3 abused and neglected children. I think he was very clear
4 to point that out. I am not challenging the Chairman,
5 but I am just saying that there seems to be an
6 inconsistency. This is an enormously important subject,
7 which will obviously have to come back.

8 Senator Nickles. Mr. Chairman, I just want to point
9 out that I agree with your ruling, and tell the Senator
10 from Rhode Island he may well have a good bill, but I
11 know Senator Grassley has a bill, I know Senator Dwine
12 has a bill, and we have the House-passed bill, and we
13 need to work it out amongst ourselves through this
14 committee and spend a little time making sure we choose
15 the best approach. I do not think it is in this
16 committee with a 5-minute rule, and on reconciliation.

17 Senator Chafee. Mr. Chairman, I just want to say
18 that this is a terribly important issue. I am not going
19 to press it here now, but the Majority Leader has
20 indicated to me a willingness to work together to try and
21 get funding for this program. The House bill is an
22 excellent bill. We have some differences in it, but it
23 just does not have any money in it to accomplish the
24 goals.

25 So, Mr. Chairman, with the hope that people have

1 become increasingly conscious of this problem as a result
2 of the conversations we have had here today and our
3 having raised it, I will obviously abide by your ruling.

4 The Chairman. Well, I thank the distinguished
5 Senator from Rhode Island.

6 The Chairman.

7 Senator Kerrey. I want to be recorded as regretting
8 that you have withdrawn this amendment.

9 The Chairman. At this stage, we will call on Bob
10 Graham for our next amendment.

11 Senator Graham. Thank you, Mr. Chairman. I offer
12 this amendment with my colleague, Senator Nickles of
13 Oklahoma.

14 Mr. Chairman, from time to time throughout the
15 discussion of Medicare and Medicaid, we have commented
16 about the fact that this reminds us of why Communism
17 failed, that any attempt to have an economy run by
18 central planning to the degree we are doing with Medicare
19 and Medicaid is an economy that is certain to collapse of
20 its own weight.

21 We have now arrived at the Red Square of that issue,
22 and that is that provisions in the Medicare law that
23 relate to the payment for durable medical equipment.

24 I would like to bring to the committee's attention,
25 this is the compiled statutes as they relate to

1 Medicare and Social Security. It takes 13 pages, more
2 words than the Declaration of Independence, the
3 Constitution of the United States, the North West
4 Ordinance, and the Gettysburg Address to tell us how to
5 buy a wheelchair.

6 The proposal that Senator Nickles and I are advancing
7 is a very simple one, and that is to provide the
8 Secretary with the authority--not the mandate or
9 direction, but the authority--to establish a competitive
10 bidding process for all Part B services, except for
11 physician services.

12 It is the intention of this amendment to achieve the
13 objective of good price, quality items of service, and
14 good access to beneficiaries, and I look forward to
15 working with the committee, particularly in drafting the
16 committee report, to clearly state what our objectives
17 are.

18 We all are familiar with the GAO reports, the
19 Inspector General reports about the egregious differences
20 between what Medicare is paying for exactly the same item
21 as the Veteran's Administration and major, other large
22 purchasers.

23 I might point out particularly to my good friend from
24 New York that, in these 13 pages, we enshrine the
25 Consumer Price Index as the means by which the formula

1 that leads to these ultimate prices will be achieved.

2 So, Mr. Chairman, I urge the adoption of this modest,
3 but I think potentially very significant, move toward
4 some degree of marketplace economy in the purchase of
5 durable medical equipment.

6 Senator Nickles. Mr. Chairman?

7 The Chairman. I would ask the staff to comment on
8 this proposal.

9 Ms. James. I apologize.

10 The Chairman. All right. Senator Nickles?

11 Senator Nickles. Mr. Chairman, I would encourage
12 our colleagues to support this amendment. I think
13 competitive bidding will allow the Medicare program to
14 use competitive forces to bring about some real savings
15 in Medicare Part B. And we talk about Part A having
16 problems, Part B has been exploding in costs, three-
17 fourths of which is paid for by the taxpayers.

18 GAO and others have recommended that Medicare use
19 more competitive bidding to help manage the costs, so I
20 think my colleague from Florida has come up with a good
21 amendment and I hope we adopt it.

22 Senator Baucus. Mr. Chairman?

23 The Chairman. I would call for the vote.

24 Senator Baucus. Mr. Chairman, very briefly.

25 The Chairman. Thirty seconds.

1 Senator Baucus. Thirty seconds.

2 I would ask Dr. Vladeck if he could assure that rules
3 that are developed here protect rural States when we go
4 to competitive bidding.

5 Dr. Vladeck. Senator, this is permissive authority.
6 Our expectation would be, in rural communities where
7 there is not a surplus of suppliers, that competitive
8 bidding would not appropriately be employed under those
9 circumstances.

10 Senator Baucus. Thank you.

11 The Chairman. Those in favor of the amendment,
12 signify by saying aye.

13 [Chorus of ayes]

14 The Chairman. Opposed, nay.

15 [No response]

16 The Chairman. The ayes have it. The amendment is
17 agreed to.

18 Senator Hatch?

19 Senator Hatch. Mr. Chairman, I call up my amendment
20 #17. This is to have chiropractic inclusion in Medicare
21 demonstration projects. It is #129, I am sorry.

22 There is considerable bipartisan interest within the
23 Congress and this committee to improving beneficiary
24 access to chiropractic care in the Medicare program.
25 Both the administration's bill and the bill reported by

1 the Ways and Means Committee last week contained
2 provisions to improve access for Medicare beneficiaries.

3 Chiropractic services are currently provided in the
4 Medicare program, however, the benefit is very limited.
5 Current law requires chiropractors to obtain a diagnostic
6 X-ray from another provider before payment would be made
7 for spinal manipulation, and that is absurd, to be honest
8 with you. Every State in the Union provides that
9 chiropractors can take their own X-rays, and it is just
10 absurd to have that extra cost involved.

11 So it was my desire to offer the identical Ways and
12 Means and administration language to remove the X-ray
13 requirement for Medicare reimbursement to the Finance
14 mark, but I understand from the staff that the CBO has
15 scored this language at \$600 million over a 5-year
16 period, so I have withdrawn that amendment.

17 The \$600 million figure is in substantial
18 contradiction to the OMB cost estimate of \$200 million
19 for the same provision. Quite frankly, there is no
20 consensus on the cost implication.

21 So what I propose is that we ask HHS to a 2-year
22 demonstration program and report back to Congress on
23 exactly what the cost implications are, as well as
24 specific legislative recommendations for action. My
25 amendment proposes a demonstration that would examine

1 ways in which access to the chiropractic benefit would be
2 expanded on a cost benefit basis to the Medicare program.

3 So, under my amendment, the Secretary of Health and
4 Human Services would conduct a demonstration of at least
5 the effect of allowing doctors of chiropractic to order
6 X-rays and be reimbursed for taking X-rays, and the
7 effect of removing the X-ray requirement entirely.

8 I hope that my colleagues will support me on this,
9 because I think it is the right thing to do. I really,
10 really believe we ought to do this.

11 Senator Grassley. Mr. Chairman?

12 The Chairman. Yes, 30 seconds.

13 Senator Grassley. Yes, 30 seconds.

14 I hope that my colleagues will support Senator Hatch.
15 This issue of chiropractors and X-rays has been around
16 for a long, long time. I think we ought to deal with it
17 head on, but since we are not going to be able to deal
18 with it head on I think it is legitimate to have a
19 demonstration project and come up with a certainty of
20 what this policy should be, because I think there is some
21 discrimination in the present policy. I do not think it
22 is entirely based upon good medicine.

23 The Chairman. Well, the Chair would propose that we
24 accept the amendment, on the condition that it has no
25 significant cost.

1 Senator Hatch. I thank the Chair.

2 Senator Moynihan. I second that motion.

3 Senator Hatch. I appreciate that. With that, I
4 will shut up.

5 The Chairman. John Breaux.

6 Senator Breaux. Mr. Chairman and my colleagues,
7 this is an amendment that Senator Mack and I have
8 offered, and was the subject of a hearing in the Senate
9 Finance Committee.

10 Basically, what it tries to do is build on the
11 Chairman's mark with regard to demonstration projects on
12 competition. Even after this bill is passed, Medicare
13 will be the only health system in the country that the
14 services are not based on competition, nor price. We
15 have an organization and an operation where we fix prices
16 for everything Medicare delivers.

17 Now, with the Graham amendment, as far as Part B, we
18 are making some progress. The demonstration project that
19 the Chairman calls for is a good suggestion. What we try
20 to do is build on that. The Chairman's mark has 5
21 demonstrations, we have 13 demonstrations. We set up an
22 Office of Competition within HHS.

23 That Office of Competition will function much like
24 the Office of Management for the Federal Employees Health
25 Benefit Plan. They will ask for bids on a standardized

1 package of benefits, which includes all the services in
2 Part A and Part B of Medicare. In addition to that, it
3 will also cover prescription drugs. They can also offer
4 a supplemental package of additional benefits.

5 So we will test-market this new way of trying to get
6 bids and be competitive in the whole Medicare system.
7 The Secretary will review those demonstration projects
8 after it is completed. Then the Secretary will make a
9 report to the President.

10 The President will make a recommendation to the
11 Congress. We have taken out the fast-track provision for
12 Congress to have to consider it, but I think that
13 Congress will bring this up in a timely fashion.

14 So what we are offering is, I think, very consistent
15 with the demonstration program in the bill, but I think
16 it expands upon it, elaborates on it, sets some
17 standards, and I think is an improvement. Senator Mack
18 is my co-sponsor on it.

19 The Chairman. One minute for Senator Mack.

20 Senator Mack. I have been waiting for a long time
21 for this one minute.

22 Mr. Chairman, we believe that this proposed
23 demonstration will prove once again that lower prices
24 will result because of competition. I believe that the
25 demonstration will prove successful and lead to a major

1 change in Medicare pricing in the future.

2 We have seen since the early 1980s significant
3 changes in the way we try to control prices, from cost-
4 based reimbursement to a prospective payment system, and
5 I believe the time is almost at hand when competition
6 will be the controlling factor in controlling prices. I
7 believe that this demonstration will, in fact, prove
8 that.

9 Again, we call for a substitute competitive bidding
10 demonstration. It establishes the Office of Competition,
11 which Senator Breaux mentioned.

12 I would point out again that the standard benefit
13 package will allow seniors to easily compare and make
14 choices, and we have provisions for high-quality
15 standards that were found in the Chafee-Jeffords,
16 Lieberman-Breaux quality suggestions, and I would
17 encourage its support.

18 Senator Moynihan. Mr. Chairman?

19 Senator Rockefeller. Mr. Chairman?

20 The Chairman. Senator Moynihan.

21 Senator Moynihan. Mr. Chairman, we discussed this a
22 bit last evening and there was some concern about a fast
23 track provision which was not necessary for the purpose
24 and may have been inhibitory to the Congress. That has
25 been dropped, and this is an excellent proposal.

1 Senator Rockefeller. Mr. Chairman?

2 The Chairman. Well, I think time has expired.

3 Senator Rockefeller. Mr. Chairman, nobody has had a
4 chance to say anything on the other side.

5 The Chairman. All right.

6 Senator Rockefeller. I am just going to ask a
7 question of Bruce Vladeck. I mean, I think this
8 amendment has enormous implications for beneficiaries and
9 I would like to ask Bruce Vladeck what you think the
10 implications might be.

11 Dr. Vladeck. Well, we believe Medicare is one
12 program. And if we are going to provide the beneficiary
13 education, the service, external quality reviews and
14 external appeals to fragment the administration of the
15 program, it would make those services and quality
16 protections more difficult to administer and enforce.

17 Senator Rockefeller. By which I read that you feel
18 that this has problems.

19 Dr. Vladeck. We like the idea of the bidding very
20 much, but the administrative structure would cause
21 considerable concern to the Secretary and the rest of us.

22 The Chairman. All time has expired.

23 Those in favor of the amendment, signify by saying
24 aye.

25 [Chorus of ayes]

1 The Chairman. Opposed, nay.

2 [No response]

3 The Chairman. The ayes have it. The amendment is
4 agreed to.

5 Next, we will call on Frank Murkowski.

6 Senator Murkowski. Thank you, Mr. Chairman.

7 Two years ago, this committee recognized that the
8 Federal funding formula for Medicaid was fundamentally
9 unfair to my State of Alaska. The formula was developed
10 13 years before we became a State.

11 Here is the reason it is basically unfair. I am
12 going to have passed out a couple of handouts here which
13 make my point. The Medicaid formula is based on per
14 capita income in individual States as it relates to per
15 capita income in the U.S.

16 Yet, because of our high cost of living, the Federal
17 Government requires that we not only cover people at the
18 poverty level, but in Alaska we have to cover them at 125
19 percent of poverty.

20 The Chairman. I would ask that the committee
21 restrict their side speaking. If you have a reason to
22 engage in such discussions, please leave the room. The
23 Senator is entitled to be heard.

24 Senator Murkowski?

25 Senator Murkowski. Thank you, Mr. Chairman.

1 As a consequence, this means more people in Alaska
2 are eligible for Medicaid programs, but the Federal match
3 is not adjusted accordingly. Basically, the current
4 formula gives us more Medicaid users and provides less
5 money to pay for their services. To exacerbate this
6 inequity, health costs in Alaska are estimated to be 71
7 percent higher than the national average.

8 Let me refer to this chart here, which shows Alaska
9 at the far left. Alaska is \$81, Delaware is \$41, New
10 York is \$47 on dentists visits, \$113, \$53, and \$54 in
11 Iowa. Normal baby delivery, \$4,200, \$2,600 in Delaware,
12 \$1,600 in Utah. That is the place to go.

13 In any event, it makes my point that we are 71
14 percent higher than the national average. Now, the 50/50
15 match appears to have a per capital income application on
16 our per capita income of about \$17,900 based on 1993
17 data. But Indiana, with a per capita income of, say,
18 \$15,000, has a 63/38 match.

19 But, if you consider the 25 percent cost of living
20 increase in Alaska, the average citizen of Indiana lives
21 better at \$15,000 of income than an Alaskan at \$18,000.
22 There are other Federal programs that take into
23 consideration that high cost of living: the Federal food
24 stamp program, the Federal school lunch program, housing
25 renovation programs, to name just a few.

1 What we are asking for is that we get the average,
2 the average of all these States that are listed here, the
3 38 States that have a varying FMAP based, obviously, on
4 the income levels, but it does not take into
5 consideration the cost of living.

6 What this committee gave us two years ago was an
7 average at 59.8 percent. I am asking today that the
8 committee consider that same ratio and that we be treated
9 like the rest of the States, on an average. Mr.
10 Chairman, I am not asking that we receive a gift, Alaska
11 is asking for equity and I would urge my colleagues to
12 support the amendment.

13 This is a chart of the other States, the 38 States
14 that have a varied formula as a consequence of the income
15 levels. I would be happy to respond to any questions.

16 The Chairman. Senator Moynihan?

17 Senator Moynihan. Mr. Chairman, this is a wholly
18 admirable amendment, and also an instructive one. I have
19 said how many times in this hearing that the matching
20 rates for Medicaid are based on the Hill-Burton Hospital
21 Construction Act of 1946. They are as antique as any
22 other provision of Federal law and they have the specific
23 consequence of penalizing any State with a higher cost of
24 living.

25 It was not intended that way. It continues to have

1 this perverse consequence. The subject needs to be
2 addressed on its own in its entirety, but the Senator
3 from Alaska has begun, and good for him. Let us all vote
4 with him.

5 Senator Moseley-Braun. Mr. Chairman, before we do,
6 I have a question of the sponsor of the amendment.

7 The Chairman. Yes, Senator Moseley-Braun.

8 Senator Moseley-Braun. I just want some assurance.
9 The memorandum that I have in front of me says the
10 Chairman's proposed FMAP increase for the District of
11 Columbia would be decreased as a way of paying for this.
12 Is that not so?

13 Senator Murkowski. I would leave it up to the
14 committee to find the \$30 million. The District of
15 Columbia simply had theirs increased about 100 percent,
16 as I recall.

17 Senator Moseley-Braun. All right. But it is not
18 going to come out of DC, which is another set of
19 problems?

20 Senator Murkowski. I would leave that up to the
21 committee to find that.

22 Senator Moseley-Braun. Thank you.

23 Senator Chafee. Mr. Chairman, just a quick
24 question.

25 The Chairman. Senator Chafee.

1 Senator Chafee. Mr. Chairman, there ought to be a
2 system of arriving at these things other than us doing
3 it. What is your system, Dennis, Bruce, or whoever is in
4 charge?

5 Mr. Smith. I am not in charge.

6 Senator Nickles. I am glad you posed the question
7 that way.

8 Senator Chafee. I mean, I am not opposed to the
9 amendment, but it just seems of the Congress is going to
10 get into setting the FMAPS for each State, we are just
11 heading down a terrible slide, in my judgment.

12 Senator D'Amato. We are acting as the people's
13 representatives against the big, bad bureaucracy.

14 Senator Chafee. That is all right.

15 Senator D'Amato. An uncaring bureaucracy.

16 Senator Chafee. Thank you.

17 Senator Nickles. Mr. Chairman?

18 The Chairman. Senator Nickles, then we will call
19 for the vote.

20 Senator Nickles. Mr. Chairman, I have the greatest
21 admiration and I understand what my colleague from Alaska
22 is doing, but I also had serious questions about what we
23 did in the District of Columbia. I know that was part of
24 the agreement, the administration, and all this, we
25 wanted to help the District of Columbia, so we upped

1 their percentage so they get another \$300 million. In
2 this case, in Alaska it only cost \$30 million.

3 But there are formulas to make these determinations.
4 Are there inequities and big differences? You bet. The
5 Senator from New York has a 50 percent State. We have
6 two Senators from New York, both sides. So is there
7 going to be an amendment coming up that says, well, that
8 will be 60 percent? If New York goes to 60 percent, my
9 guess is that it will cost a little bit more than \$30
10 million.

11 [Laughter]

12 Senator Moynihan. We accept 60 percent.

13 [Laughter]

14 Senator Nickles. So I am really concerned. Maybe
15 we need to review how these matches are set. As I have
16 stated probably too much before to my colleagues, I am
17 concerned about a growing Federal share in a lot of
18 these. I do not think doing it State by State is the
19 right approach.

20 The Chairman. Well, I would have to say that I have
21 the same concern, that we use a case by case approach. I
22 think the whole matter ought to be reviewed rather than
23 try to change it in the manner proposed here.

24 Senator Moynihan. Do we have an agreement on that,
25 sir?

1 The Chairman. I would ask the Clerk to call the
2 roll.
3 The Clerk. Mr. Chafee?
4 Senator Chafee. Let me think about it a minute.
5 You go ahead.
6 The Clerk. Mr. Grassley?
7 Senator Grassley. Aye.
8 The Clerk. Mr. Hatch?
9 Senator Hatch. Aye.
10 The Clerk. Mr. D'Amato.
11 Senator D'Amato. Aye.
12 The Clerk. Mr. Murkowski?
13 Senator Murkowski. Aye.
14 The Clerk. Mr. Nickles.
15 Senator Nickles. No.
16 The Clerk. Mr. Gramm.
17 Senator Gramm. Aye.
18 The Clerk. Mr. Lott?
19 Senator Lott. Aye.
20 The Clerk. Mr. Jeffords?
21 The Chairman. No, by proxy.
22 The Clerk. Mr. Mack?
23 Senator Mack. No.
24 The Clerk. Mr. Moynihan?
25 Senator Moynihan. Aye.

1 The Clerk. Mr. Baucus?
2 Senator Baucus. No.
3 The Clerk. Mr. Rockefeller?
4 Senator Rockefeller. No.
5 The Clerk. Mr. Breaux?
6 Senator Breaux. [No response]
7 The Clerk. Mr. Conrad?
8 Senator Conrad. No.
9 The Clerk. Mr. Graham?
10 Senator Graham. No.
11 The Clerk. Ms. Moseley-Braun?
12 Senator Moseley-Braun. Aye.
13 The Clerk. Mr. Bryan.
14 Senator Bryan. No.
15 The Clerk. Mr. Kerrey?
16 Senator Kerrey. No.
17 The Clerk. Mr. Chairman?
18 The Chairman. No.
19 The Clerk. Mr. Chafee?
20 Senator Chafee. Aye.
21 The Clerk. The votes are 9 yeas, 10 nays.
22 The Chairman. The amendment is not agreed to.
23 Next, is Senator Rockefeller.
24 Senator Murkowski. Mr. Chairman, I know there is
25 not grounds for reconsideration, but I think that is

1 terribly unfair and I would like to move for
2 reconsideration and discuss it, and bring it up later.
3 You have acknowledged that we do not have the business
4 doing it. This committee authorized it two years ago.
5 It was vetoed in the reconciliation package.

6 Senator Kerrey. Mr. Chairman, unless you vote on
7 the opposite side, how can you move to reconsider?

8 The Chairman. He is not in a position to call for
9 reconsideration.

10 Well, let us proceed for the moment.

11 Senator Murkowski. Mr. Chairman, I intend to bring
12 it up again.

13 The Chairman. Senator Rockefeller.

14 Senator Rockefeller. Mr. Chairman, this is, I
15 think, an interesting and good amendment that I make,
16 together with Senator Jeffords. There is sort of a
17 conflict between VA hospitals and their usage and people
18 who are eligible for Medicare and who do not use VA
19 hospitals.

20 What Senator Jeffords and I would propose is a so-
21 called subvention amendment, and it is a demonstration
22 project. It would only last for 3 years, and they would
23 be in 12 VA sites, different kinds of sites, to see
24 whether the VA, collecting Medicare payments for those
25 who do not now use the VA system, but who go to other

1 places for health care, whether that is a feasible idea.

2 This is something which looms over the whole future
3 of the VA system. It would not cost more. It is budget
4 neutral in the way we have gone at it. Medicare would
5 pay either way, so it is not an increase in cost to
6 veterans.

7 The veterans groups, and this is actually important,
8 because all the veterans groups opposed this kind of
9 thing just even two years ago, are all for it now. It is
10 a very good approach. Frankly, it is going to help us
11 sort out the future of VA hospitals in this country.

12 The Chairman. I would ask Alex to comment on it.

13 Dr. Vachon. Senator, maybe two comments. First, is
14 that this would create a new precedent for funding
15 Federally-operated hospitals, whether the VA or other
16 kinds of hospitals. Second, according to CBO, we
17 understand the score for this is \$200 million over 3
18 years.

19 Senator Nickles. How much?

20 The Chairman. How much?

21 Dr. Vachon. \$200 million._____

22 The Chairman. I would ask the distinguished sponsor
23 how he would pay for that.

24 Senator Rockefeller. One, that is not true. We
25 have a cut-off figure of \$50 million annually. I mean,

1 automatically that is in the legislation because nobody
2 knows exactly how this is going to work out. But \$200
3 million is incorrect. We have written it to be, as I
4 say, budget neutral.

5 Senator Graham. Mr. Chairman, could I ask a
6 question?

7 The Chairman. Alex?

8 Dr. Vachon. The difference in the estimates,
9 Senator, may be, you cut it off at \$50 million per year
10 in Medicare outlays, but CBO assumes a diminished level
11 of maintenance of effort on the part of the VA.

12 So Medicare will pick up those additional costs that
13 the VA today pays for through their discretionary funds,
14 so it will be converting what is paid for through
15 discretionary funds today through mandatory spending.

16 Senator Graham. Mr. Chairman?

17 The Chairman. Bob?

18 Senator Graham. Mr. Chairman, question. The
19 purpose of this is to allow the VA to recoup some of its
20 expenditures through those VA patients who are Medicare-
21 eligible, correct?

22 Dr. Vachon. Correct.

23 Senator Graham. So if you collected a dollar from
24 Medicare, would that not be a dollar that the VA does not
25 have to spend?

1 Senator Kerrey. No, this is additional revenue for
2 the VA.

3 Dr. Vachon. This would be additional revenue.

4 Senator Rockefeller. If I could just clarify this.

5 Senator Graham. Why would it be additional revenue?

6 Senator Kerrey. Because if I am an over-65-year old
7 veteran and I go to a VA hospital, in addition to the
8 budget that we provided the Veterans Administration of
9 \$15 billion to run their system, they will now get a
10 check coming from HCFA for Part A, will they not?

11 Senator Graham. No, unless we construct a stupid
12 budget. What we ought to do is have a budget----

13 Senator Rockefeller. Mr. Chairman, I would like to
14 clarify the budget neutral, because I can do that.

15 The Chairman. All right, Senator Rockefeller. Then
16 we will proceed with the vote.

17 Senator Rockefeller. CBO, at the beginning, did say
18 that there would be a \$50 million cost. All of CBO's
19 recommendations were included, however, in the House
20 bill. CBO then came back and said they could not
21 identify a cost for the bill.

22 Now, if you want to take me on, Alex, I would be
23 happy to do that.

24 Dr. Vachon. No, sir. Not at all. This is just
25 provided by the administration.

1 The Chairman. All right. Those in favor of the
2 amendment, signify by saying aye.

3 [Chorus of ayes]

4 The Chairman. Opposed, nay.

5 [Chorus of nays]

6 The Chairman. The ayes appear to have it. The
7 amendment is agreed to.

8 Next, we have Mr. Gramm.

9 Senator Gramm. Mr. Chairman, I had worked out an
10 agreement with you to drop some amendments in return for
11 offering a changed version of the Texas waiver. Let me
12 get the language passed out. There was concern on the
13 part of some of my colleagues about the authorization of
14 the Secretary to have 10 State plans, and I have dropped
15 that language from the amendment as it appeared in the
16 bill. If you look at the language, it is struck out. So
17 all we would do now is simply grant the waiver for the
18 one State that has done the stuff and applied it.

19 The one point I was unable to make because of time
20 limits in the previous debate is that this will allow
21 Texas to cover an additional 115,000 children from the
22 savings that we will get from consolidating the
23 bookkeeping work.

24 So I hope, with the dropping of these 10
25 demonstration projects that concerned some of my

1 colleagues, that we can put the language back in the
2 bill. I thank the Chairman.

3 Senator Conrad. Mr. Chairman?

4 The Chairman. Senator Conrad.

5 Senator Conrad. I would raise a point of order
6 here. We had a unanimous consent agreement last night
7 for no new amendments.

8 Mr. Gramm did not have notice of this amendment. It
9 is not left on his group of amendments left to be
10 considered by the committee, and this would clearly
11 violate the unanimous consent agreement we had last
12 night. I would raise a point of order.

13 Senator Gramm. Mr. Chairman?

14 The Chairman. The Senator from Texas.

15 Senator Gramm. Mr. Chairman, let me say that I had
16 worked out with you that I would drop three amendments to
17 do this.

18 Senator Rockefeller. Oh, we all did that. We all
19 did that kind of thing, Senator.

20 Senator Gramm. No. I dropped amendments as we went
21 along. The Chairman agreed to this. I think this is an
22 eminently reasonable amendment. I suggest we just vote
23 on it.

24 Senator Conrad. Mr. Chairman, I really think this
25 would absolutely violate the good order of this

1 committee. When we had a unanimous consent agreement
2 that was clear as a bell that there were going to be no
3 new amendments beyond the amendments that were noticed,
4 Mr. Gramm's amendment was not noticed. This would be an
5 absolute violation of the unanimous consent agreement we
6 entered into.

7 Senator D'Amato. Mr. Chairman, it would seem to me
8 that we should have a little comity. Now, let me say
9 this. I voted against the Gramm amendment because I was
10 concerned it was too expansive. He has cut that back.

11 If necessary, I will move to reconsider as one of
12 those who voted on the winning side. But let me just say
13 this to you. We are going to have our differences at
14 times. You know we are operating this way. Let us have
15 a little comity for each other when it comes to some of
16 these matters. I would just suggest that. So, I would
17 move to reconsider.

18 Senator Mack. Mr. Chairman?

19 The Chairman. Yes.

20 Senator Mack. I am over here in the corner.

21 The Chairman. Senator Mack.

22 Senator Mack. I have an amendment that, frankly, if
23 we are in a situation, suppose I was not going to offer
24 that amendment, can I offer that slot to Senator Gramm?

25 The Chairman. No, I do not think you can do that.

1 Senator Gramm. Well, finally, Mr. Chairman, let me
2 say that I have reserved the right to offer an amendment
3 on Medicaid waiver, renewal, and expansion of coverage
4 authority. I mean, that covers what I am doing. But the
5 point is, I think we are beginning to burden ourselves
6 with technicalities by doing this, I dropped three
7 amendments, the Chairman agreed to it, and I suggest we
8 just have the vote.

9 Senator Conrad. Mr. Chairman? Mr. Chairman, if I
10 might be heard on this.

11 The Chairman. Yes.

12 Senator Conrad. I tell you, we either have an order
13 here or we do not. Mr. Gramm references his amendment #3
14 on streamlining the Medicaid waiver process. We have
15 that amendment. That is not the amendment that the
16 Senator is offering now. We entered into a clear
17 unanimous consent agreement last night: no new
18 amendments. The Senator did not have this amendment on
19 his list, and it would violate the rules of the
20 committee.

21 The Chairman. Well, the Chair will rule that I did
22 say that we would be limited to the amendments that were
23 listed.

24 Senator Gramm. Mr. Chairman, let me remind you that
25 I have reserved the right to do a second-degree amendment

1 from the very beginning. No one can dispute that. Now,
2 I can offer this as a second-degree amendment, or Senator
3 D'Amato can move to reconsider, which would bring the
4 amendment back before us. I will then move to modify the
5 amendment, then we can vote on it. I mean, clearly we
6 can do this if we want to do it. I just do not see why
7 we are putting each other through these hurdles.

8 Senator Conrad. Mr. Chairman, there is not on Mr.
9 Gramm's list a reservation for a second-degree amendment
10 either. If Senator D'Amato wants to move to reconsider,
11 that would be in order, but it is not in order to have a
12 new amendment that was not on the list.

13 Senator D'Amato. Mr. Chairman, I move to reconsider
14 the Gramm amendment.

15 The Chairman. He has that right.

16 Senator Gramm. Mr. Chairman, I modify the amendment
17 by striking the authorization of the 10 waivers.

18 Senator Conrad. Mr. Chairman, I would raise the
19 point of order, there have not been second-degree
20 amendments here in this process.

21 The Chairman. But second-degree amendments are in
22 order as part of the process.

23 Senator Conrad. Well, I thought it was part of the
24 unanimous consent agreement, Mr. Chairman, that there
25 were no amendments in order other than the amendments

1 listed by unanimous consent.

2 The Chairman. No mention was made of second-degree
3 amendments. But there is, as a matter of right, a
4 second-degree amendment.

5 Could I just make an appeal to everybody here, we
6 have been trying to move ahead in a fair and equitable
7 manner----

8 Senator Conrad. The Chairman has been very fair.

9 The Chairman. [Continued]. And trying not to
10 become too technical. I would ask, why do we not
11 withhold this matter for a few minutes and see if we
12 cannot reach some kind of agreement on it.

13 Senator Moynihan. I think that would be good.

14 Senator Nickles. Mr. Chairman?

15 The Chairman. Yes.

16 Senator Nickles. Just a suggestion. I think we
17 have all agreed that if the Senator changes his mind on a
18 vote we can reconsider. I think we have always had in
19 this committee the right for a Senator to modify his
20 amendment. You call it second-degree, but we have
21 modified dozens of amendments in the last 24 hours.

22 So I would just suggest as a way to get out of it,
23 Senator D'Amato moved to reconsider it and Senator Gramm
24 asked permission to modify his amendment. We have always
25 granted that, and I would hope that we would vote.

1 The Chairman. Well, I would again say, I ask all
2 the parties, for the moment, to withdraw from this matter
3 and see if we cannot resolve it in an amicable manner.

4 Senator Conrad. I would just note that it is my
5 amendment that Senator D'Amato would be seeking to
6 reconsider, not Senator Gramm's amendment.

7 The Chairman. All right. In the meantime, we will
8 proceed.

9 Senator Moynihan. Duly noted.

10 The Chairman. Senator D'Amato.

11 Senator D'Amato. Mr. Chairman, on behalf of Senator
12 Moynihan and myself I offer this amendment to deal with a
13 problem of a successful hospital. It is called Calvary
14 Hospital in Bronx, New York. It treats the terminally
15 ill cancer patients where no one else will take them.

16 They are a victim of their own success in terms of
17 reducing the average length of stay of these terminally
18 ill patients from 52 days down to 26; if they go another
19 day they will be penalized as a result of that and lose
20 funding.

21 I would ask that this amendment be accepted because,
22 if anything, they should not be penalized for having
23 focused on treating the terminally ill. That is what
24 would take place, otherwise.

25 Senator Moynihan. Mr. Chairman?

1 The Chairman. Senator Moynihan.

2 Senator Moynihan. I hope the committee would make
3 this provision for an extraordinary institution of God's
4 mercy, such as it is, for these people.

5 The Chairman. Is there any objection?

6 [No response]

7 The Chairman. If not, we accept the amendment.

8 Senator D'Amato. Thank the Chair.

9 The Chairman. Bob Graham.

10 Senator Graham. Thank you, Mr. Chairman.

11 We have included in the Chairman's mark a number of
12 provisions relative to Medicare waste, fraud and abuse.
13 The amendment that I am now offering, which was
14 originally contained in legislation offered by Senator
15 Breaux, extends a number of those provisions into the
16 Medicaid program.

17 As an example, the provision that allows for or
18 directs the use of surety bonds for suppliers under Part
19 B; strengthening conflict of interest safeguards,
20 granting authority to the Secretary and the States to
21 refuse to enter into Medicaid contracts with individuals
22 or entities convicted of felonies; prohibition on
23 affiliation by managed care entities with individuals who
24 have been debarred from participating by other Federal
25 agencies. Those are the types of anti-fraud provisions,

1 most of which are already in the Chairman's mark as it
2 relates to Medicare.

3 One that we have deleted from this amendment is a
4 provision that would have allowed State Medicaid fraud
5 units, where they find fraud within a Federal program in
6 the course of their investigation of State units--and I
7 might parenthetically say this is a rather common event,
8 because people who are engaged in health care fraud tend
9 to move from one program to the other--would be allowed
10 to follow that fraud investigation.

11 I am dropping this at the request of the staff, but I
12 alert you to the intention to continue to work on this
13 issue and see if we can find some acceptable inter-
14 governmental language for this. So, Mr. Chairman, I move
15 the amendment. I ask for the amendment's consideration.

16 The Chairman. Dennis, would you comment, please?

17 Mr. Smith. Senator, we have looked at a number of
18 provisions that were included in the fraud and abuse
19 package, a number of which we feel were good additions.
20 There were a couple of provisions that we were concerned
21 about, as Senator Graham mentioned, on the fraud control
22 units.

23 There also is a provision that I am not qualified to
24 speak to, but the provisions on the Bankruptcy Code that
25 I would raise. Perhaps we can have an additional look at

1 that.

2 Senator Graham. I might say that the language on
3 using bankruptcy as a means of avoiding responsibility to
4 Medicaid is the same language that is in the Chairman's
5 mark as it relates to Medicare.

6 Mr. Chairman, this amendment has a positive budget
7 scoring. Senator Breaux is going to be offering an
8 amendment shortly which has a similar budget cost, and I
9 would like to ask that the budget scoring be deferred to
10 Senator Breaux's amendment as an offset.

11 The Chairman. Is this something that we can work on
12 and accept, in part?

13 Mr. Smith. We have been working on it, I think, in
14 parts. There are issues that I think we can accept, but
15 there were a couple of concerns that we wanted to work
16 with.

17 The Chairman. Is it outside of our jurisdiction?

18 Mr. Smith. The Bankruptcy Code concerned me.

19 Senator Graham. Mr. Chairman, I would be agreeable
20 to dropping the bankruptcy provision, as we have dropped
21 the State Medicaid fraud provision, so that we would keep
22 the other provisions in this fraud.

23 The Chairman. Do you have any comment?

24 Senator Moseley-Braun. Mr. Chairman?

25 The Chairman. Yes, Senator Moseley-Braun.

1 Senator Moseley-Braun. Mr. Chairman, I certainly
2 would support what I think the Senator, in general, is
3 trying to do. I have some concerns about the surety bond
4 provisions in here. If the Senator would agree to work
5 to at least have a conversation about that, I would very
6 much appreciate it.

7 Senator Graham. I will. I might say the surety
8 bond provision has been used by a number of States.

9 The Chairman. Could I suggest that we see what we
10 can work out and we will include what we can, if that is
11 all right?

12 Senator Graham. Mr. Chairman, I would ask, could we
13 vote on this amendment so that we would have the offset
14 available for Senator Breaux?

15 The Chairman. All right. Any further comments?

16 Mr. Smith. There is one additional item. I have
17 not looked on the score on this, Senator, but on
18 modifications of the MMS requirements, I believe the CBO
19 scored that as a cost on the House side. But if you say
20 you have a score, I do not know that that includes that.

21 Senator Graham. Our amendment no longer includes
22 that provision.

23 Mr. Smith. All right.

24 The Chairman. I guess I would again request of the
25 Senator from Florida, can we see if we can sort this out

1 and see what can be accepted and come back to it a little
2 later?

3 Senator Graham. My concern, Mr. Chairman, is I
4 would like to get this amendment dealt with so that my
5 friend and colleague can take advantage of the offset.

6 The Chairman. Well, we do have a few more
7 amendments before we get to Senator Breaux's.

8 Senator Graham. All right.

9 The Chairman. So why do we not see if we cannot
10 sort it out and move ahead on it?

11 Senator Graham. All right.

12 The Chairman. Senator Kerrey.

13 Senator Kerrey. This amendment has no additional
14 costs. The current language deals with special needs
15 children under the Medicaid program, disabled children
16 under the Medicaid program.

17 Senator Moynihan. Could we have order, Mr.
18 Chairman?

19 The Chairman. Yes.

20 Senator Kerrey. The mark mandates that they go into
21 managed care. Under current law, the States can apply
22 for a freedom of choice waiver to mandate. I call my
23 colleagues' attention to two facts here. One, is the
24 Commerce Committee has this amendment in their mark, so
25 you are going to go into conference with the House having

1 this freedom of choice, but not a mandate that children
2 with special needs be required to go into managed care.

3 Second, there is a GAO evaluation of managed care and
4 how it works for children with special needs, and it is
5 exceptionally difficult. There is great risk in a
6 managed care environment with a child with special needs
7 that requires specialty care, that requires multiple
8 visits, and I hope my colleagues will accept this
9 amendment.

10 The Chairman. The committee will please be in
11 order.

12 Does staff want to comment?

13 Mr. Smith. Thank you, Mr. Chairman. As drafted,
14 the Chairman's mark assures that the services that are
15 needed for children with special needs, that the children
16 themselves have access to the services. Children with
17 special needs is a fairly broad category, though. It may
18 contain children who may be in foster care but not
19 necessarily have any particular medical problems.

20 Senator Kerrey. I would trust that our conferees,
21 in conference with the House, can deal with that
22 particular part of the language. They can acknowledge
23 that the language is broad and narrow it down. I give to
24 the conferees the absolute discretion and power to narrow
25 it down so it is reasonable.

1 All I am saying, is that I think current law works.
2 The States can come in, they can get a waiver. This
3 allows the States to go to mandating without any kind of
4 a waiver. I think we have a sufficient amount of
5 anecdotal stories, as well as a GAO evaluation, that
6 indicates that there is a lot of risk here. There is no
7 additional savings to us to do it this way.

8 I just think there is a lot of risk to go in this
9 direction. The House does not have this in their mark.
10 I just think we are far better going into conference with
11 this in the mark. My guess is, we are going to end up
12 having to yield to the House anyway.

13 The Chairman. Is there any cost to this proposal?

14 Senator Kerrey. There is no cost to this proposal.

15 Senator Chafee. Mr. Chairman?

16 The Chairman. I would like to accept it and move
17 ahead, if we could.

18 Senator Chafee. That is fine. I think it is a good
19 amendment.

20 The Chairman. All right. Those in favor, signify
21 by saying aye.

22 [Chorus of ayes]

23 The Chairman. Opposed, nay.

24 [No response]

25 The Chairman. Next, we have Senator Hatch.

1 Senator Hatch. Well, thank you, Mr. Chairman.

2 What I would like to do here with this amendment,
3 under several provisions of Medicare and Medicaid law,
4 reimbursement is authorized for sanatoria operated by the
5 First Church of Christ, Scientist.

6 Now, these statutory provisions were challenged
7 successfully last year in the case of Children's Health
8 Care as a legal duty versus Vladeck in which a Minnesota
9 District Court held that the above statutory provisions
10 and their accompanying regulations violate the
11 establishment clause of the constitution.

12 The Chairman. I would ask the staff to keep the
13 discussions down. It is hard to hear the Senator.

14 Senator Hatch?

15 Senator Hatch. In this Minnesota case they decided
16 that this was a violation of the establishment clause of
17 the constitution as an impermissible sectarian
18 preference.

19 Pursuant to the court decision, the Secretary was
20 enjoined from further implementation. However, the
21 court's injunction was stayed until August. Now, as a
22 result of that ruling, unless the statute has changed,
23 large numbers of Christian Scientists who have paid into
24 Medicare for over 30 years will be denied access to the
25 benefits they reasonable expected for care provided in

1 Christian Service Nursing Care facilities.

2 Now, what this amendment would do, is authority would
3 be provided under both the Medicare and Medicaid statutes
4 for the Health Care Financing Administration to develop
5 conditions of participation for religious non-medical
6 institutions and to require that such conditions are met.
7 These provisions would be worked out with HCFA to achieve
8 budget neutrality and to resolve administrative concerns.

9 Now, we are working with HCFA, the Department of
10 Justice, and your staff, Mr. Chairman, to try to resolve
11 this. But it is not in the House mark, and if we do not
12 put it in this one, it will not be conferencable. The
13 court stay expires in August, so I would appreciate it if
14 this could be accepted, or if not, I would like to have
15 it voted on and I hope my colleagues would support me.

16 The Chairman. I would ask the Senator, is there any
17 cost?

18 Senator Hatch. I do not think there is any cost
19 here. We are trying to write it so there will not be any
20 cost, and we will work with staff to try and do that.

21 Senator Bryan. Mr. Chairman, may I ask a question?

22 The Chairman. Yes.

23 Senator Bryan. It is below the \$50 million
24 threshold. Any conceivable cost would be diminimus, in
25 scoring terms.

1 The Chairman. Well, unless there is objection we
2 will accept the amendment.

3 Senator Bryan. I just wanted to ask a question, Mr.
4 Chairman.

5 The Chairman. Yes, Senator Bryan.

6 Senator Bryan. The Senator's explanation is
7 confined to the situation involving the case involving a
8 Christian Science sanatoria. The amendment itself has a
9 much broader scope. Is the Senator's purpose just to
10 deal with that particular issue with respect to the case?

11 Senator Hatch. It is to deal with that particular
12 issue. But I do think we have to deal with the issue of
13 religious freedom generally in the Congress, and we will
14 do that in another way.

15 Senator Bryan. I do not disagree. I just do not
16 want the amendment to be so broad as to go far beyond the
17 issue that the Senator raises.

18 Senator Hatch. That is what we are working with
19 HCFA to do and that is what we intend to do here. But,
20 keep in mind, I am going to work hard to try and make
21 sure that religious freedom is always protected, broadly.

22 Senator Bryan. I appreciate that.

23 The Chairman. The next one is Senator Moseley-
24 Braun.

25 Senator Hatch. Thank you, Mr. Chairman. Did you

1 take it, Mr. Chairman? You agreed to it?

2 The Chairman. Yes, we took it. Yes.

3 Senator Hatch. Well, I want to thank you. You are
4 very gracious on this.

5 The Chairman. Thank you.

6 Senator Moseley-Braun?

7 Senator Moseley-Braun. Thank you, Mr. Chairman. I
8 do not know but that I needed to get some information
9 around to my colleagues about this particular amendment.
10 It has to do with teen parents attending school from the
11 limit on vocational education.

12 As many of you know, the welfare bill that passes
13 often is referred to as punitive in nature. I think,
14 punitive notwithstanding, there are some almost draconian
15 unintended consequences.

16 Can I have my colleagues attention, please? I cannot
17 talk over all this noise. Thank you.

18 The governors have pointed out, and here is the
19 problem, because of compulsory education in this country,
20 teen parents have to go to school. As a result, those
21 teen parents wind up being counted against the 20 percent
22 in terms of the TANF work participation rate requirement.

23 The result, therefore, is that the teenagers take up
24 all of the slots that are exempted from the work
25 requirement, meaning that adults who want to go and get

1 vocational education cannot get it.

2 So if you have got somebody who is not required to be
3 in school that is, say, past teenage years who is a
4 parent who wants to go to school, the State wants them to
5 go to school, there is a vocational education slot for
6 them, they may not be able to because the teen parents
7 will have crowded out these slots.

8 I have called the committee's attention to a letter
9 from the National Governors Association, which refers to
10 this as really a State flexibility issue.

11 Excuse me. Would my colleagues just give a moment?
12 I do not do a whole lot of talking in this committee.

13 The Chairman. Yes.

14 Senator Moseley-Braun. Thank you.

15 The Chairman. I ask staff who are talking to please
16 remove themselves from the room.

17 Please proceed.

18 Senator Moseley-Braun. What the Governors
19 Association points out is that, as a result of this four-
20 fold reduction of the cap, no adults involved in
21 vocational educational activities would count toward the
22 work participation rate.

23 So they are concerned that, again, Work First
24 notwithstanding, that because of compulsory education the
25 teenagers will crowd out the opportunities for anybody

1 who is not a teenager to get vocational education.

2 I think that this amendment which takes the teen
3 parents out so those who are required to have compulsory
4 education do not count in the calculation of the limit of
5 the number of persons who are permitted to meet the work
6 requirements through vocational education activity would
7 be an appropriate thing.

8 Moreover, to make kind of a larger point, I think
9 everyone should understand that it really is a good thing
10 if people who are transitioning from welfare to work have
11 an opportunity to get an education, particularly
12 vocational education, so they can provide for themselves,
13 so they will not become recidivists, so they will be able
14 to support themselves and their families.

15 This amendment is calculated to give people the
16 opportunity to support themselves and their families, to
17 get trained for gainful employment and engagement, to
18 give the governors some flexibility so they do not wind
19 up having all of their education slots taken up by
20 children who are required to be in school, and I urge the
21 adoption of the amendment.

22 The Chairman. Time has run out. I would just point
23 out that this amendment does substantially undercut, and
24 I emphasize the word undercut, the work requirements of
25 the welfare reform last year. We will proceed with the

1 vote.

2 Those in favor of the amendment, signify by saying
3 aye.

4 [Chorus of ayes]

5 The Chairman. Opposed, nay.

6 [No response]

7 Senator Hatch. I would say the ayes have it.

8 Senator Nickles. Mr. Chairman?

9 The Chairman. Yes.

10 Senator Nickles. I think we could accept the
11 amendment, but with the caveat that I think we have to be
12 careful that we do not undermine the work requirements.

13 Senator Moseley-Braun. It is not intended to do
14 that, Senator Nickles.

15 Senator Nickles. I understand that. I have not
16 been able, in this short period of time, to be able to
17 calculate it. We put in the welfare bill work
18 requirements States had to meet, then we put some limit
19 on education.

20 Senator Moseley-Braun. Right.

21 Senator Nickles. And training.

22 Senator Moseley-Braun. Right.

23 Senator Nickles. I know that you want to modify
24 this, I guess, for teenagers going into vocational
25 education, or not have that be counted.

1 Senator Moseley-Braun. Right. Because of
2 compulsory education, the teenagers take up all the
3 slots.

4 Senator Nickles. Mr. Chairman, let me just say I
5 will be happy to work with my colleague from Illinois. I
6 do not want the work requirements really lessened. That
7 does not mean I do not want kids in vocational education,
8 and other things. So between now and conference we will
9 work to make sure that we do not undermine the work
10 requirements.

11 Senator Moseley-Braun. I would be happy to do that,
12 certainly.

13 Senator Chafee. Meanwhile, we adopt it, do we not?

14 The Chairman. Yes. The ayes definitely have it.

15 Senator Moseley-Braun. Thank you.

16 The Chairman. Senator Grassley.

17 Senator Grassley. Mr. Chairman, I will have a map
18 out here in just a minute that I want to show everybody,
19 and I would like to have the Senators from Florida, New
20 York, and Illinois particularly pay attention to what I
21 am going to say because I am going to ask an initial
22 question of them.

23 We are planning to, through this bill, create a
24 situation in rural America so we have managed care for
25 everybody. I have got to thank staff, I have got to

1 thank Senator Chafee, I have got to thank everybody who
2 has supported everything to this point that has moved us
3 in that direction, the blend, the AAPCC, the \$350 floor,
4 and everything.

5 But the basic question I have to ask is in regard to
6 the \$350 floor and the fact that, even though we have the
7 50/50 blend, the blend moves in very slowly. Like next
8 year it is a 90/10 blend, and it gradually goes down
9 until you get to the point where it is 50/50. So we want
10 to get managed care plans in right now.

11 Well, the point that I would like to make, and for
12 you to consider, is at \$350, we will not be able to do
13 that. So my amendment would have it be 85 percent of the
14 national average. The national average right now is
15 \$476.

16 In my State, it ranges from a low of \$252 to one
17 county that is \$411. The one county that is \$411 is
18 across from Omaha, so the people in Pottawottami County
19 can join a Douglas County organization for an HMO. But
20 no place else in the other 98 counties can they do that
21 because the State average is \$322.

22 So you bring it up to \$350, and \$350 two years ago
23 would be very adequate because we had \$350 in the bill
24 that passed last time. But now what was good for \$350
25 two years ago is not going to get managed care in today.

1 Senator Grassley. So I am asking the Senators,
2 from the States that I have called attention to, you
3 have to ask a basic question, do you want us to have
4 managed care plans immediately, like you have had them
5 for several years, so that we can have pharmaceuticals,
6 eyeglasses, hearing aids, membership at health clubs
7 and very low co-pays or no co-pays, just like you have?

8 Basically, what we are trying to show here is
9 wherever there is a blue or near blue on this map, it
10 parts of the country where we are so low in AAPCC that
11 we will not get managed care plans.

12 Now, everyone of you are voting for this bill and
13 supporting this bill, with a 50/50 ratio and a \$350
14 cap, feeling that you are going to be able to get this
15 in all of rural America. I am here to tell you, not
16 based on my study, but based upon people who know what
17 it takes to get people interested in getting managed
18 care in, that you just cannot do it at \$350. Two years
19 ago you could do it at \$350, but you cannot do it at
20 \$350 today.

21 So if somebody said it only has to be \$360, that
22 will do it. I would be happy. But everything that I
23 have been able to decide is that inflation has raised
24 it well above \$350.

25 The President recognizes the \$350. Two years ago

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1 he did not recognize any need for this. So we have the
2 President on board moving in this direction. We have
3 got the House on board moving in this direction because
4 they have \$350. But the bottom line of it is do you
5 want us to have managed care plans?

6 Senator Kerrey. Mr. Chairman?

7 The Chairman. Yes?

8 Senator Grassley. I do not think you can do it
9 for \$350, and hence, my amendment.

10 Senator Kerrey. Mr. Chairman, I want to, first
11 of all, second what the Senator from Iowa said about
12 you and Senator Moynihan's mark. I think you have gone
13 a long ways towards leveling the playing field for
14 rural America.

15 This amendment, by using a percentage, I think
16 makes more sense, but there is no question that if this
17 amendment is adopted, it is more likely that managed
18 care will go into rural areas, and I support the
19 amendment.

20 The Chairman. Does the staff want to comment on
21 this?

22 Ms. James. Could I have a clarification?

23 In the written version of the amendment, it looks
24 like it retains the one percent minimum update, but my
25 understanding is that you reduce that to zero?

1 Senator Grassley. Not to zero. Just to the
2 extent necessary for offset to pay for this. Now, this
3 should not cost very much because you can get managed
4 care and get this threshold up relatively
5 inexpensively.

6 Senator Graham. Could I ask a question?

7 The Chairman. Yes.

8 Senator Graham. I want to run through some math
9 here. You used, as the lowest county a county that you
10 said had --

11 Senator Grassley. Alamo Key County is \$252
12 versus \$768 in Miami.

13 Senator Graham. Yes. \$252.

14 Senator Grassley. Yes. And there are some
15 counties in Nebraska that are even lower.

16 Senator Graham. So that means that the fee-for-
17 service cost, that is the cost of physicians and
18 hospital care and laboratories in that county is \$252.
19 Is that right?

20 Senator Grassley. Yes.

21 Senator Graham. Now, we are going to reimburse,
22 under the mark, at \$350.

23 Senator Grassley. Yes

24 Senator Graham. In most places, we would be
25 reimbursing at 95 percent of \$252, but we are going to

1 be reimbursing at roughly at 140 percent of fee-for-
2 service rates.

3 Senator Grassley. Yes.

4 Senator Graham. What is going to happen to the
5 fee-for-service --

6 Senator Kerrey. No. They were low utilization
7 rates when the perspective payment system went in place
8 in 1983, and we got locked in at a low rate. That is
9 what happened.

10 Senator Grassley. Yes. You have to understand
11 that.

12 Senator Kerrey. We got locked in at a low rate,
13 and the law has produced a depopulation of health care
14 in rural communities as a consequence of reimbursing at
15 a rate that is lower as initially because we are under
16 utilizing health care.

17 The Chairman. Time is up, but I would like to
18 call on the Administration for any comments they may
19 have.

20 Dr. Vladeck. Well, just two, Mr. Chairman, if I
21 could. First, the variation in cost among counties is
22 partially a function of utilization. It is also
23 partially a function of input price differences, which
24 are quite substantial, and it is partially a function
25 of differentials in health from one community to

1 another, and it is partially a function of the teaching
2 and disproportionate share, which, when you pull out of
3 the rates, will have a very consequential effect, which
4 is why you need the minimum update.

5 The second is the statement that this will permit
6 rural HMOs to provide the supplemental benefits that
7 have been provided by HMOs in the past in the high
8 reimbursement counties is clearly the case. We are
9 concerned that going to this dramatic redistribution
10 would cause the HMOs in the higher cost counties to
11 have to begin to reduce their benefits for the majority
12 of the 4 million enrollees who are already involved in
13 those plans.

14 Senator Mack. Mr. Chairman? Mr. Chairman?

15 Senator Grassley. I need to respond to that.

16 The Chairman. Let Connie speak first.

17 Senator Mack. I want to get this straight. You
18 are asking me to kind of give this my blessing, and so
19 I want to get it straight. We have gone away from the
20 70/30 blend to 50/50.

21 Senator Grassley. But that does not take hold
22 until down the road five years.

23 Senator Mack. And then we are going to be giving
24 up the one percent, which maybe is the --

25 Senator Grassley. No. Giving up a portion of

1 it.

2 Senator Mack. I understand. And also, it seems
3 to me that it is going to drive up the cost of
4 Medicare. It does not seem to me that this is
5 something that I can give a blessing to.

6 Senator Grassley. But remember, no plan goes
7 down. That is the first thing that I want to say in
8 response to Mr. Vladeck. Second, remember that we take
9 care of the lower cost areas. That is why we have a
10 local blend.

11 That factor that you raised questions about, that
12 we should take into consideration, remember we do take
13 that into consideration in the local/national blend.

14 The Chairman. Well, the time has expired. The
15 Clerk will call the roll.

16 The Clerk. Mr. Chafee?

17 Senator Chafee. Aye.

18 The Clerk. Mr. Grassley?

19 Senator Grassley. Aye.

20 The Clerk. Mr. Hatch?

21 Senator Hatch. Aye.

22 The Clerk. Mr. D'Amato?

23 Senator D'Amato. No.

24 The Clerk. Mr. Murkowski?

25 Senator Murkowski. Aye.

1 The Clerk. Mr. Nickles?
2 Senator Nickles. Aye.
3 The Clerk. Mr. Lott?
4 The Chairman. Yes by proxy.
5 The Clerk. Mr. Jeffords?
6 The Chairman. Yes by proxy.
7 The Clerk. Mr. Mack?
8 Senator Mack. No.
9 The Clerk. Mr. Moynihan?
10 Senator Moynihan. No.
11 The Clerk. Mr. Baucus?
12 Senator Baucus. Aye.
13 The Clerk. Mr. Rockefeller?
14 Senator Rockefeller. Aye.
15 The Clerk. Mr. Breaux?
16 Senator Breaux. No.
17 The Clerk. Mr. Conrad?
18 Senator Conrad. Aye.
19 The Clerk. Mr. Graham, of Florida?
20 Senator Graham. No.
21 The Clerk. Ms. Moseley-Braun?
22 Senator Moynihan. No by proxy.
23 The Clerk. Mr. Bryan?
24 Senator Bryan. No.
25 The Clerk. Mr. Kerrey?

1 Senator Kerrey. Aye.

2 The Clerk. Mr. Chairman?

3 The Chairman. No.

4 The Clerk. Mr. Gramm?

5 The Chairman. No by proxy.

6 The Clerk. The votes are 11 yea, 9 nay.

7 The Chairman. The amendment is agreed to.

8 All right. Senator Rockefeller.

9 Senator Rockefeller. Thank you, Mr. Chairman.

10 If I could have the attention of my colleagues?

11 Last year an MSA demonstration project was set up
12 for the under 65 population, and the Chairman's mark
13 includes an MSA proposal that would allow senior
14 citizens to also set up an MSA account using Medicare
15 dollars.

16 Now, I have a lot of problems with MSAs and who
17 takes advantage of them, but this is not in any way
18 related to try to get rid of that. My amendment merely
19 adds the same protection, as we did in the Kennedy-
20 Kassebaum, for those who are under 65, to consumers who
21 are over 65, and I think they deserve, no less,
22 protection.

23 My amendment would merely adopt the identical
24 consumer protections that were adopted, as I said, last
25 year under Kennedy-Kassebaum for the under 65

1 population, except this would be for the over 65. I
2 would cap out of pocket costs at \$3,000 because in the
3 mark there are unlimited provider charges allowed,
4 there being no balanced billing protection.

5 My amendment would also set a maximum deductible
6 between \$1,500 and \$2,250. The Chairman's mark
7 includes a maximum deductible of \$6,000. Eighty
8 percent of our Medicare beneficiaries have an income
9 under \$25,000. Six thousand is just not doable. I am
10 simply saying, for the seniors, we should give the same
11 consumer protection as we did for those under 65 last
12 year.

13 The Chairman. Senator Nickles?

14 Senator Nickles. Mr. Chairman, I might ask
15 staff. My memory does not go back quite that well.
16 When we passed the trial for MSAs on what, the tax bill
17 last year, did we end up having the same deductibles as
18 Senator Rockefeller is saying?

19 Ms. James. Yes.

20 Senator Nickles. Limitation on out of pocket
21 expense?

22 Ms. James. Yes.

23 Senator Nickles. And has there been a decent
24 response in the private sector for persons wanting it?

25 Ms. James. Yes, Senator. And if I could explain

1 why the mark calls for a \$6,000 maximum? Because of
2 the population, the age of the population, in order to
3 be able to buy a policy where you would have a
4 significant difference between the cost of the
5 catastrophic policy and have money to put into your
6 account, you have to adjust the cost.

7 I am not saying it would be \$6,000, but we had to
8 leave enough room, depending on the area of the
9 country, whatever the plan is. But you had to have
10 more room because you have an older population, and so
11 you cannot really use the same figures as for the under
12 65 population.

13 The Chairman. So you are saying that as a
14 practical matter this would undercut the proposal
15 completely so that it would not be effective?

16 Ms. James. Yes, sir.

17 Senator Nickles. Mr. Chairman?

18 The Chairman. Senator Nickles?

19 Senator Nickles. Mr. Chairman, I would just urge
20 our colleagues not to adopt Senator Rockefeller's
21 amendment. We, last night, in my opinion, made a
22 serious mistake--and I may try to rectify it on the
23 floor--when we reduced the number in this trial period
24 from 500,000 to 100,000. Let's at least give it a
25 chance.

1 And I do not know, actuarially, where this figure
2 should be, Jay. But let's at least give it a chance.
3 And if it requires the option, keep in mind that no
4 one, no person, is compelled to join anything. We are
5 making MSAs purely an option, and I think we should
6 make it a viable option. If it takes a higher
7 deductible to do that, so be it.

8 There may be some people that would like to have
9 that option. So I would urge my colleagues to vote no
10 on the amendment.

11 The Chairman. All time has expired.

12 Senator Rockefeller. Mr. Chairman, am I allowed
13 to simply rebut that?

14 The Chairman. Yes.

15 Senator Rockefeller. I would say to Julie that,
16 in fact, in the Chairman's mark it is not clear that
17 there are any limitations. In fact, out of pocket
18 expenses. This is not trivial. This is just simply
19 giving for older the same consumer protection as for
20 younger.

21 The Chairman. Julie?

22 Ms. James. Well, I think that Senator
23 Rockefeller is referring to the fact that we do have a
24 \$6,000 deductible on the policy, but we do not apply
25 any of the balanced billing requirements to the plan,

1 so that it depends on the way the plan is constructed.
2 Most of these are insurance policies that define how
3 much they are going to cover.

4 Senator Rockefeller. And there are no cost
5 sharing limitations either I believe?

6 Ms. James. Right.

7 Senator Kerrey. Mr. Chairman, as somebody who
8 had an amendment earlier against balanced billing, I
9 think this is relatively a minor consumer protection.
10 I do not see the problem with it. It does not go as
11 far as prohibiting balanced billing, but it does say we
12 are going to maintain some Federal standards on behalf
13 of consumers. I do not see the problem with it.

14 The Chairman. Any further comment?

15 [No response.]

16 The Chairman. The Clerk will call the roll.

17 The Clerk. Mr. Chafee?

18 Senator Chafee. Aye.

19 The Clerk. Mr. Grassley?

20 The Chairman. No by proxy.

21 The Clerk. Mr. Hatch?

22 Senator Hatch. Aye.

23 The Clerk. Mr. D'Amato?

24 Senator D'Amato. No.

25 The Clerk. Mr. Murkowski?

1 Senator Murkowski. No.
2 The Chairman. Mr. Murkowski voted no.
3 The Clerk. Mr. Nickles?
4 Senator Nickles. No.
5 The Clerk. Mr. Gramm, of Texas?
6 The Chairman. No by proxy.
7 The Clerk. Mr. Lott?
8 The Chairman. No by proxy.
9 The Clerk. Mr. Jeffords?
10 The Chairman. Yes by proxy.
11 The Clerk. Mr. Mack?
12 Senator Mack. No.
13 The Clerk. Mr. Moynihan?
14 Senator Moynihan. Aye.
15 The Clerk. Mr. Baucus?
16 Senator Baucus. Aye.
17 The Clerk. Mr. Rockefeller?
18 Senator Rockefeller. Aye.
19 The Clerk. Mr. Breaux?
20 Senator Breaux. Aye.
21 The Clerk. Mr. Conrad?
22 Senator Conrad. Aye.
23 The Clerk. Mr. Graham, of Florida?
24 Senator Graham. Aye.
25 The Clerk. Ms. Moseley-Braun?

1 Senator Moseley-Braun. Aye.

2 The Clerk. Mr. Bryan?

3 Senator Moynihan. Aye by proxy.

4 The Clerk. Mr. Kerrey?

5 Senator Kerrey. Aye.

6 The Clerk. Mr. Grassley?

7 Senator Grassley. No.

8 Mr. Hatch. Mr. Chairman, I would like to change
9 my vote to no.

10 The Chairman. Senator Hatch changes his vote to
11 no.

12 The Clerk. Mr. Chairman?

13 The Chairman. No.

14 The Clerk. The votes are 11 yeas, 9 nays.

15 The Chairman. The amendment is agreed to.

16 The next amendment is Senator Gramm. It's Phil
17 Gramm.

18 Senator Gramm. Mr. Chairman, is it timely to go
19 back to the D'Amato reconsideration of the Conrad
20 Amendment?

21 The Chairman. No. I would like to wait.

22 Senator Gramm. Okay. Well, Mr. Chairman, let me
23 ask that it be handed out, an amendment on Medicare
24 subvention for Federal military retirees. This is
25 something that we worked on at the task force level.

1 We have an allowable budget in our bill of \$100
2 million. We have now scoped it with CBO where the
3 demonstration project is limited so that it will fall
4 within that category. I had thought that we might wait
5 and do this on the floor, but given that we have done
6 Veterans, I think it is imperative that we move ahead
7 with this.

8 This simply sets up a demonstration project.
9 There will be six sites chosen by the Secretary. The
10 procedure will be worked out requiring a maintenance of
11 effort by the military. And basically, the issue is,
12 when people are career military, they are guaranteed
13 all their life so that they will have access to
14 military hospitals. So they earn that benefit.

15 And then they have been required, in recent years,
16 to pay Medicare taxes. So they have earned two medical
17 retirement benefits, and we have reached a point where
18 they have got to decide which way to go.

19 And one of the options we are looking at here, on
20 a demonstration grant basis, strictly limited for three
21 years, is a reimbursement by Medicare to military
22 hospitals where the costs are strictly limited to find
23 out does this cost more, can we do this, can we live up
24 to the benefit. I would urge the amendment be adopted.

25 The Chairman. Is there any further comment?

1 [No response.]

2 The Chairman. If not, I move that we accept it.

3 Those in favor, signify by saying aye.

4 [Chorus of ayes.]

5 The Chairman. Opposed, nay.

6 [No response.]

7 The Chairman. The ayes have it.

8 Senator Mack?

9 Senator Mack. Mr. Chairman, the amendment I have
10 offered would change the proposed blend of national and
11 local rates of payments to Medicare choice
12 organizations, and I am pursuing this now, in light of
13 the last Grassley Amendment.

14 Last week the Chairman's mark included a blend of
15 70 percent national rates and 30 percent local rates in
16 2002; however, when the Chairman's mark was distributed
17 on Friday, the blend was drastically changed to 50/50.

18 While I understand the need to address the
19 geographic variation in payments, this change is
20 disproportionately unfair to States, such as Florida,
21 which has a high rate of Medicare managed care
22 patients.

23 By reducing the blend to 50/50, the beneficiaries
24 could lose the additional benefits which attracted them
25 to managed care, or be forced to make higher co-

1 payments for those benefits. When one adds in the GME
2 carve out and the reduction of new enrollees, it is
3 very difficult to justify the change.

4 My amendment would restore the national/local
5 blend to 70/30 in 2002, which is the same as in the
6 conference report to accompany the 1995 Balanced Budget
7 Act. A 30/70 blend is a fair, equitable solution to
8 the current problem of geographic variations in
9 payment.

10 Senator Moynihan. We agree.

11 Senator Mack. Thank you very much.

12 The Chairman. Any

13 Ms. James. No, Mr. Chairman.

14 Senator Chafee. Julie, this is a very dramatic
15 departure, isn't it, from the Chairman's mark?

16 Senator Mack. This is returning to the
17 Chairman's mark.

18 Ms. James. The discussion draft version of the
19 mark had a 70/30 blend in it. The mark did revise that
20 to a 50/50. There was not a very dramatic effect at
21 that time. However, because now of Mr. Grassley's
22 Amendment that just passed, I cannot really say what
23 the effect would be.

24 But if there were an effect, it would be to shift
25 the payment rates towards the higher end.

1 Senator Chafee. What do you say, Bruce?

2 Dr. Vladeck. This is consistent with the
3 President's budget bill, and I have not yet had the
4 opportunity to think through how it interacts with Mr.
5 Grassley's Amendment.

6 Senator Kerrey. Well, I will tell you how it
7 interacts. Very badly. This is not a friendly
8 amendment. This is like the previous ones where you
9 have got to decide for your State how it best affects
10 you, and a 50/50 blend is how I vote, and a 70/30 blend
11 is what I vote against.

12 I appreciate that sets me apart from colleagues,
13 but I think a 50/50 blend is the right way to go.

14 Senator Mack. I appreciate that in depth
15 analysis.

16 Senator Kerrey. Yes. I know. Very lofty. No
17 Ph.D. behind my name.

18 [Laughter]

19 The Chairman. Time has expired. The Clerk will
20 call the roll.

21 The Clerk. Mr. Chafee?

22 Senator Chafee. No.

23 The Clerk. Mr. Grassley?

24 The Chairman. No by proxy.

25 The Clerk. Mr. Hatch?

1 Senator Hatch. No.
2 The Clerk. Mr. D'Amato?
3 Senator D'Amato. Aye.
4 The Clerk. Mr. Murkowski?
5 Senator Murkowski. Aye.
6 The Clerk. Mr. Nickles?
7 The Chairman. No by proxy.
8 The Clerk. Mr. Gramm, of Texas?
9 Senator Gramm. No.
10 The Clerk. Mr. Lott?
11 The Chairman. No by proxy.
12 The Clerk. Mr. Jeffords?
13 The Chairman. No by proxy.
14 The Clerk. Mr. Mack?
15 Senator Mack. Aye.
16 The Clerk. Mr. Moynihan?
17 Senator Moynihan. Aye.
18 The Clerk. Mr. Baucus?
19 Senator Baucus. No.
20 The Clerk. Mr. Rockefeller?
21 Senator Rockefeller. No.
22 The Clerk. Mr. Breaux?
23 Senator Breaux. Aye.
24 The Clerk. Mr. Conrad?
25 Senator Conrad. No.

1 The Clerk. Mr. Graham, of Florida?

2 Senator Graham. Aye.

3 The Clerk. Ms. Moseley-Braun?

4 Senator Moseley-Braun. Aye.

5 The Clerk. Mr. Bryan?

6 Senator Bryan. No.

7 The Clerk. Mr. Kerrey?

8 Senator Kerrey. Aye.

9 The Clerk. Mr. Chairman?

10 The Chairman. No.

11 The Clerk. Mr. Jeffords?

12 The Chairman. No by proxy.

13 The Clerk. The votes are 7 yeas, 13 nays.

14 The Chairman. The amendment is not agreed to.

15 Senator Breaux?

16 Senator Breaux. Oh, boy. These things are so
17 complicated. Again, it is the Bob Graham comment on
18 micro managing health care.

19 I have an amendment with Senator Grassley, and it
20 goes to the question of how we reimburse HMOs in areas.
21 The Chairman's mark changes slightly how we reimburse
22 HMOs by saying we will consider a national blend and a
23 local blend of costs and come up with a figure to
24 reimburse HMOs.

25 I have no problems with that. I think that is

1 probably a good policy to do that. But what they do,
2 in addition to that, is say that we will have a blended
3 local input price adjusted national rate. What I
4 understand--and Bruce Vladeck is probably the only one
5 that really understands this--is that that results in
6 double counting the wages that are paid to health care
7 personnel and doing it twice, when you consider the
8 local costs, you consider the local wages being paid.

9 But the Chairman's mark also says you are going to
10 consider the wages again when you consider the national
11 costs, and therefore, you are double counting wages.
12 For most efficient areas, for the low cost areas, and
13 basically for the rural areas, double counting wages
14 reduces the amounts that HMOs would be reimbursed in an
15 unfair fashion.

16 It is fine to count the wages once when you
17 consider the local blend, but you should not count it
18 again when you factor in the national blend. Count
19 wages and those input costs once. Do not double count.

20 So the Breaux-Grassley Amendment makes that
21 correction in a way that I think is fair and merits our
22 support.

23 Ms. James. If I may comment?

24 Senator Bryan. Could we get a staff response to
25 that, Mr. Chairman?

1 Ms. James. Thank you.

2 Senator Bryan. I mean it was a lucid
3 presentation by the distinguished Senator from
4 Louisiana.

5 Ms. James. When you apply a blended formula, it
6 does not matter what you are phasing down to. But on
7 the side that is your local rate, it is true that that
8 is your actual costs, so it reflects your wages.

9 However, when you do the other side of the blend,
10 which is the national average, that is a national
11 average that is not adjusted for the area, so that we
12 apply those adjustments only to the national average,
13 so that when you are blending, you are blending a
14 national average that takes into account what your wage
15 costs are with your actual rates in your county, which
16 includes your wage costs.

17 So it evens out both sides. It is not really a
18 double counting.

19 Senator Breaux. The point is that it is all
20 right to count local wages when you count the local
21 input. But I cannot see double counting them when you
22 also consider the national costs nationwide. You
23 really penalize low cost states and rural states by
24 double counting something that should be counted once,
25 but it should not be counted twice in coming with the

1 reimbursement rate.

2 Ms. James. Again, I do not think it is double
3 counting. It is just having an input price adjustor on
4 the national average side, and then it is just implicit
5 on the local rate side.

6 Senator Breaux. Well, the real thing we should
7 be counting is the health status of the people. That
8 is really where the cost differentials are. I just
9 think it is wrong to double count the wages, and I
10 think it penalizes rural and local areas.

11 I think we ought to take this, and if there is
12 something that comes up between now and the time we get
13 to conference, we ought to work it out. But I think it
14 is the right policy. We should count wages once, but
15 you should not count them twice.

16 Senator D'Amato. Let me ask, what is the impact
17 of this amendment in terms of the high cost areas and
18 the metropolitan areas, whether it is in Illinois or
19 Texas or Florida or New York, if we were to adopt this
20 amendment?

21 Ms. James. It would result in lower rates in the
22 high cost areas and higher rates in the low range
23 areas.

24 Senator D'Amato. Have you estimated what that
25 would be, what that rate change would be approximately?

1 Senator Breaux. Yes.

2 Senator D'Amato. I am asking the table down
3 there? Do we have any idea?

4 Ms. James. No.

5 Senator D'Amato. If you were to factor this in,
6 what is your estimate as to the impact? We are talking
7 about tremendous impacts here, and we are really
8 talking about a new kind of warfare.

9 And if you want to count up the rural areas and
10 the smaller States against the high cost, larger
11 metropolitan areas, and we are going to have that kind
12 of warfare, I think it is bad, I think it is counter
13 productive, and it is just based upon how many votes do
14 we have around the table, as opposed to what makes
15 sense. It is an attempt to reach in.

16 Now, we saw it once, and I saw some colleagues
17 vote for that. I am really surprised at that. I
18 really am, given their concern and the championship
19 that they have had to meet the medical needs of people
20 on a fair basis.

21 We are going to continue this kind of thing. I
22 will tell you this has ruined this, it is not good and
23 at a certain point we are going to jeopardize the work
24 of this committee. This committee has worked very hard
25 under the leadership of the Chairman.

1 But this is nonsense, and this is greed, and that
2 is what it is. It is not the needs of people. It is
3 greed.

4 Now, you may think it is funny, and you snicker
5 over there--I am looking at the staffer--but I do not
6 think it is so funny.

7 Senator Breaux. Would the gentleman yield? I
8 mean, if it is all right to put it in based on that,
9 why is it not all right to take it out on the same
10 basis?

11 Senator D'Amato. Because there is no logic to
12 it. It is a lot of clap trap about double counting.
13 And when you heard the argument that you put forth,
14 rebut it, then you went to something else. There is no
15 double count here. It is a lot of nonsense.

16 How do you establish an average and where you have
17 it higher or lower? No double count at all. Now,
18 either we are going to recognize areas and their needs
19 to be reimbursed accordingly, or we are going to say we
20 are going to scrap the system for everything. That is
21 not right.

22 Now, we have seen it take place once under the
23 Grassley Amendment. We have seen it two or three other
24 ways. We saw it take place twice. We saw the blended
25 change take place to meet and accommodate the needs of

1 those in rural districts. I have got rural
2 constituents, but you finally take it to where this is
3 an overreaching.

4 And I would appeal to the Chair to exercise the
5 kind of leadership that has brought us to this point
6 and not to just give in on numbers.

7 Ms. James. Mr. Chairman, there is a CBO cost to
8 this amendment of \$200 million over five years.

9 The Chairman. Two hundred million.

10 Senator Breaux. And the offset is the waste
11 fraud and abuse amendment that Graham offered and
12 adopted.

13 The Chairman. All time has expired. The Clerk
14 will --

15 Senator D'Amato. Has that offset been accepted,
16 Mr. Chairman? I do not mean to be technical.

17 The Chairman. Not yet.

18 Senator D'Amato. But if it has not been
19 accepted, then I would raise a point of order.

20 Senator Breaux. It is contingent on that offset
21 being accepted. If it is not --

22 Senator D'Amato. Well, it has not been accepted,
23 so I raise a point of order. And if you think we are
24 going to do battle on here and do everything we can,
25 you had better believe it. We are talking hundreds and

1 hundreds of millions of dollars and shifting it around
2 with no thought, but just simply saying well, we have
3 got the numbers here, in terms of the Senators who
4 represent various States.

5 But I think we have to be a little bit bigger than
6 the parochial interests, and I understand parochialism.
7 I will fight for my State as hard as anybody, and I
8 expect the Senator from Louisiana to do it. But not
9 when it comes to taking from other States unfairly, and
10 this is wrong.

11 Senator Breaux. Mr. Chairman?

12 Senator D'Amato. And the needs of people.

13 Senator Breaux. We are all concerned about the
14 needs of people.

15 Senator D'Amato. I raised a point of order and
16 ask the Chair for a ruling.

17 Senator Breaux. Well, you do not have to do
18 that. I will withdraw the amendment, pending the
19 disposition of the Graham Amendment from Florida.

20 The Chairman. All right. The amendment has been
21 withdrawn.

22 Senator D'Amato, you were going to make a motion
23 to reconsider the Conrad?

24 Senator D'Amato. Yes. I make a motion to
25 reconsider.

1 The Chairman. Would you explain --

2 Senator Conrad. Mr. Chairman?

3 The Chairman. Yes?

4 Senator Conrad. Might I address this issue? Or
5 Senator D'Amato is waiting to speak?

6 Senator D'Amato. No. No. You can certainly
7 address the issue.

8 Senator Conrad. Senator D'Amato is moving to
9 reconsider. He certainly has the right to do that. I
10 think we have got in a situation here where not only is
11 the issue is important, but I think the rules of the
12 committee become an issue.

13 Clearly Senator D'Amato has the right to
14 reconsider. That will put before us the exact same
15 question all over again because I had made a motion to
16 strike. They cannot amend a motion to strike. That
17 would be a violation of the rules as well.

18 So the vote will be on a reconsideration of the
19 exact policy that we rejected previously. I thank the
20 chair.

21 The Chairman. All right. The Clerk will call
22 the roll.

23 The Clerk. Mr. Chafee?

24 Senator Chafee. Aye.

25 The Clerk. Mr. Grassley?

1 The Chairman. Aye by proxy.
2 The Clerk. Mr. Hatch?
3 Senator Hatch. Aye.
4 The Clerk. Mr. D'Amato?
5 Senator D'Amato. Aye.
6 The Clerk. Mr. Murkowski?
7 Senator Murkowski. Aye.
8 The Clerk. Mr. Nickles?
9 The Chairman. Ayes by proxy.
10 The Clerk. Mr. Gramm, of Texas?
11 Senator Gramm. Aye.
12 The Clerk. Mr. Lott?
13 The Chairman. Aye by proxy.
14 The Clerk. Mr. Jeffords?
15 The Chairman. Aye by proxy.
16 The Clerk. Mr. Mack?
17 Senator Mack. Aye.
18 The Clerk. Mr. Moynihan?
19 Senator Moynihan. No.
20 The Clerk. Mr. Baucus?
21 Senator Baucus. No.
22 The Clerk. Mr. Rockefeller?
23 Senator Rockefeller. No.
24 The Clerk. Mr. Breaux?
25 Senator Breaux. No.

1 The Clerk. Mr. Conrad?

2 Senator Conrad. No.

3 The Clerk. Mr. Graham, of Florida?

4 Senator Graham. No.

5 The Clerk. Ms. Moseley-Braun?

6 Senator Moseley-Braun. No.

7 The Clerk. Mr. Bryan?

8 Senator Bryan. No.

9 The Clerk. Mr. Kerrey?

10 Senator Kerrey. No.

11 The Clerk. Mr. Chairman?

12 The Chairman. Aye.

13 The Clerk. The votes are 11 yeas, 9 nays.

14 The Chairman. The ayes have it. The motion to
15 reconsider is carried.

16 Now we vote on the Conrad Amendment.

17 Senator Chafee. Mr. Chairman, may I ask a
18 question? I thought that what was going to happen here
19 is that they were going to modify this to restrict it
20 to just one. Wasn't that --

21 Senator Gramm. Mr. Chairman, the Chairman has
22 the right to modify the underlying mark at any point he
23 chooses. I did not have the right to modify the Conrad
24 Amendment. So the Chairman has the language to modify
25 the underlying mark to knock out the 10 projects that

1 were objected to.

2 Senator Chafee. Well, that is what I would like.

3 Senator Conrad. Mr. Chairman, might I point out
4 that is not the vote that will be before us. The vote
5 that will be before us is to go right back to the
6 policy that we rejected just moments ago. So that is
7 the vote that we will be casting here.

8 And frankly, I think it is an appalling precedent
9 to set. It would be equivalent to having an amendment
10 before this committee that says anything the State of
11 Texas does with respect to Federal programs is
12 approved, and then a big blank space after it. I mean,
13 that is what we are doing here.

14 That is the precedent we would be setting here.
15 We defeated this previously on a clear vote. For those
16 that think this does not have substantial impact, it is
17 10 percent of the food stamp recipients in the country;
18 a million children who are involved in terms of their
19 eligibility for programs, and I would hope people would
20 stick to the position they took just moments ago.

21 Senator Gramm. Mr. Chairman, may I respond very
22 briefly by saying this change, by saving \$200 million,
23 covers another 115,000 children in Texas, the same
24 children that Senator Conrad is talking about.

25 So, if you are more concerned about bureaucracy

1 and inefficient paper handling than you are 115,000
2 children getting Medicaid, then that is one thing. But
3 the point is this is simply allowing more children to
4 be covered by doing it more efficiently.

5 Senator Conrad. Mr. Chairman?

6 Senator Gramm. And I am sorry we had to do it
7 this way. If we had not had objection, we could have
8 done it another. But certainly, the way we are doing
9 it is totally within the rules, and so I ask my
10 colleagues to reject this amendment.

11 Senator Conrad. Mr. Chairman, nobody knows if
12 this saves money or costs money, because the fact is
13 none of us have seen it and none of us can see it. So
14 what we are voting on here is a blank check saying
15 Texas is approved, no matter what they do.

16 And if we approve that as a precedent, every
17 State, I predict, will be coming to the committee to
18 overturn decisions that are made in a process that we
19 created.

20 Senator Baucus. Mr. Chairman?

21 The Chairman. This matter has been fully
22 debated.

23 Senator Baucus. Mr. Chairman?

24 The Chairman. Thirty seconds Senator Baucus.

25 Senator Baucus. Mr. Chairman, I am forming the

1 language that will apply to Texas, and it says just
2 what the Senator from North Dakota said. It is a carve
3 out only for one State. It says, "The Secretary shall
4 approve any State plan. It refers now to Texas. "And
5 such plan shall be deemed approved in its entirety, as
6 described in the preceding sentence as according to
7 Texas."

8 I mean it is a total blanket acceptance for one
9 State only.

10 Senator Gramm. Mr. Chairman, I think we have
11 debated it. Medicare coverage for 115,000 Texans;
12 bipartisan legislature support for the change. It is
13 being opposed because one special interest group
14 objects to saving this money and covering these
15 children because it inconveniences --

16 Senator Chafee. Mr. Chairman, could I ask a
17 question?

18 The Chairman. Yes.

19 Senator Chafee. What we have got before us is
20 the 10 units.

21 The Chairman. That is right.

22 Senator Chafee. How do we get down to just Texas
23 alone, which I am supportive of. But not the 10.

24 Now, is it my intention that if this is approved,
25 then you will modify it and get it down to just Texas?

1 The Chairman. That is correct.
2 The Clerk will call the roll.
3 The Clerk. Mr. Chafee?
4 Senator Chafee. Aye.
5 Senator Gramm. You want a "no" this time. The
6 vote is on the Conrad Amendment.
7 Senator Chafee. Excuse me. No.
8 The Clerk. Mr. Grassley?
9 The Chairman. No by proxy.
10 The Clerk. Mr. Hatch?
11 Senator Hatch. No.
12 The Clerk. Mr. D'Amato?
13 Senator D'Amato. No.
14 The Clerk. Mr. Murkowski?
15 The Chairman. No by proxy.
16 The Clerk. Mr. Nickles?
17 Senator Nickles. No.
18 The Clerk. Mr. Gramm, of Texas?
19 Senator Gramm. No.
20 The Clerk. Mr. Lott?
21 The Chairman. No by proxy.
22 The Clerk. Mr. Jeffords?
23 The Chairman. No by proxy.
24 The Clerk. Mr. Mack?
25 Senator Mack. No.

1 The Clerk. Mr. Moynihan?
2 Senator Moynihan. Aye.
3 The Clerk. Mr. Baucus?
4 Senator Baucus. Aye.
5 The Clerk. Mr. Rockefeller?
6 Senator Rockefeller. Aye.
7 The Clerk. Mr. Breaux?
8 Senator Breaux. Aye.
9 The Clerk. Mr. Conrad?
10 Senator Conrad. Aye.
11 The Clerk. Mr. Graham, of Florida?
12 Senator Graham. Aye.
13 The Clerk. Ms. Moseley-Braun?
14 Senator Moseley-Braun. Aye.
15 The Clerk. Mr. Bryan?
16 Senator Bryan. Aye.
17 The Clerk. Mr. Kerrey?
18 Senator Kerrey. Aye.
19 The Clerk. Mr. Chairman?
20 The Chairman. No.
21 The Clerk. The votes are 9 yeas, 11 nay.
22 Senator Conrad. Mr. Chairman, can I just thank
23 you for insisting that we do follow the rules? I
24 appreciate that.
25 The Chairman. Thank you. I appreciate your good

1 sportsmanship.

2 I now modify the mark, as previously described.

3 Senator Chafee. So it is my understanding now
4 that all the 10 are eliminated except Texas?

5 The Chairman. That is correct.

6 Senator Chafee. Thank you.

7 The Chairman. Anything further?

8 Senator Graham. Mr. Chairman, I think we are
9 ready to go back to that amendment on Medicaid waste
10 fraud and abuse.

11 The Chairman. All right. Senator Graham.

12 Senator Graham. After consultation, Mr.
13 Chairman, with the staff, we have further reduced the
14 number of items that will be included in this amendment
15 to a ban on spending for non-health related items,
16 disclosure of information, surety bonds requirement for
17 Part B suppliers, surety bond requirement for home
18 health agencies, monitoring the payments for dual
19 eligibles, conflict of interest standards, authority to
20 refuse to enter into Medicaid agreements with
21 individuals convicted of felonies, prohibiting
22 affiliation of managed care entities with individuals
23 who have been debarred by Federal agencies, beneficiary
24 and program protection against waste fraud and abuse
25 and application of provisions which allow Medicaid to

1 carry into bankruptcy their claims against a provider
2 who is declared bankrupt.

3 Those are the provisions which are in the
4 amendment as it is now offered.

5 The Chairman. Is that correct?

6 Mr. Smith. Yes, Mr. Chairman. The agreement has
7 been to modify, as the Senator has described. He has
8 described what it is in. I will describe briefly what
9 has been omitted.

10 That is the modifications of the MMIS
11 requirements, the public process on State plan
12 amendments and the State Medicaid fraud control units.

13 Senator Graham. And I would like to say Senator
14 Moseley-Braun raised a very significant question about
15 surety bonds and whether there would be any
16 discriminatory application relative to certain groups
17 of potential providers because of their potential
18 difficulty in securing surety bonds.

19 I will say our own State has had this requirement
20 of surety bonds for some time, and we have no evidence
21 and there has been no one to suggest that has been a
22 problem. But I would like to suggest that in the
23 committee report that we give some attention to this
24 issue and that, in implementing this, HCFA be sensitive
25 that it not be used in a way that is other than the

1 intended way, which is to use this as a means of
2 excluding inappropriate people from the program.

3 The Chairman. If there is no objection, the
4 proposal is accepted.

5 Senator Graham. Thank you, Mr. Chairman.

6 The Chairman. Next, we will call on Senator
7 Mack.

8 Senator Mack. Mr. Chairman, I move to reconsider
9 the Murkowski Amendment.

10 Senator Murkowski. Mr. Chairman?

11 The Chairman. Yes, Senator Murkowski?

12 Senator Murkowski. Again, what my amendment does
13 is to increase the Federal match to be equivalent with
14 the national average for the State of Alaska, of 58.9
15 percent. And I would remind my colleagues that
16 included in the mark is a provision that would increase
17 the Federal match for the District of Columbia from
18 50/50 to 60/40.

19 As a consequence of the concern expressed by the
20 ranking minority member, I would refer to a advisory
21 commission on intergovernmental relations, commenting
22 on per capita income as being inappropriate as the only
23 consideration for evaluation of the FMAP.

24 It states, and this is what the commission
25 found, --

1 Senator Moynihan. In 1982, if I may say.

2 Senator Murkowski. -- that the use of a single
3 index resident per capita income to measure fiscal
4 capacity seriously misrepresents the actual ability of
5 many governments to raise revenue.

6 I point that out because I think it reflects the
7 opinion of the ranking member, and I would urge my
8 colleagues to give consideration to the inequity
9 associated with the reality that 71 percent higher
10 medical costs are associated with my State, as the
11 chart that was passed around clearly shows.

12 And I would implore you to consider that this
13 committee went on record two years ago to support a 59
14 percent FMAP Federal match to the State. So we are not
15 asking for anything that has not been approved before.

16 And the question of the equity issue is the
17 reality that while we have higher per capita income,
18 our medical expenses are double. There is the chart.

19 So without further comment, unless anybody has, I
20 would defer to my colleagues.

21 Senator Moynihan. If I could just take 30
22 seconds, Mr. Chairman?

23 The Chairman. Senator Moynihan.

24 Senator Moynihan. The Senator from Alaska has
25 referred to a finding of the advisory commission on

1 intergovernmental relations in 1982. Most of the
2 members were still those appointed by President
3 Eisenhower.

4 This is the most profound inequity in our national
5 health insurance system, and the fact that the Senator
6 from Alaska, who is most grievously treated, raises it,
7 is an important principal, and I hope we support it.

8 Senator Murkowski. One other thing. I would
9 also advise my colleagues that these costs, for Alaska
10 doctor's visit, \$81.00; dentist, \$113; one day nursing,
11 \$211; hospital, \$680; for a normal baby delivery,
12 \$4,200, are for Anchorage, Alaska, which is our
13 cheapest, our cheapest, most inexpensive, concentrated
14 medical care capability because it is the largest city.

15 If you move out in the bush to Nome, I mean, it is
16 another 20, 25, 30 percent higher.

17 Senator Kerrey. Why is it more expensive in
18 Alaska then it is elsewhere for a doctor's visit?

19 Senator Gramm. You have got to come by dog sled.

20 [Laughter]

21 Senator Gramm. You are rushing through the snow.

22 Senator Murkowski. First of all, transportation
23 is higher. We do not have a road system. I mean,
24 costs are just that much higher. That is why the
25 Federal Government allows a 25 percent cost of living

1 allowance in Alaska.

2 Senator Kerrey. It is the lack of roads?

3 Senator Murkowski. The overall transportation.
4 Everything that we utilize in Alaska virtually is
5 shipped up to Alaska. So you have a transportation
6 cost out to Seattle, plus transportation to Alaska,
7 which is --

8 Senator Kerrey. Because when I go into more
9 sparsely populated areas of Nebraska where
10 transportation is a problem as well, the costs
11 typically go down.

12 Senator Murkowski. For example, we have to
13 basically contract for doctors to come up to some of
14 these areas because the living is pretty tough; it is
15 pretty harsh, and you just cannot attract them unless
16 they have a contractual package that looks pretty
17 promising.

18 The Chairman. All time has expired.

19 Senator Kerrey. Aren't wages higher?

20 Senator Murkowski. Sure they are higher, but
21 they do not offset that reality. We are 100 percent
22 higher in our medical costs. That is just the reality.
23 Our wages aren't that much higher.

24 The Chairman. The vote is on the motion to
25 reconsider. The Clerk will call the roll.

1 The Clerk. Mr. Chafee?
2 Senator Chafee. Aye.
3 The Clerk. Mr. Grassley?
4 The Chairman. Aye by proxy.
5 The Clerk. Mr. Hatch?
6 Senator Hatch. Aye.
7 The Clerk. Mr. D'Amato?
8 Senator D' Amato. Aye.
9 The Clerk. Mr. Murkowski?
10 Senator Murkowski. Aye.
11 The Clerk. Mr. Nickles?
12 Senator Nickles. No.
13 The Clerk. Mr. Gramm, of Texas?
14 Senator Gramm. Aye.
15 The Clerk. Mr. Lott?
16 The Chairman. Aye by proxy.
17 The Clerk. Mr. Jeffords?
18 The Chairman. Aye by proxy.
19 The Clerk. Mr. Mack?
20 Senator Mack. Aye.
21 The Clerk. Mr. Moynihan?
22 Senator Moynihan. Aye.
23 The Clerk. Mr. Baucus?
24 Senator Baucus. No.
25 The Clerk. Mr. Rockefeller?

1 Senator Rockefeller. Pass for a minute.
2 The Clerk. Mr. Breaux?
3 Senator Breaux. Aye.
4 The Clerk. Mr. Conrad?
5 Senator Conrad. No.
6 The Clerk. Mr. Graham, of Florida?
7 Senator Graham. No.
8 The Clerk. Ms. Moseley-Braun?
9 Senator Moseley-Braun. Aye.
10 The Clerk. Mr. Bryan?
11 Senator Bryan. No.
12 The Clerk. Mr. Kerrey?
13 Senator Kerrey. No.
14 The Clerk. Mr. Chairman?
15 The Chairman. Aye.
16 The Clerk. The votes are yeas, 6 nays.
17 Senator Murkowski. Thanks very much, ladies and
18 gentlemen.
19 The Chairman. The motion to reconsider is
20 carried. Can we do it by voice vote?
21 Senator Murkowski. I would be happy to.
22 The Chairman. Those in favor of the Murkowski
23 Amendment signify by saying aye.
24 [Chorus of ayes.]
25 The Chairman. Opposed, nay.

1 [Chorus of nays.]

2 The Chairman. The ayes have it. The amendment
3 is carried.

4 Senator Breaux. Can I make another run?

5 The Chairman. Senator Breaux.

6 Senator Breaux. Let me make another run, and I
7 am sure I might have the attention of my Senator from
8 New York. In fact, both of them.

9 I do not want to get too complicated because I
10 will get more confused than I currently am. But if you
11 look at page 18 of the Chairman's mark, and I am trying
12 to do something that is fair and maybe would be helpful
13 to the Senator from New York as well.

14 On page 18, we are talking about a different way
15 of reimbursing HMOs. The aging committee that Senator
16 Grassley chairs, we had a hearing on HMOs, and HCFA
17 said that their estimate was that we were overpaying
18 HMOs by about \$2 billion a year because we do not take
19 into consideration their actual costs. We base it on
20 95 percent of whatever their fee-for-service is in that
21 area.

22 One of the most important things we do not
23 consider is the health status of the people in the
24 HMOs. So HMOs that enroll very healthy people are
25 still getting reimbursed as if they were treating the

1 sickest people in a particular area. We do not
2 consider health status in trying to figure out how much
3 to pay them.

4 The Chairman's mark says, all right, beginning in
5 1998, we are going to blend 50/50. Half the national
6 cost and half the local cost. What it says is that in
7 doing that on the national, we are going to consider
8 wages, the input price, and when you consider the local
9 costs, you are going to consider wages again.

10 What I am pointing out, number one, is you are
11 double counting wages, and that is unfair to low cost
12 areas, particularly rural areas and the more efficient
13 areas.

14 Now, what my amendment does--and this is to try to
15 bring about some fairness here--is that we would strike
16 that language for now and then require the Medicare
17 payment review commission to study a more appropriate
18 measure to see how we are going to reimburse HMOs,
19 including a Medicare hospital wage index, including the
20 wage index, and also the actual health status of the
21 people in that area enrolled in HMOs.

22 Clearly the most important item in considering how
23 we reimburse HMOs is the health status of the people in
24 the HMOs. The Chairman's mark does not allow them to
25 consider the health status of the people in the HMOs.

1 That is probably the most important factor in
2 determining how much their real costs really are.

3 So my amendment says, all right, you want to
4 consider wage costs? Let's consider that. But also
5 consider the health status of the people in the HMOs as
6 well and give us a recommendation on something that
7 makes sense, as opposed to something that I think does
8 not.

9 And that would give the Senator from New York
10 health status. You have a lot more sick people in your
11 HMOs in your areas as I do in some areas in my State.
12 That is the most important consideration in determining
13 what their reimbursement rate should be. And you can
14 consider the wage index as well. You could consider it
15 twice, if that is the appropriate thing to do.

16 Senator Gramm. Mr. Chairman, could we ask the
17 staff to give --

18 The Chairman. I was just going to ask Julie to
19 comment.

20 Ms. James. First of all, in the Chairman's mark
21 we do have a risk adjuster. It is an interim risk
22 adjuster. And then we call for the Secretary to
23 develop another risk adjuster.

24 Senator Gramm. But it is only for newly enrolled
25 members in HMOs, isn't it?

1 Ms. James. That is correct. It is a proxy risk
2 adjuster, but we do call for the Secretary to do what
3 you essentially just asked for in the amendment, to
4 develop something better on risk adjustment.

5 This issue on the input price adjustment is we are
6 trying to determine a base rate that will bring us from
7 where we are today with the range in our county rates
8 to bring those rates closer together.

9 And I just would like to state again that the
10 input price adjuster is just applied to one side where
11 you are not double counting. The wages are considered
12 on both sides of the equation, and it is not a double
13 count.

14 Senator Chafee. Is this a study? Or what is the
15 Senator from Louisiana proposing?

16 Ms. James. The modification to the formula for
17 determining the base rate that is contained in the
18 Chairman's mark.

19 Senator Breaux. My amendment would require to
20 ask the Secretary and the Medicare Payment Review
21 Commission to study more appropriate measures,
22 including the wage index and the actual health status
23 or case mix of a geographic region and report back to
24 Congress so we can a better and a more informed
25 decision on what is the best way to determine how to

1 reimburse HMOs.

2 Senator Chafee. So it is just a study, isn't it?

3 Senator D'Amato. No. This is not just a study.

4 Senator Gramm. Mr. Chairman?

5 Senator D'Amato. If I might.

6 The Chairman. The Senator from Texas.

7 Senator Gramm. Well, Mr. Chairman, let me remind
8 you that we are savings billions of dollars with the
9 changes that we have made, and let's remember the
10 Administration proposed an across the board five
11 percent cut. After studying it, that was their
12 recommendation.

13 We concluded, on a massive bipartisan basis, that
14 we did not want to do that because it was terribly
15 unfair to the areas of the country that have a lot of
16 penetration by HMOs and already have the lowest rates
17 in the country, to reduce them by the same amounts that
18 areas that have very high reimbursement had.

19 And so I would like to urge our colleagues we put
20 together something to try to split the difference as an
21 interim measure. I am afraid if we throw it out and go
22 back to the Secretary, A) We are not going to save the
23 money we need to meet the target; and number two, we
24 could end up with a 5 percent across the board cut,
25 which would be totally irrational and very harmful to

1 rural areas; very harmful to areas that already have
2 very low reimbursement rates.

3 On this complicated matter, when the committee did
4 a lot of work on it, when the staff put together a
5 compromise, it is not that I am saying Senator Breaux
6 is absolutely wrong and there is no merit in it, but I
7 do not think we ought to throw overboard an important
8 part of this bill on something we are going to debate
9 for five minutes.

10 Senator Breaux. Would the Senator yield on this?
11 Let me ask, can I just leave -- what about leaving? I
12 am trying to get something that is better than what we
13 have got because I thin it is deficient.

14 Leave the language in the bill like it is, but
15 also add the health status of the people in the HMOs.
16 It is incredibly ludicrous for us not to have, in
17 determining what to reimburse an HMO, not to consider
18 the health status of the people in the HMOs.

19 Senator D'Amato. Would the Senator then withdraw
20 the reallocation of money and just ask for the study to
21 be conducted and include the health of people, because
22 if you want to include the health of people, I support
23 that. I think that makes sense. But it goes beyond
24 the study, what your amendment does now.

25 The Chairman. I would like to ask Julie to

1 comment on Senator Breaux's proposal.

2 Ms. James. Well, one of the reasons that we used
3 the best research that we could find to try to come up
4 with an interim risk adjuster was because it is very
5 difficult to adjust for health status, but everyone
6 agrees we need to do that, and we are moving in that
7 direction. And the mark does call for the Secretary to
8 move as quickly as possible to come up with an adjuster
9 that would take into account health status.

10 Senator Murkowski. Mr. Chairman, may I ask
11 Julie? We talked a lot about the effect on rural
12 States. Do you have any idea what effect it would have
13 say on my State of Alaska?

14 Ms. James. It has an effect because it is
15 related to costs of living. I'm sorry, Senator.
16 Because it is related to costs in an area and wages, it
17 has an effect where there are higher costs and wages
18 versus lower costs and wages.

19 Senator Murkowski. And that effect is
20 measurable? I know it will hurt me, but how much?

21 Ms. James. How much?

22 Ms. Spitznagel. In Alaska, every county. Every
23 county in Alaska would have a decrease in payment under
24 this proposal than under the one that is in the mark.

25 Senator Murkowski. I see. Well, we have Burros.

1 But it is the same. I got the message. Thank you.

2 Senator Breaux. Mr. Chairman, I think that the
3 best procedure -- I mean, I have offered the amendment.
4 I think it is clear. We have an offset with the
5 Medicaid waste, fraud and abuse amendment that was
6 adopted, and I think we ought to go ahead and vote on
7 it.

8 If between now and the conference we can figure
9 out a better way of doing it, I certainly want to be
10 cooperative on it. But I think we ought to vote on it.

11 Senator Gramm. Mr. Chairman, could I ask one
12 final question of the staff?

13 The Chairman. One final question.

14 Senator Gramm. Now, do we have any kind of
15 guarantee that if we adopted this amendment that it
16 would replace the savings we have in our current
17 formula?

18 Ms. James. Senator, there is a small cost--well,
19 small--a \$200 million cost over five years that CBO
20 scores related to this amendment, but it is basically a
21 redistribution of the money.

22 Senator Gramm. Well, Mr. Chairman, let me urge
23 people to vote now and then give us a chance to work
24 between now and the floor --

25 Senator Rockefeller. Hasn't the Chairman called

1 for a vote?

2 The Chairman. Let's vote.

3 Senator Gramm. -- so that if we can work
4 something out, we do it. But let's not throw overboard
5 something that we have worked on for months for
6 something we debated for five minutes.

7 The Chairman. The time has expired. The Clerk
8 will call the roll.

9 The Clerk. Mr. Chafee?

10 Senator Chafee. No.

11 The Clerk. Mr. Grassley?

12 The Chairman. Aye by proxy.

13 The Clerk. Mr. Hatch?

14 Senator Hatch. Aye.

15 The Clerk. Mr. D'Amato?

16 Mr. Hatch. I will go no. Excuse me. Just
17 change mine to no.

18 The Chairman. Hatch votes no.

19 The Clerk. Mr. D'Amato?

20 Senator D'Amato. No.

21 The Clerk. Mr. Murkowski?

22 Senator Murkowski. No.

23 The Clerk. Mr. Nickles?

24 Senator Nickles. Aye.

25 The Clerk. Mr. Gramm, of Texas?

1 Senator Gramm. No.
2 The Clerk. Mr. Lott?
3 The Chairman. No by proxy.
4 The Clerk. Mr. Jeffords?
5 The Chairman. No by proxy.
6 The Clerk. Mr. Mack?
7 Senator Mack. Aye.
8 The Clerk. Mr. Moynihan?
9 Senator Moynihan. No.
10 The Clerk. Mr. Baucus?
11 Senator Baucus. Aye.
12 The Clerk. Mr. Rockefeller?
13 Senator Rockefeller. Aye.
14 The Clerk. Mr. Breaux?
15 Senator Breaux. Aye.
16 The Clerk. Mr. Conrad?
17 Senator Conrad. Aye.
18 The Clerk. Mr. Graham, of Florida?
19 Senator Graham. Aye.
20 The Clerk. Ms. Moseley-Braun?
21 Senator Moseley-Braun. Aye.
22 The Clerk. Mr. Bryan?
23 Senator Bryan. Aye.
24 The Clerk. Mr. Kerrey?
25 Senator Kerrey. Aye.

1 The Clerk. Mr. Chairman?

2 The Chairman. No.

3 The Clerk. Eleven years, 9 nays.

4 The Chairman. The amendment is agreed to.

5 Senator Conrad. Mr. Chairman, could I move to
6 reconsider and then move to offer a second degree
7 amendment which would strike the Gramm provision?

8 [Laughter]

9 Senator Conrad. A little joke.

10 The Chairman. Our next amendment is Senator
11 D'Amato.

12 Senator D'Amato. Mr. Chairman, this amendment, I
13 believe, has been agreed to by all sides. Number 69.
14 It would simply apply the current law to the new \$3
15 billion welfare to work block grant. It says that if
16 your State meets the work requirements of the current
17 welfare formal law, your maintenance of effort shall be
18 at the 75 percent, the historical effort, and we are
19 simply applying current law to these new funds. There
20 is no cost.

21 It just gives the States the same flexibility that
22 it had under the old or just newly passed work-fare
23 welfare law.

24 The Chairman. Any comment?

25 Senator Moynihan. A good idea.

1 The Chairman. Those in favor?

2 Senator Chafee. What does Julie say about this
3 amendment?

4 Ms. James. I apologize. I was distracted.

5 The Chairman. Dennis, do you want to comment?

6 Mr. Smith. Senator D'Amato described it
7 completely, in terms of conforming with what is in the
8 welfare reform bill in terms of maintenance of effort,
9 as long as you are meeting your work requirements.

10 The Chairman. Those in favor signify by saying
11 aye.

12 [Chorus of ayes.]

13 The Chairman. Opposed, nay.

14 [No response.]

15 The Chairman. The ayes have it. The amendment
16 is agreed to.

17 Senator D'Amato. Mr. chairman, I have one
18 further amendment. It is number 59, transitional
19 capital. Mr. Chairman, back in the 1993, 1994, 1995
20 period, there was a change in the reimbursement that
21 relates to capital construction. The formulas were
22 changed where a hospital, in terms of construction, was
23 reimbursed at 85 percent to 70 percent.

24 Some of the larger hospitals in States that have
25 had difficulty in processing State and Federal

1 applications as it relates to obtaining a certificate
2 of need were caught during this transition period.

3 As a result, the projected predicated on 85
4 percent reimbursement. It only received 70 percent. I
5 believe that HCFA would be supportive. I think there
6 are a number of institutions. I think five together.
7 Pennsylvania, Illinois and New York has one. These are
8 non for profits.

9 And the impact would be minimal. I think in the
10 New York case it is \$15 million over a period of many
11 years. So I think there are a number of members who
12 have institutions in the same place. I would hope that
13 they would not be penalized.

14 And I understand HCFA has indicated there would be
15 no substantial cost shifting.

16 The Chairman. Would you care to comment?

17 Dr. Vladeck. It is a very modest amount of money
18 in the aggregate, sir.

19 Senator Moseley-Braun. Mr. Chairman?

20 The Chairman. Any further comment?

21 Senator Moseley-Braun. Just that I strongly
22 support this. It is just a matter of closing a glitch
23 that would penalize hospitals for trying to make their
24 facilities better. In Cooke County we have two.

25 Ms. Bonmartini. May I ask for clarification, Mr.

1 Chairman?

2 The Chairman. Yes.

3 Ms. Bonmartini. Senator D'Amato, just for
4 clarification purposes, I understand your amendment is
5 budget neutral, --

6 Senator D'Amato. Yes.

7 Ms. Bonmartini. -- and therefore, it would be a
8 redistribution of capital payments establishing these
9 altered exception policy.

10 Is the amount of money that would be redistributed
11 capped on an annual basis or is it unlimited?

12 Senator D'Amato. No. No. It is capped.

13 Ms. Bonmartini. To what amount?

14 Senator D'Amato. I think it is \$50 million.

15 Ms. Bonmartini. Okay. Thank you.

16 The Chairman. Those in favor, signify by saying
17 aye.

18 [Chorus of ayes.]

19 The Chairman. Opposed, nay.

20 [No response.]

21 The Chairman. The ayes have it.

22 Senator Rockefeller?

23 Senator Mack. Mr. Chairman?

24 The Chairman. Yes, Senator Mack?

25 Senator Mack. Just an inquiry. How many more

1 amendments do we have?

2 Senator Moynihan. Nineteen.

3 The Chairman. No. Two more and then a final
4 pass. Three more I guess.

5 Senator Mack. Thank you, Mr. Chairman.

6 The Chairman. Senator Hatch?

7 Mr. Hatch. Mr. Chairman, I appreciate the
8 efforts you and your staff had made to work with me on
9 the important role that community health centers play
10 in serving Medicaid patients, and I am particularly
11 grateful that the Chairman's mark retains cost based
12 reimbursement for these centers.

13 My staff and your staff have engaged in extensive
14 discussions about what methodology should be used to
15 insure that community health centers receive cost based
16 payments when contracting with managed care plans.

17 At a walk through of the bill, I raised this issue
18 and the committee staff recognized that under the
19 current payment process health centers receive an
20 average, for managed care plans, of about 50 percent of
21 their cost of caring for a Medicaid patient, even
22 though current law requires that they be paid 100
23 percent of their reasonable costs.

24 The committee staff has assured us that it is
25 their intent to make sure that community health centers

1 receive cost based reimbursement when participating in
2 managed care and that the language of the mark
3 accomplishes this goal.

4 After reviewing the mark, I am not confident that
5 we are all the way there yet; however, this is a very
6 complex and technical area, or issue. And given the
7 time pressures we are under, I would be willing to
8 withdraw my amendment, if you would commit to having
9 our staffs work together to resolve the issue as we go
10 to the floor and through conference.

11 And I know we should share the common goal of
12 making sure the community health centers have adequate
13 reimbursement to continue to serve Medicaid and
14 uninsured patients.

15 And again, I want to commend you and your staff
16 for working with us on this issue. Is that all right?
17 can I get that commitment?

18 The Chairman. That is satisfactory.

19 Mr. Hatch. Thank you. Then I will withdraw the
20 amendment, and we will just work together on it.

21 The Chairman. Thank you.

22 Senator Graham?

23 Senator Graham. Mr. Chairman, this amendment is
24 in a different section of our mark up and that is the
25 welfare section, and I alert my teutonic cousin to this

1 because I think he will want to comment on this.

2 The current law gives to the Secretary some
3 discretion when a State has failed to meet its
4 statutory participation and work standard.

5 As you know, we have in the law that States have
6 to first be at 25 percent of participation and those
7 rates go up over the next four or five years. But the
8 Secretary has the discretion of levying a sanction in
9 the form of a reduction of the State's grant of five
10 percent in the first year, two percent in each year
11 thereafter until it reached a maximum of a 21 percent
12 reduction.

13 The Chairman's mark changes it from up to, to
14 mandatory. So the Secretary must levy the sanction at
15 the prescribed percentage limit. I think that is bad
16 policy, to remove from the Secretary any discretion.

17 Let's just think in the context of the State
18 represented by Senator Conrad. He has just suffered a
19 very major economic blow. Shouldn't the Secretary have
20 some range of discretion to take into account whether
21 there were factors that were outside the control of the
22 State or its commitment or use of appropriate methods
23 to meet the work participation rates? More likely it
24 would be economic recessions, and we know that what has
25 been happening in recent years is not a nationwide

1 recession, but a regional recession.

2 We had one in California, we had in the northeast,
3 we've had one in the southeast. I think the Secretary
4 ought to be able to take those kind of factors that
5 were beyond the ability of the State into
6 consideration.

7 Whether a State missed the participation mark by a
8 substantial level, indicating a lack of effort, or by a
9 minuscule level ought to be a factor that could be
10 taken into consideration.

11 So, while I agree with the goal of these high
12 participation rates and believe that some sticks are
13 appropriate, I think they ought to be sticks that can
14 be wielded with some degree of common sense and
15 judgment rather than the arbitrary mandate that is in
16 the Chairman's mark.

17 So my amendment would go back to the current law,
18 which allows the Secretary to levy the sanctions up to
19 the specified percentages.

20 The Chairman. Senator Moynihan?

21 Senator Moynihan. Mr. Chairman, before the
22 response from what Senator Graham of Florida called his
23 teutonic colleague, --

24 Senator Graham. Cousin.

25 Senator Moynihan. Cousin. Could I make the

1 point that Mr. Dooley once said that an Anglosaxon is a
2 German that has forgot his grandparents. But the
3 Grahams are Scotts, where all the brains come from.

4 Senator Graham. Particularly economic.

5 Senator Moynihan. That is right. That is right.

6 And we learned in the New York Times this morning that
7 Mr. Nehmour was the man who produced laga-rythym. And
8 between Adam Smith and Nehmour, we have Phil Gramm.

9 [Laughter]

10 Senator Gramm. Mr. Chairman, I have never been
11 in more distinguished company. Thank you.

12 I want to ask my colleague's attention, because
13 this is a technical amendment that covers a drafting
14 mistake that was made out of conference, and I want to
15 go through it so nobody is under any delusion about
16 what happened.

17 We wrote a bill in committee that said, with the
18 first five percent, if a State was out of compliance,
19 that the Secretary had discretion. But, if the next
20 year they were out of compliance, the Secretary had to
21 impose an additional five percent penalty. And in the
22 third year, they had to impose an additional five
23 percent penalty, and there was no limit on it up to 100
24 percent.

25 That bill went to the floor of the Senate.

1 Senator Graham, my Scottish cousin, offered an
2 amendment to strike that provision, which was defeated.
3 We then went to conference with the House and the
4 conferees agreed on a compromise that I accepted to
5 lower the five percent to two percent a year to lessen
6 the blow on States and to make it mandatory.

7 The only problem was that when the language was
8 written by the staff, everyone agrees that the staff
9 did not write down what was agreed to and the whole
10 program, at the lower rates, was made discretionary.

11 So this was simply a drafting error from
12 conference. Unfortunately, it happens. The Chairman
13 has included it as a technical correction, which it is,
14 and this is something we decided on.

15 We voted on the floor to keep a penalty that was
16 much more severe than the one that was written in the
17 conference. I agreed during the conference, at the
18 final hour in the final agreement, to reduce it from a
19 five percent stair step penalty with no limit, to a two
20 percent penalty per year with a limit of 21 percent.

21 But everyone agreed that that ought to be
22 mandatory. And the logic is, if you do not do this, a
23 State would say well, we just do not want to fool with
24 the work requirement. We will pay a five percent
25 penalty.

1 And they only have to do that once they have given
2 up the five percent, if we did not have the provision,
3 which this committee adopted, which the floor
4 sustained, which the conference agreed to, we would
5 have no enforcement.

6 So this is a technical correction. All the
7 conferees agree that these three words should have
8 never been in there.

9 The Chairman. All time has expired. The Clerk
10 will call the roll.

11 Senator Graham. Mr. Chairman?

12 The Chairman. Thirty seconds.

13 Senator Graham. I do not want to re-debate
14 history. I want re-debate policy, and the policy is
15 that the Secretary ought to have some range of
16 discretion. As the National Governor's Association
17 have said in their letter to us, "We urge you to
18 support an amendment that would retain the Secretary's
19 authority when imposing penalties to take into account
20 the impact of a recession, natural disaster or other
21 unique circumstances on its State's ability to meet the
22 work participation rates."

23 That is the policy. Should there be some range of
24 judgment by the Secretary? I believe there should, and
25 therefore, would urge the adoption of this amendment.

1 Senator Baucus. Did you say the Governors want
2 this?

3 Senator Graham. The National Governors'
4 Association.

5 Senator Gramm. Mr. Chairman? Mr. Chairman, I
6 would like to respond very briefly. Paragraph C says
7 that if the State is in non-compliance, due to
8 circumstances that cause the State to become a needy
9 State, that it can be waived by the Secretary. So we
10 have the provision about a flood or a drought.

11 This was agreed to in conference. The Senator
12 offered it on the floor. We defeated it. This is
13 correcting a technical mistake.

14 The Chairman. All time has expired.

15 Senator Graham. Mr. Chairman, could I just --

16 The Chairman. Let's vote.

17 Senator Graham. I looked at that provision,
18 subsection C, first. It only deals with a "needy
19 state". Not a state that is in despair because of a
20 circumstance such as the floods.

21 And second, it does not allow the Secretary to
22 have the discretion to levy some sanctions, but not the
23 maximum sanctions.

24 The Chairman. All time has expired. The Clerk
25 will call the roll.

1 The Clerk. Mr. Chafee?
2 Senator Chafee. Aye.
3 The Clerk. Mr. Grassley?
4 The Chairman. No by proxy.
5 The Clerk. Mr. Hatch?
6 Senator Hatch. Aye.
7 The Clerk. Mr. D'Amato?
8 Senator D'Amato. Aye.
9 The Clerk. Mr. Murkowski?
10 Senator Murkowski. No.
11 The Clerk. Mr. Nickles?
12 Senator Nickles. No.
13 The Clerk. Mr. Gramm, of Texas?
14 Senator Gramm. No.
15 The Clerk. Mr. Lott?
16 The Chairman. No by proxy.
17 The Clerk. Mr. Jeffords?
18 The Chairman. Yes by proxy.
19 The Clerk. Mr. Mack?
20 Senator Mack. No.
21 The Clerk. Mr. Moynihan?
22 Senator Moynihan. Aye.
23 The Clerk. Mr. Baucus?
24 Senator Baucus. Aye.
25 The Clerk. Mr. Rockefeller?

1 Senator Rockefeller. Aye.

2 The Clerk. Mr. Breaux?

3 Senator Moynihan. Aye by proxy.

4 The Clerk. Mr. Conrad?

5 Senator Conrad. Aye.

6 The Clerk. Mr. Graham, of Florida?

7 Senator Graham. Aye.

8 The Clerk. Mr. Bryan?

9 Senator Bryan. Aye.

10 The Clerk. I'm sorry. Ms. Moseley-Braun?

11 Senator Moseley-Braun. Aye.

12 The Clerk. Mr. Bryan?

13 Senator Bryan. You only get to vote once. Aye.

14 The Clerk. Mr. Kerrey?

15 Senator Moynihan. Aye by proxy.

16 The Clerk. Mr. Chairman?

17 The Chairman. No.

18 The Clerk. The votes are 14 yeas, 6 nay.

19 The Chairman. The amendment is agreed to.

20 I would now call upon Julie.

21 Ms. James. Senator, with all the changes that we

22 have made to the payment formula, we understand now

23 that there might be a problem with Senator Grassley's

24 amendment to adjust the floor to 85 percent of the

25 national average and to pay for it by reducing the

1 minimum update.

2 To hold the minimum update at zero might not be
3 enough money. So I have discussed it with Senator
4 Grassley's staff, and we suggest agreeing to just
5 adjust the floor to the extent that you can with
6 reducing the minimum update from one to zero so that
7 nobody would be going negative.

8 The Chairman. Nobody go negative.

9 Senator D'Amato?

10 Senator D'Amato. That is good news, Mr.
11 Chairman.

12 The Chairman. I do not think it is good news.

13 Senator D'Amato. We will have to fight it out on
14 the floor.

15 But, Mr. Chairman, I would ask that the staff -- I
16 have amendment number 61.

17 The Chairman. I thought you were going to
18 comment on that.

19 Senator D'Amato. Oh, no.

20 The Chairman. Does everyone agree to that?

21 [No response.]

22 The Chairman. There is no objection. We so
23 agree.

24 Mr. Rockefeller?

25 Senator Rockefeller. Thank you, Mr. Chairman.

1 This is a worker protection, protection against the
2 displacement provision in the welfare bill.

3 We are spending \$3 billion on welfare to work to a
4 new job. In the process of that we should not,
5 however, as a matter of policy, it seems to me,
6 displace folks who already have work and are also
7 taxpayers.

8 I think it was back in 1982 when I was Governor.
9 I think it was the first or second work for welfare
10 people, a working program, and we did this, but we had
11 very strong worker displacement protection.

12 This language in my amendment comes directly from
13 Chairman Goodling in the House, and it simply insures
14 -- it is a lot of language, but it insures that Federal
15 funding is used to create new jobs and help welfare
16 recipients train. Not to replace or displace those who
17 already have work.

18 Senator Nickles. Mr. Chairman?

19 The Chairman. Yes, Senator Nickles.

20 Senator Nickles. Mr. Chairman, I strong oppose
21 this amendment. Everybody--most everybody--voted for
22 the welfare to work program. This amendment was tried
23 last Congress. It did not pass, and for a good reason.

24 We said we wanted to create jobs for welfare
25 recipients. We want them to move into the private

1 sector. This amendment basically says if anybody is
2 doing the job anywhere, well, the welfare worker need
3 not apply.

4 Even if you are raking leaves in a park,
5 temporarily as a part-time city employee, somebody is
6 going to see that is replacing the part-time city
7 employee; therefore, the welfare worker cannot have
8 that job. And so the net impact of it is you are going
9 to be excluding a lot of opportunities for welfare
10 workers to start climbing the economic ladder, because
11 public employee unions do not want this provision in
12 the law.

13 Or they are trying to insert this type of
14 protectionism in the law that is very much to their
15 benefit; very much to the disadvantage of welfare
16 recipients that want to enter the job market.

17 So I see this as a gutting provision of the
18 welfare bill that we passed last Congress, that the
19 President signed, and I would urge our colleagues to
20 defeat this amendment.

21 Senator Rockefeller. I would say to the good
22 Senator that this is not the union supported amendment
23 that the Senator is referring to. This is nothing to
24 do with that.

25 This simply has to do with the fact that taxpayers

1 who have a job ought to have the right to be able to
2 keep that job and not simply be displaced by some
3 county supervisor who decides that they want to take
4 advantage of an opportunity to get rid of somebody.
5 This is worker protection.

6 Senator Moseley-Braun. Mr. Chairman?

7 Senator Gramm. Mr. Chairman?

8 Senator Moseley-Braun. I had my hand up first.

9 The Chairman. One minute for each.

10 Senator Moseley-Braun. All right. Mr. Chairman,
11 I got a phone call not too long ago for a black woman,
12 as it turned out, who worked for one of the Federal
13 agencies, and she was livid that she had been a
14 temporary employee at one of the agencies--Federal
15 agency as it turned out--two years. And now, because
16 of the welfare to work, she was threatened in her job.

17 It is the working poor who are the most threatened
18 by the influx of welfare to work. Hypotheticals
19 notwithstanding, I do not think there has been
20 sufficient attention paid to what happens to those
21 people who are already in at the bottom end of the
22 employment ladder who are hard working.

23 Senator Grassley talks a lot about the working
24 poor. What happens to those people who are in the work
25 force already when we push from Welfare to Work, or

1 move from Welfare to Work, these new workers? And that
2 is the category of people to whom this amendment is
3 directed.

4 And I think I would strongly urge my colleagues
5 that you are building in, without paying attention to
6 this issue. The effort I think is really doing more
7 and would cause more harm than you expect.

8 The Chairman. One minute for Senator Gramm.

9 Senator Gramm. Mr. Chairman, this the worst sort
10 of special interest legislation. What this says is if
11 Texas has a contract to pay people to pick up paper
12 along our streets and thoroughfares, and we have a
13 mandatory work requirement for welfare recipients, and
14 they cannot find a job in the private sector, that we
15 cannot ask them to go pick that paper?

16 It means that we are excluded from the ability to
17 ask welfare workers to do work that is valuable to the
18 taxpayer. This just kills our whole effort because we
19 are aiming to protect a special interest that does not
20 want competition.

21 I mean, if we want to protect existing workers
22 from welfare recipients, we would keep welfare
23 recipients on welfare, but we cannot afford to do it,
24 and it is not right. It is a special interest group.

25 The Chairman. The Clerk will call the roll.

1 The Clerk. Mr. Chafee?
2 Senator Chafee. No.
3 The Clerk. Mr. Grassley?
4 Senator Grassley. No.
5 The Clerk. Mr. Hatch?
6 Senator Hatch. No.
7 The Clerk. Mr. D'Amato?
8 Senator D'Amato. Aye.
9 The Clerk. Mr. Murkowski?
10 [No response.]
11 The Clerk. Mr. Nickles?
12 Senator Nickles. No.
13 The Clerk. Mr. Gramm, of Texas?
14 Senator Gramm. No.
15 The Clerk. Mr. Lott?
16 The Chairman. No by proxy.
17 The Clerk. Mr. Jeffords?
18 Senator Moynihan. Aye by proxy.
19 The Clerk. Mr. Mack?
20 Senator Mack. No.
21 The Clerk. Mr. Moynihan?
22 Senator Moynihan. Aye.
23 The Clerk. Mr. Baucus?
24 Senator Baucus. Aye.
25 The Clerk. Mr. Rockefeller?

1 Senator Rockefeller. Aye.
2 The Clerk. Mr. Breaux?
3 Senator Moynihan. Aye by proxy.
4 The Clerk. Mr. Conrad?
5 Senator Conrad. Aye.
6 The Clerk. Mr. Graham, of Florida?
7 Senator Graham. Aye.
8 The Clerk. Ms. Moseley-Braun?
9 Senator Moseley-Braun. Aye.
10 The Clerk. Mr. Bryan?
11 Senator Bryan. Aye.
12 The Clerk. Mr. Kerrey?
13 Senator Moynihan. Aye by proxy.
14 The Clerk. Mr. Chairman?
15 The Chairman. No. Murkowski is no by proxy.
16 Jeffords is yes proxy.
17 Senator Murkowski. Mr. Chairman, I will be
18 voting in person.
19 The Clerk. The votes are 11 yeas, 9 nays.
20 The Chairman. The amendment is agreed to.
21 I would now point out --
22 Senator Chafee. Mr. Chairman?
23 The Chairman. Yes?
24 Senator Chafee. Let's go to final passage, shall
25 we?

1 The Chairman. We are working as fast as we can.
2 Senator, D'Amato, please be as brief as you can.
3 Senator D'Amato. I will.

4 Mr. Chairman, I have an amendment, number 61. Mr.
5 Chairman, the committee mark represents a good start in
6 dealing with those who would game the system by coming
7 in with high costs, thereafter dropping their costs and
8 getting a-50 percent reimbursement for the saving.

9 The change that I propose would be budget neutral
10 by adjusting the market basket and the rates of savings
11 and the cost limits. It would be one that would be
12 less radical.

13 Mr. Chairman, I would ask, in the interest of
14 time, that staff on both sides study this, and if they
15 feel it appropriate and that it is budget neutral, that
16 it be considered and put into the Chairman's and the
17 manager's amendment.

18 So we could give a little more, because I
19 think while the committee, again, has made a good
20 effort in terms of stopping those from gaming the
21 systems, we may have created some harm inadvertently as
22 well.

23 The Chairman. All right. We will take a look at
24 it with you prior to the floor action.

25 Senator Conrad. Mr. Chairman?

1 The Chairman. Senator Conrad?

2 Senator Conrad. It is a good amendment. Senator
3 D'Amato's amendment is a good amendment I think.

4 The Chairman. Let me point out the staff has
5 been working to clear a few other amendments. Conrad
6 Number 37, Conrad Number 45, Jeffords Number 159 on
7 practice expenses of physicians with modifications.
8 These have been cleared with modifications.

9 I would like to give the staff the usual authority
10 to make technical and conforming changes during the
11 drafting of this bill.

12 Before we turn to final vote, I want to turn to
13 two nominations. We have a quorum present. So the two
14 nominations, the first is Kevin L. Thurm, to be Deputy
15 Secretary of the Department of Health and Human
16 Services. The second is the nomination of Richard J.
17 Tarplin to the Assistant Secretary for Legislation of
18 the Department of Health and Human Services.

19 If there is no objection, I ask that the committee
20 consider these two.

21 Senator Moynihan. I move to adopt them en bloc.

22 The Chairman. They have been moved that we
23 consider them en bloc.

24 I move that the committee favorably report these
25 nominations to the Senate. All those in favor, please

1 say aye.

2 [Chorus of ayes.]

3 The Chairman. All those opposed say nay.

4 [No response.]

5 The Chairman. The ayes have it, and the two
6 nominations are ordered reported to the Senate.

7 We are waiting for the leader to be here.

8 Mr. Hatch. Mr. Chairman? Mr. Chairman?

9 The Chairman. Yes?

10 Mr. Hatch. May I just make a couple of comments
11 while we are waiting? I just want to make a few
12 comments with regard to the fraud and abuse provisions
13 included in your mark.

14 As the Chairman knows, I have been concerned about
15 these provisions because of the obvious implications
16 for law enforcement in combating fraud and abuse in the
17 Medicare program and in other programs. I think we
18 need effective fraud and abuse enforcement tools.

19 I just want to be sure that these provisions do
20 not have any unintended consequences or implications
21 that would penalize innocent parties that are following
22 the letter of the law. I have been concerned that some
23 of the provisions under consideration have not been
24 subject to any formal hearing review process.

25 Accordingly, I have attempted to address issues

1 which I believe may be problematic:

2 With respect to the PROD provisions incorporated
3 in the mark, I am not going to oppose them. I did have
4 some reservations with respect to the provisions for
5 additional authority to impose civil monetary
6 penalties. I had planned to offer an amendment in this
7 area, but have decided not to do so, in recognition
8 that the Chairman sought to achieve a balance in the
9 mark and has been willing to work with me to
10 incorporate some report language that will help to
11 resolve concerns I have expressed about these
12 provisions.

13 The amendment I had planned to offer would have
14 deleted the provision imposing civil monetary penalties
15 on those persons who provided a service, ordered or
16 prescribed, by an excluded individual. In my view,
17 these provisions target the wrong provider.

18 They punish the provider who is serving the
19 patient based on a legitimate and legal prescription,
20 rather than the excluded provider who is at fault.

21 Now, I think it is extremely important to clarify
22 our expectations on this issue and others within the
23 CAMPAIGN section, and I am pleased that the Chairman
24 has agreed to report language that, in effect,
25 clarifies the intent of these provisions as they apply

1 to individuals providing a service or an item.

2 Now, Mr. Chairman, I have a more detailed
3 statement on this issue, which I ask will be included
4 in the record. At this point, I want to thank you, you
5 and your staff, for all of your concerns in this area.

6 [The prepared statement of Senator Hatch appears
7 in the appendix.]

8 Senator Grassley. Mr. Chairman, I have a
9 question for you.

10 The Chairman. Senator Grassley?

11 Senator Grassley. We discussed this in the
12 informal mark up, and I was told that rural health
13 centers were in certain provisions, and they are
14 actually worded in one part of the legislation, but
15 they are not in another part.

16 And all I want to do is have permission to bring
17 it up so everything is above board, but to discuss this
18 with the staff because I think it is a technicality
19 that can worked out.

20 The Chairman. I will instruct the staff to
21 review the matter with you.

22 Senator Grassley. Thank you.

23 Senator Conrad. Mr. Chairman?

24 The Chairman. Yes, Senator Conrad?

25 Senator Conrad. Before we vote--I understand we

1 are waiting for the majority leader--I would just like
2 to thank you for your fairness throughout this
3 procedure. I think people on both sides can say you
4 have been extraordinarily fair, and at least for me I
5 would like to say I appreciate it very much.

6 [Applause.]

7 Senator Moynihan. Mr. Chairman, may I just add
8 that a long and rewarding tradition of bipartisan
9 efforts in the Finance Committee, which lapsed for a
10 period, has obviously returned and to the large
11 benefit, I think, of the Senate and hopefully of the
12 nation. Thanks to you, sir.

13 The Chairman. Well, I thank you very much for
14 those kind and gracious remarks. I want to express my
15 appreciation to the members of the committee. I think
16 we have proceeded in a bipartisan way, and I think that
17 we have ended up with an agreement that hopefully will
18 have broad bipartisan support.

19 I would like to--after saying all those nice
20 things--urge everybody, as we proceed with the mark up
21 of taxes, how important it is that we keep the
22 amendments to a minimum. We have got a tremendous load
23 before us, and time is running out.

24 I hope you do not propose any amendments. But
25 those of you that did, I would ask that you review them

1 carefully so that in the beginning of the mark up we
2 can get an actual count of what amendments there will
3 be.

4 Senator Moseley-Braun. Will there be an
5 opportunity, Mr. Chairman, for the staffs to get
6 together before we go to the tax side and review one
7 more time, because looking at the list, I would just
8 assume there are some things that I would think could
9 be taken as technical or nominal kinds of amendments.
10 And I would prefer not to have to take up the time of
11 the committee if they can be accepted and go into a
12 single package.

13 The Chairman. Yes. We will proceed along those
14 lines.

15 Senator Moseley-Braun. Thank you.

16 Senator Breaux. Mr. Chairman?

17 The Chairman. Yes, Senator Breaux?

18 Senator Breaux. Mr. Chairman, I would also just
19 like to echo the good work that you and Senator
20 Moynihan have done, and all of the members working
21 together.

22 The staff has a tremendous amount of work to do,
23 in the sense of trying to interpret this concept that
24 we now have voted on, because we did not work with
25 statutory language. We just worked on all of these

1 amendments and language basically with the concept.
2 You now have to go out and figure out what we really
3 meant.

4 And, when we did the children's health amendment
5 that was adopted, or kept the Chairman's mark, the
6 Chairman's mark was amended a number of times. And I
7 would ask--Senator Gramm was involved in this--that we
8 have said there that the type of medical insurance for
9 our children in the various States -- we talked in
10 terms of the coverage for those children would be
11 consistent with that provided under the Federal
12 Employees' Health Benefits Program.

13 One of my concerns, and I think we are in
14 agreement on this, is that we are talking about
15 coverage that is similar to the FEHPB for children. It
16 is not the intent to use that reference to the FEHPB to
17 restrict or to retard the ability of the State to
18 insure children through premiums or co-payments. But
19 that is the type of coverage we were talking about. Is
20 that your understanding?

21 Senator Gramm. Mr. Chairman, let me respond.
22 Obviously we preserve the ability of the States to run
23 the plan, to have co-payments and deductibles. But
24 what we are doing here is basically defining the types
25 of things that would be covered. Basically, the

1 benefit package definition would be similar to the
2 types of coverage provided in the broad range of
3 options under the Federal Employee Program.

4 The Senator is right. The reference there is
5 basically to the type of coverage.

6 We did preserve the ability to have co-payments
7 and deductibles, but our intention in that reference
8 was the kinds of things to be covered, the benefit
9 package issue. The Senator is right.

10 Senator Breaux. I do not want to prolong this,
11 but it is important for intent, I think, in this very
12 important area. And that is, if they would use the
13 provisions of the FEHPB to actually prevent low income
14 children from being insured, that would not be
15 consistent with what the whole thrust of the Senator's
16 amendment is.

17 Senator Chafee. You know, we can reconsider the
18 whole thing if you want.

19 Senator Gramm. The purpose here is to prevent
20 Senator Chafee from reconsidering, and basically, the
21 objective is to cover children. Not to deny children
22 coverage.

23 So we left them with a broad range of things they
24 can do to be efficient and to reach as many children as
25 they wanted. But our goal there was defining the broad

1 perspective of benefit package.

2 Senator Kerrey. We are waiting for the majority
3 leader to come, so perhaps there is a little bit of
4 slack in the line here. But as long as the subject has
5 been raised, having voted against and for the Chafee
6 proposal, this was precisely the problem that I had
7 with the Chairman's mark.

8 And so, if what the two Senators are saying is the
9 intent here is for States to use FEHPB as a guideline,
10 but not as a firm standard, then your expectation might
11 come to pass; that States will not have these kinds of
12 deductibles and co-payments that are substantially
13 different in FEHPB and substantially provide a barrier,
14 I think, for the kind of care that everybody is trying
15 to get to children.

16 Senator Chafee. Well, Mr. Chairman, there is
17 still an opportunity to straighten this thing out, if
18 you want. We can go right back and do it right.

19 The Chairman. I know that the majority leader is
20 on his way, but I think what we will do is to start the
21 vote, and we will hold it open until he appears.

22 So I move that we report the bill before us, as
23 modified, to the budget committee.

24 The Clerk will call the roll. Call it slowly.

25 The Clerk. Mr. Chafee?

1 Senator Chafee. Aye.
2 The Clerk. Mr. Grassley?
3 Senator Grassley. Aye.
4 The Clerk. Mr. Hatch?
5 Senator Hatch. Aye.
6 The Clerk. Mr. D'Amato?
7 Senator D'Amato. Aye.
8 The Clerk. Mr. Murkowski?
9 Senator Murkowski. Aye.
10 The Clerk. Mr. Nickles?
11 Senator Nickles. Aye.
12 The Clerk. Mr. Gramm, of Texas?
13 Senator Gramm. Aye.
14 The Clerk. Mr. Lott?
15 MR. LOTT: Aye.
16 The Clerk. Mr. Jeffords?
17 Senator Jeffords: Aye.
18 The Clerk. Mr. Mack?
19 Senator Mack. Aye.
20 The Clerk. Mr. Moynihan?
21 Senator Moynihan. Aye.
22 The Clerk. Mr. Baucus?
23 Senator Baucus. Aye.
24 The Clerk. Mr. Rockefeller?
25 Senator Rockefeller. Aye.

1 The Clerk. Mr. Breaux?

2 Mr. Breaux. Aye.

3 The Clerk. Mr. Conrad?

4 Senator Conrad. Aye.

5 The Clerk. Mr. Graham, of Florida?

6 Senator Graham. Aye.

7 The Clerk. Ms. Moseley-Braun?

8 Senator Moseley-Braun. Aye.

9 The Clerk. Mr. Bryan?

10 Senator Bryan. Aye.

11 The Clerk. Mr. Kerrey?

12 Senator Kerrey. Aye.

13 The Clerk. Mr. Chairman?

14 The Chairman. Aye.

15 [Applause]

16 The Chairman. Let me again thank everyone for
17 their cooperation, and particularly for their favorable
18 vote.

19 Senator Moynihan. Unanimous.

20 Did the majority leader ever vote?

21 The Chairman. We are waiting. We are holding
22 the vote open.

23 Senator Moynihan. All right.

24 [Whereupon, at 1:35 p.m., the hearing was
25 recessed, to be reconvened on Thursday, June 19, 1997,

1 at 10:00 a.m.]
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