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Before the

COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

MARKUP OF S. 951 HEALTH INSURANCE FOR THE UNEMPLOYED

Washington, D.C.

July 13, 1983



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EXECUTIVE SESSION

MARKUP OF S. 951 HEALTH INSURANCE FOR THE UNEMPLOYED

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WEDNESDAY, JULY 13, 1983

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

The Committee met, pursuant to notice, at 2:04 p.m., in Room SD-215, Dirksen Senate Office Building, the Honorable Robert Dole [Chairman of the Committee] presiding.

Present: Senators Dole [presiding], Packwood, Roth, Danforth, Chafee, Heinz, Wallop, Durenberger, Symms, Grassley, Long, Bentsen, Moynihan, Baucus, and Bradley.

Also Present: Mr. DeArment, Mr. Stern, Ms. Burke, Mr. Hoyer, Mr. Belas, Mr. Weiss, and Ms. Olson.

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The Chairman: What is the latest on the abortion amendment?

Mr. DeArment: The amendment stands at eight in favor and ten against, so it would fail.

The Chairman: Let me go over this again. It takes seven to start, is that right?

Mr. DeArment: That is correct, Mr. Chairman.

The Chairman: And then four?

1 Mr. DeArment: Five to continue, eleven to report out.

2 The Chairman: Eleven to report out.

3 [Pause.]

4 The Chairman: We are still short one. We can discuss.

5 As I recall, Sheila, yesterday when we finished we had a
6 couple of open issues. One was the formula, and depending on
7 how that was worked out, there may be an amendment by Senator
8 Baucus or Senator Bradley or Senator Moynihan. Another one
9 has since been raised that instead of the six-month we should
10 have a twelve-month provision that Senator Baucus first
11 suggested. Is that correct?

12 Mr. DeArment: That is correct.

13 Senator Heinz: Why is that, Mr. Chairman?

14 The Chairman: Sheila, why do you not explain why the
15 Labor Department suggested 12 months might be better than the
16 six-month?

17 Ms. Burke: My understanding is that there is some
18 concern about seasonal differences, and Labor seemed to feel
19 that a 12-month moving average would help equal out some of
20 those seasonal shifts. The six-month moving average
21 established in August, for example, would hit some states
22 unusually because of that period of time of the year, so they
23 suggested 12 to help equal that out.

24 Senator Heinz: Will there be any other effect, any other
25 possible effect of such a change?

1 Ms. Burke: No major effects from what we understand from
2 Labor.

3 The Chairman: I do not think there is any objection to
4 changing that to 12 months, since that was the original
5 request by Senator Baucus. Without objection, we will take
6 care of that.

7 Senator Heinz: I have got one other thing I think we
8 ought to get into, which is the Danforth amendment. There is
9 no copy of it available. My staff and I have been trying to
10 find out what it says, to see if it really is as described,
11 but apparently it does not exist.

12 The Chairman: It is coming into existence. Is it
13 available?

14 Ms. Burke: We have not seen it yet either, Senator. We
15 understand Senator Danforth's staff is making copies.

16 Senator Heinz: Mr. Chairman, let me suggest we set aside
17 the vote on the Danforth amendment. What is that?

18 The Chairman: It was just handed to me.

19 Senator Heinz: I do not want a summary, Mr. Chairman. I
20 want to see the amendment.

21 The Chairman: Well, we have the funding to discuss.
22 Maybe Senator Danforth will be here by the time we -- Is
23 there work being done now on drafting the Danforth
24 amendment? This is simply a summary of it.

25 Ms. Burke: Yes, sir. I believe so.

1 Senator Heinz: This is also quite different from the one
2 we had voted on yesterday, Mr. Chairman.

3 The Chairman: We actually never voted yesterday. We
4 suggested that Senator Danforth not pursue it, and we would
5 try to see if we could find some agreement between yesterday
6 afternoon and this afternoon. At that time he was suggesting
7 150 percent of the median income, and I understand now it is
8 100 percent.

9 Ms. Burke: We can ask legislative counsel to provide us
10 with technical language, Senator. We can ask them to do that
11 as soon as possible. We have just received the description,
12 so we can provide it to them, and ask them to draft.

13 The Chairman: What about the other open -- we will wait
14 for Senator Danforth, but on the funding formula --

15 Senator Heinz: Mr. Chairman, may I just ask, have any
16 policy decisions been made as to what is going to be counted
17 as income?

18 Ms. Burke: Not to the best of my knowledge, Senator.

19 Senator Heinz: I wish legislative counsel would look.

20 Ms. Burke: The only materials that we have are those
21 that you have just been handed. The other remaining issue,
22 Senator, had to do with the allocation formula. You should
23 have before you a summary chart that is dated July the 13th,
24 1983. The summary chart compares the allocation as a result
25 of the proposed amendment.

1 The Chairman: Where is the summary chart?

2 Ms. Burke: It should be before you, Senator. It is a
3 long sheet.

4 The Chairman: No. Oh, there it is.

5 Ms. Burke: The summary chart reflects the proposed
6 amendment by the Chairman and the amendment that was
7 suggested by Senator Durenberger yesterday. You will notice
8 to the far left the insured unemployment rates for each state
9 are reflected. Those numbers are a 12-month moving average.
10 The second column indicates the increase over the IUR of the
11 prior two years, the increase over the average for two years
12 per state.

13 The third column is the federal allocation under the
14 Chairman's amendment. The fourth indicates the federal match
15 under the Chairman's amendment, and the third, the required
16 state spending to receive the full federal entitlement or
17 full federal allocated amounts per state.

18 The last three columns are the federal allocation, state
19 match, and percentage, and state match requirements with
20 respect to the amendment suggested by Senator Durenberger.

21 The Chairman: As I understand, you now have the answer
22 to the question raised by Senator Bentsen yesterday?

23 Ms. Burke: I am sorry, Senator?

24 The Chairman: Do you now have the answer to the question
25 raised by Senator Bentsen as to what --

1 Ms. Burke: Yes, sir. There is approximately \$100
2 million difference between the state matching requirements
3 under your amendment and those required under Senator
4 Durenberger's amendment. The total number for your amendment
5 is not included. It was approximately \$179 million in
6 required state funding.

7 Senator Bentsen: That much less effort on the part of
8 the state?

9 Ms. Burke: Approximately \$100 million difference under
10 the Durenberger proposal.

11 The Chairman: As I understand ours, it is about \$180
12 million, and the Durenberger would require about \$82 million
13 state match.

14 Ms. Burke: That is correct, sir.

15 The Chairman: And the federal remains the same, the
16 allocation?

17 Ms. Burke: Yes, sir. Under your proposal and under
18 Senator Durenberger's proposal, the federal totals would
19 remain the same.

20 The Chairman: Again, I am seeking information. As I
21 understand yesterday afternoon and evening staff spent
22 considerable time on the Durenberger proposal, which had not
23 been around very long at that time.

24 Ms. Burke: Yes, sir. We tried to identify more clearly
25 the factors that were taken into consideration in calculating

1 the formula, and how those factors related to the allocations
2 to each of the states. As I indicated yesterday in
3 describing the proposal, the intention of Senator
4 Durenberger's proposal is to reflect in the determination of
5 the state matching rate the personal income of a state and
6 also incorporates the individuals who have been unemployed
7 for a long period of time and those who are currently ensured
8 under employed.

9 So all three factors are considered in this formula.
10 They are weighted nationwide by average, and the allocation
11 also uses those figures, both per capita income in the state,
12 the insured unemployment, volume of insured unemployed, and
13 the long-term unemployed.

14 The Chairman: Also, I just want to pursue -- you
15 indicated earlier this morning that there were some areas
16 where at least there were no answers for it at this point.
17 What areas are those, and are they significant? Should we
18 try to address them now, or at a later time?

19 Ms. Burke: The concerns that we raised this morning
20 after our discussions with the Labor Department are concerns
21 with respect to the weighting of different factors in the
22 formula, whether or not that weighting should take place on a
23 national average or on a per state basis, concerns about the
24 sensitivity of the formula itself, and how reflective it is
25 of a state's capacity to finance a program, and whether or

1 not this formula made more sense perhaps than any other
2 formula.

3 We would agree that including per capita income is indeed
4 a method of estimating or reflecting a state's capacity to
5 finance. We are still unclear as to what the weighting
6 factor should be in the calculation of that formula, but
7 would also agree that the end result, which is a more
8 discrete difference in terms of matching, not the enormous
9 jumps from 80 to 85 to 90, for example, perhaps makes more
10 sense on the part of the states in terms of what they would
11 be responsible for financing.

12 Senator Chafee: Mr. Chairman?

13 The Chairman: Senator Chafee?

14 Senator Chafee: I have some trouble understanding -- I
15 understand the formula, but the results perplex me. Take
16 Connecticut, which I think we all know is a high individual
17 income state. Oddly enough, Connecticut goes up nearly 20
18 points using the factor, using the formula that involves
19 personal income. You would think it would work the opposite
20 way. Is there any explanation why that would be so?

21 Ms. Burke: Senator, I cannot answer you on an individual
22 state basis why any particular effect would take place. I
23 can only indicate that the formula, as I understand it, is
24 designed to reflect the personal income in the context of the
25 total population in the state which is unemployed.

1 So I would imagine in part it reflects a high rate of
2 unemployment per total population, but I honestly cannot
3 answer you that in the context of Connecticut per se. I
4 honestly do not know. But that is what, as I understand it,
5 the formula is designed to reflect, all portions of the
6 formula.

7 Senator Chafee: I can see Alaska going down. I am
8 surprised it does not go down more, because the individual
9 income in Alaska is probably the highest in the country, the
10 average individual income.

11 Senator Heinz: Well, Mr. Chairman, it seems to me one of
12 the reasons that the matches go up is that they all, all the
13 ones at the bottom go up, and all the ones at the top come
14 down, and there is compression in the middle. The lowest
15 match under the Durenberger amendment is 75 percent, as I
16 cast my eye down the page, and only one or two or three under
17 80 percent. There are a good number at 65 percent under the
18 Dole amendment, and prior to the Dole amendment, there were a
19 good number at zero.

20 I think Senator Chafee's first question is a darn good
21 question, though, which is why does Connecticut with high per
22 capita income come out so much better.

23 Mr. Durenberger: It seems to me there are probably two
24 reasons, and I cannot be precise about one versus seven and
25 so forth, but the two reasons are that -- the first one is

1 that rather than using this what I have been calling the
2 notching effect, where you took your percentage of IUR and
3 that put you into the 50 percent or 60 percent category, and
4 then somebody else was two percentage points up and he got
5 put in the 75 category, and we had these big jumps by
6 percentage of IUR.

7 We flipped the calculation around and factored the total
8 number of targeted unemployed in each state into the personal
9 income, and out of that then came a percentage which, as John
10 Heinz has just pointed out, is much more compressed.

11 You find when you combine the personal incomes and the
12 targeted unemployed that you never should have been down as
13 low as 60 percent in some areas to begin with, and people who
14 were in the 80 percent bracket probably should have been in
15 the 87 or 89 percent bracket, but they got shoved into the 80
16 percent bracket because they could not make the 95 percent
17 bracket. So some combination of those two factors is the
18 reason.

19 Senator Chafee: Mr. Chairman, changing the subject and
20 going to the open enrollment period, as we have the
21 legislation now, there is an exemption for employers with
22 fewer than 25 employees. I suspect that that probably
23 eliminates a very substantial number of employees in the
24 country. Is that right, Rich, some 30 percent?

25 Mr. Belas: That is correct, Senator. It is somewhere

1 between 25 and 33 percent.

2 Senator Chafee: Well, as I understand the situation,
3 having the open enrollment period, it is not that
4 complicated, and it seems to me if we are going to do this we
5 ought to provide for the open enrollment period for those
6 with a lower cutoff number of employees, say ten or something
7 like that. You would pick up a lot more employees that way,
8 would you not? Where would you be then?

9 Mr. Belas: Using the best figures we have from the
10 Bureau of Labor Statistics, you would cover -- exempting only
11 employers with fewer than ten employees, you would cover
12 about 85 percent of the employee population as opposed to 75
13 to 65 percent under the current Committee version.

14 Senator Chafee: Well, Mr. Chairman, we are trying to
15 balance off in all of these things the harassment or problems
16 that are associated with a small employer and we are not
17 trying in any way to discourage him from being involved in
18 these health plans to start with, and we do not want him
19 throwing up his hands and saying this is one more difficulty,
20 but as I understand the open enrollment, it is not that
21 complicated, and does not make such difficulty.

22 I propose, Mr. Chairman, that we lower it to have the
23 cutoff point at ten.

24 The Chairman: I think the concern was, and I have asked
25 Mr. Belas about it -- I am glad you raised the question.

1 What we are trying to avoid is causing small businessmen or
2 small businesswomen any additional federal government
3 intervention. They are not required to cover anyone in the
4 program in any event. They are not required to go out and
5 buy group coverage, are they?

6 Mr. Belas: That is correct. There is no federal law
7 that mandates group health coverage under a private plan.

8 Senator Chafee: Now, I suppose that if the employer was
9 providing a plan that only covered, for example, only covered
10 the employee, that is what his plan was. Now, if we had an
11 open enrollment, and they wanted to come in and get -- would
12 they be entitled to the broader coverage, or only if the
13 employer was prepared to pay for it?

14 Mr. Belas: It would depend on what the plan generally
15 provided.

16 Senator Chafee: Well, let us take my proposal, my
17 situation.

18 Mr. Belas: If you were an employee pay all plan to start
19 with, it would remain an employee pay all plan. Even though
20 the employee had the option to change from employee only
21 coverage to family coverage, it would not cause the employer
22 to pay any portion of that premium.

23 Senator Chafee: Well, let us take the situation where
24 the employer paid entirely for the plan, but the plan was
25 only for the employee, that is, the individual. Is that a

1 possibility?

2 Mr. Belas: That is a possibility, but as I understand
3 it, it is very unlikely.

4 Senator Chafee: I suppose that would be unlikely. By
5 dropping it down to where proposed, are we constituting and
6 adding an undue burden to the employer?

7 Mr. Belas: I do not believe so, Senator. Basically,
8 most of the larger plans, as we understand it, have open
9 enrollment periods for this type of a situation, and most
10 plans, as you know, have open enrollment periods. If the
11 employee marries and is adding just one more in the open
12 enrollment period, as I understand it, that adds a negligible
13 increase in the premium for the employer.

14 Senator Chafee: I propose that, Mr. Chairman.

15 The Chairman: Would there be any objection to changing
16 it from 25 to ten? It seems to me that Senator Chafee makes
17 a good point. If we are going to cover people who are out of
18 work, we probably should change that provision. We had a 25
19 exemption. Anybody with 25, or fewer than 25 employees would
20 not be affected by the legislation. We are told that would
21 mean that we would not cover how many? What percent?

22 Mr. Belas: It would exempt from the potential for
23 coverage 25 to 35 percent of the employee population.

24 The Chairman: There is no requirement that the employer
25 buy the coverage. The only requirement is that if it is

1 present, that they have this open enrollment. Is that
2 correct?

3 Mr. Belas: That is correct.

4 The Chairman: That is little, if any, additional cost.

5 Mr. Belas: That is also correct.

6 The Chairman: Without objection, then, we will make that
7 change.

8 Senator Bentsen: Mr. Chairman?

9 The Chairman: Senator Bentsen.

10 Senator Bentsen: Mr. Chairman, I have an amendment I
11 would like to propose at this time, and that is to make
12 Medicaid available to first time pregnancies. That is
13 something that is not addressed here. It costs some \$49
14 million.

15 What you run into is in many instances you have no
16 eligibility unless they qualify for AFDC, having already had
17 a child, but the lack of prenatal care for first time
18 pregnancies is one that has resulted in a substantial
19 increase in all kinds of problems for children who have low
20 birth weight, children who are born who have ten times as
21 much incidence of mental defects as those you have of normal
22 birth. I think these are funds that would be very wisely
23 invested, and I would strongly urge the Committee to do so.

24 We had a similar action taken on the floor of the Senate
25 in the past, and that is not now in this piece of

1 legislation. It is my understanding that the House does
2 provide for that. I would urge that we do so.

3 The Chairman: Sidney, do you have any information on
4 that?

5 Mr. Olson: No, I do not. That would be a Medicaid
6 change, Senator.

7 Ms. Burke: Under current law, Senator Dole, the states
8 have the option under the Medicaid program of including women
9 for coverage who are in their first pregnancy, who have not
10 yet become eligible for AFDC. The proposal, as I understand
11 it, is to mandate the states provide for eligibility for
12 individuals in these circumstances. They are currently
13 permitted to do so if they choose, but they are not required
14 to do so. This would mandate the coverage of those women
15 under Medicaid.

16 Senator Bentsen: That is right. Let me cite some of the
17 organizations that feel strongly about this particular
18 amendment and are in support of it. National Conference of
19 Catholic Charities, National Committee on Adoption, March of
20 Dimes, the American Citizens Concerned With Life, Planned
21 Parenthood, Presbyterian Church, Association for Retarded
22 Citizens, American Academy of Pediatrics, the American
23 College of Obstetrics and Gynecology.

24 I became particularly interested in this because of some
25 of the work I saw done down in my home town of Houston. I

1 have a son who has become very involved in this regard, and
2 it is absolutely staggering some of the results that you see
3 from lack of prenatal care for mothers, and what you have
4 seen in the way of handicapped children, malformed children,
5 children with mental defects, because proper care was not
6 exercised at that time.

7 The Chairman: I am not certain I have any disagreement
8 with the amendment. I am wondering -- What I had hoped we
9 might do is report out this bill, health care for the
10 unemployed, with the savings provisions which would fund that
11 program, and then take up our responsibility under
12 reconciliation. Would it make any difference whether you
13 added it there or here?

14 Senator Bentsen: Yes, it would make a difference. I
15 guess we could put it under -- under reconciliation?

16 The Chairman: You could do that under reconciliation,
17 right? It might even be on a faster track.

18 Senator Bentsen: All right.

19 The Chairman: I am willing to do it.

20 Senator Bentsen: All right, if the Chairman is willing.

21 The Chairman: Can we do that?

22 Mr. DeArment: Yes.

23 The Chairman: We are going to go into that after we
24 finish this bill today, and we hope to finish that next
25 Tuesday and Wednesday.

1 Ms. Burke: As I understand it, the proposal is \$49
2 million in the first year, Senator, and has approximately
3 \$200 million over three years. Is that correct?

4 Senator Bentsen: That is correct.

5 The Chairman: Is that all right?

6 Senator Bentsen: Yes, that is fine.

7 The Chairman: Senator Danforth, are you prepared at this
8 point to discuss your amendment?

9 Senator Danforth: Mr. Chairman, I am. There have been a
10 variety of discussions at the staff level, and I know among
11 Senators as well, on the means testing proposal that I
12 brought up yesterday afternoon.

13 I do not know whether anything has been circulated or
14 not, but I think that most of the discussion, as I hope is
15 pointed out in this document, is along the following lines,
16 that as a requirement for participation in the program and
17 receipt of federal funds, each state would be required to
18 impose a means test for individual eligibility.

19 The means test would be measured by the states' median
20 income figure. In no case would an individual or his or her
21 immediate family be eligible for coverage by the state
22 program if his or her individual or family income exceeds 100
23 percent of the state median income level.

24 Now, that 100 percent is a change from yesterday, where
25 the idea was 150 percent, but in talking to a number of

1 Senators, they thought that was too high. States may impose
2 stricter requirements with respect to this median income
3 test. States would have broad authority and discretion with
4 respect to the initial determination and verification of this
5 eligibility requirement.

6 In other words, the idea of the amendment would be to set
7 a standard for the states to allow them to deviate from that
8 standard by making it stricter, but to allow them also with
9 broad authority with respect to making the determination and
10 verifying eligibility requirements, and that the most recent
11 survey figures for state median income would be used,
12 adjusted and updated to reflect current wage levels.

13 The Chairman: I know Senator Heinz had a question.

14 Senator Bradley: Mr. Chairman, could I ask one question?

15 The Chairman: Oh, sure.

16 Senator Bradley: Does this mean if you file two separate
17 returns, that is counted as -- does this apply only if the
18 family files a joint return, or does the total have to mean
19 the total of two separate returns as well as a joint return?
20 How do we determine that?

21 Senator Danforth: How do you determine what is income
22 and what is not income?

23 Senator Bradley: What is whatever the figure is for your
24 state?

25 Senator Danforth: Well, the thought is that the

1 determination would be made in exactly the same way as it is
2 made for social security, and I think Sheila or Rod could
3 describe that.

4 Mr. DeArment: The tax base in terms of determining
5 income is essentially the computation for income tax purposes
6 with a portion of the tax exempt income.

7 Senator Bradley: If a husband and wife file separate
8 returns, is that considered as one family? Is there a
9 difference in treating a separate return and a joint return
10 for the purposes of this amendment?

11 Mr. DeArment: I think that would be Senator Danforth's
12 intention. The question is, when you have joint returns
13 versus single returns, you would look at, if it is a joint
14 return, you would apply the --

15 Senator Danforth: How is it done for social security,
16 Rod? How is that done in the social security case?

17 Mr. DeArment: If you have a joint return, under social
18 security, there are two limitations. One is for those who
19 have filed single returns, and a second limitation for those
20 who file joint returns.

21 Senator Danforth: As far as the policy is concerned, I
22 think that the objective is total family income as opposed to
23 any particular individual within a family.

24 Senator Bradley: But if I heard what he said, he said in
25 social security there are different numbers, and what we are

1 looking at here is only one set of numbers, so what does that
2 set of numbers apply to, the joint return or the single
3 return?

4 Mr. DeArment: You can do it based on median family
5 income, and that would be the standard, and just use one
6 number. Or you could adjust it by family size. There are a
7 number of options.

8 Senator Bradley: I am just trying to understand it. I
9 just got this in my hand ten seconds ago. I understand that
10 what you have done is set a goal of median family income and
11 means tested and said you are not eligible if your family
12 income is above a certain amount.

13 My question is, how do you determine what family income
14 is? Do you do it by the tax returns? If so, does it make a
15 difference if you file joint or separate? And as I heard
16 your answer, if it is to parallel social security, it is a
17 different number.

18 Mr. DeArment: Clearly, you could do it with the tax
19 return, and you can do it with one number based on the median
20 income as you look at the tax returns, and you look at the
21 tax returns of all those family members that are involved.

22 Senator Bradley: Then as I heard you it is not then like
23 social security.

24 Mr. DeArment: That is correct, if you did it that way.

25 Senator Bradley: What is the intention?

1 Senator Danforth: The intention is median family income.

2 Senator Bradley: As determined by? I mean, it is a
3 different determination if you did it by joint versus
4 separate filings. I mean, are we going to be encouraging
5 people who are now filing jointly to file separately if they
6 are unemployed for a certain period of time, so that they
7 will be eligible for half benefits? That is the basic
8 question.

9 Mr. DeArment: I cannot imagine that in terms of the
10 penalty for doing that, you would not be filing as a single,
11 you would be filing separate returns as a joint, as a married
12 person. If you have a couple that has or would be filing not
13 a joint return but married, filing separately, and there is
14 quite a penalty for doing that generally in terms of income
15 tax consequences.

16 Senator Danforth: Randy, what can you tell us in this
17 regard? Do you have any suggestions?

18 Mr. Weiss: This proposal appears to be similar to a test
19 that used to be applied under Title XX of the Social Security
20 Act, in which there was a family income limit that was
21 applied to determine whether families were eligible for
22 social services that were provided under that, and I believe
23 that was left generally to the states to determine the exact
24 administration of it.

25 I think generally it was based on a percentage of states'

1 median incomes, and many of the states adjusted it by family
2 size so that larger families had a higher limit than smaller
3 families, but generally the notion was family income, is what
4 was used.

5 The Chairman: Is that gross income, or adjusted income?

6 Mr. Weiss: I think it was similar to the concept of
7 adjusted gross income, but it was not done through the income
8 tax system. It was done by the office that was administering
9 that program.

10 Senator Bradley: So is there something that simply
11 states what the median family income is?

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1 The Chairman: We have a vote on now. I think staff
2 needs to clarify this by the time we get back, because I have
3 a number of questions on it. I wonder if we might dispose of
4 the amendment of Senator Bentsen. I understand now if we
5 include it in this bill we will not have the problem with the
6 budget reconciliation that we might have if we wait.

7 Mr. DeArment: If we wait and put it in the budget
8 reconciliation, we are told that the Budget Committee, while
9 they would permit additional spending under Medicare -- in
10 Medicaid, would score it differently, so maybe we ought to
11 put it in this bill.

12 Senator Bentsen: I would like to go ahead and move that
13 now.

14 The Chairman: Is there any objection? If not, the
15 amendment will be agreed to.

16 Senator Chafee: Mr. Chairman, just one question on the
17 Danforth thing we might be thinking of. I support the
18 amendment, but I can see problems. One of them is, if you
19 come in with your income tax return, that shows what you had
20 last year, and maybe that is when you were working, so you
21 have got a pretty big income, but this year you have no
22 income, and so your situation is dramatically reversed.

23 The Chairman: Let us have the staff work on that with
24 diligence in the next ten minutes.

25 [Whereupon, a brief recess was taken.]

1 The Chairman: Randy, do you want to come up here, too?
2 We are going to be getting into this. And maybe the Labor
3 Department person, too. Jim?

4 When we left to vote, we were discussing the Danforth
5 amendment and how it could be implemented without -- this is
6 an emergency program. We are trying to help unemployed
7 workers as far as some health coverage is concerned. We are
8 not seeking to get into some sophisticated means testing
9 formula, program, whatever.

10 We are aware of the fact, having visited with the
11 Governors' Association, that many states will means test a
12 program in any event, and what Senator Danforth proposes to
13 do is to in effect mandate means testing without some rigid
14 formula, and that was sort of where we left off.

15 How can we, if in fact there are votes for the Danforth
16 amendment, how can we implement the Danforth amendment
17 without creating mountains of paperwork and frustrating the
18 intent of the program for a long, drawn-out verification
19 process? You know, you might wait so long the program would
20 be expired before it was verified. Have you got that worked
21 out?

22 Mr. DeArment: Yes. What was proposed, or what we worked
23 out, was, the system would work as follows. The federal
24 government, the Secretary would issue tables that would show
25 100 percent of median income by state, by family size. It

1 would be then the state's responsibility as to how to
2 administer this means test, but some states could do it
3 however they choose.

4 They could do it by simple declaration, sort of a
5 self-certification system, or do a more elaborate system if
6 they chose, but the state would have the flexibility to do
7 that, and it could be done, I think, on a fairly simple and
8 relatively small cost basis.

9 The Chairman: I understand the tables we have before us
10 are 1979, so the median income now is probably what, 10 to 15
11 percent higher?

12 Mr. DeArment: I think approximately 15 percent higher
13 than the table that was distributed.

14 The Chairman: Now, Jim, you were suggesting that the
15 problem might be, since the program would be administered
16 through UC, it might create an additional burden on the
17 program. Is that correct?

18 Mr. Van Erden: Yes, sir.

19 The Chairman: Depending on what the states decided to
20 do, I would assume.

21 Mr. Van Erden: Depending on what the state is doing.
22 The real problem is -- If you do it on a self-certification
23 basis, it is not much of a problem. The real problem would
24 be whether we had to do a follow-up to determine the
25 certification.

1 Senator Danforth: Mr. Chairman, first of all, the last
2 thing on my mind is to set into motion some Rube Goldberg
3 type of verification, certification process. What I am
4 trying to get at is the fact that here we are at a time of
5 massive deficits. On top of those deficits we are creating a
6 brand new program, and it seems to me that that program, if
7 we are going to create such a program, should benefit those
8 who are most in need, not just everyone and his brother who
9 is unemployed.

10 I mean, supposing some guy who is, say, 24 years old, and
11 he is living at home with his very well-to-do parents, and he
12 has a job, and he loses his job. Should he be a beneficiary
13 under this program? It is my view that the answer to that
14 should be no.

15 So, I would hope that we would not get ourselves involved
16 in some highly-elaborate paper process. I would think that
17 we could provide that the states are required to have a means
18 test, but at the same time not set out the mechanics by which
19 they implement the means test. Leave them up to them.

20 I think that most people, if they came through the door,
21 and you showed them a chart, and said, is your family income
22 over such and such an amount, they would say yes or no, and
23 it does not bother me with a program this size if there are
24 some people who are going to, and I mean maybe there will be
25 some people who would cheat on it, but I think that the basic

1 position is not some very detailed, highly technical policing
2 system, but rather whether we can target this sort of program
3 to those who are most in need.

4 Senator Moynihan: Could I just ask a question? I do not
5 think a 24-year-old person's family income would include the
6 income of his parents. In any of our social programs, an
7 adult's family income is what he and his direct family earn.
8 Is that not right?

9 Mr. DeArment: That is correct.

10 Senator Moynihan: So it would not --

11 Mr. DeArment: That happened to be one of the more
12 problematic examples. Maybe a better example would be --

13 Senator Moynihan: I mean, you could not define the
14 parents' income as part of the family income of that
15 individual.

16 Senator Danforth: Let me change the example to somebody
17 who is married to a wealthy woman.

18 Senator Moynihan: Right, that would be -- well, I just
19 wanted to ask this. You are talking about a means test which
20 would cut off at twice the median family income?

21 Senator Danforth: No, at median family income.

22 Senator Moynihan: Oh, exceeds 100 percent. And it would
23 cut off at half, at the median income. That means half the
24 people would not be -- well, no, we do not know that. If you
25 are unemployed, presumably. Do we have any idea what

1 proportion of the unemployed this would affect?

2 The Chairman: Do you have any figures on that?

3 Mr. Van Erden: No, I could provide them.

4 Senator Danforth: Yesterday we were thinking about 150
5 percent. That was 21 to 25 percent.

6 Senator Heinz: Mr. Chairman, excuse me. That number was
7 simply the number of people who had incomes over 150
8 percent. It was not the number of the unemployed people, as
9 I recollect.

10 Senator Moynihan: I wonder, Mr. Chairman. I do not know
11 what your scheduling is, but the Labor Department can give
12 you estimates of this kind. I wonder if we should not have
13 that.

14 Mr. Van Erden: Mr. Chairman, we have a sample from a
15 number of states where we do collect family income, where we
16 could make some estimates on the particular question at
17 hand. Our problem normally if we look at the nation is, we
18 do not collect family income for claimants. We only collect
19 the wage data for the individual claimant. But we could make
20 some estimates on that if you would like.

21 Senator Moynihan: I would certainly hope we might get
22 such estimates before we make a decision.

23 Senator Durenberger: Mr. Chairman?

24 The Chairman: Senator Durenberger?

25 Senator Durenberger: Let me go back. I think I have

1 done this privately with a couple of people. I see the
2 concern on the part of the Senator from Missouri, and you
3 know, we all can agree with the concern, and I think we all
4 agree that we do not want to create another welfare program
5 here. We are not dealing with a welfare population. But
6 just to make it understood that we are not creating a federal
7 program with \$1.8 billion, I have discovered that not
8 everybody is quite clear on what this program is going to
9 cost.

10 My staff tells me that the first year cost of this
11 program, assuming some average set of benefits, not all of
12 the options, but some average set of benefits, the total cost
13 around the country would be \$3.2 billion. Now, of that cost,
14 only \$750 million in that year is coming from us. That is
15 what we are debating here.

16 Another possibly \$1 billion could come, if all of the
17 states required in the sale of the policy in effect to the
18 unemployed, that 8 percent of the unemployment compensation
19 check be used as a contribution to premium. That would raise
20 another \$1 billion, and then probably another \$150 million if
21 they use the option that we adopted yesterday on other cost
22 sharing like co-payments, and that still leaves you \$1.3
23 billion which the states are going to have to raise just in
24 one year to make this program work.

25 So, I agree with you, Mr. Chairman. In the conversations

1 we have had with the Governors, all of the emphasis is
2 already there to get the states to do some form of means
3 testing. We are trying to reinforce it, but I am very
4 skittish about trying to come up with any kind of a formula.
5 We are going to have to take it out of the unemployment comp
6 office and go over to the welfare office if we are going to
7 do it, and I think we have been demonstrating that here.

8 And we also have the problem, I think, this whole family
9 problem that we were just addressing, and the issue of what
10 is a family becomes very important particularly in health
11 insurance.

12 I mean, the difference between one kid and ten kids is
13 much more important when it comes to health insurance than it
14 may be when it comes to some other factor of support. So I
15 would hope that unless we can come up with something that is
16 somewhat open-ended and does not require an awful lot of
17 bureaucracy, that we leave the impetus on means testing.

18 Senator Danforth: The whole intention is and has been
19 from the beginning that it be extremely open-ended, that it
20 be extremely unbureaucratic, that we in the Congress provide
21 maximum flexibility to state governments to set their own
22 standards, rather, that we limit ourselves to instructing the
23 states that they come up with a means test which is no more
24 than 100 percent of median family income, give them maximum
25 discretion not only to determine how to put that kind of

1 program in place, but also to actually administer once it is
2 in place.

3 So, I would have in mind really no instructions to the
4 state other than they do in fact put in place a means test.
5 I think really the question is not one of detail, not one of
6 mechanics, because it has never been my intention to set out
7 such mechanics, but rather as a matter of principle whether
8 or not this should be a means tested program.

9 Senator Durenberger: Can we drop the median income test?

10 Senator Wallop: What would you substitute for it?

11 Senator Durenberger: I do not know.

12 Senator Wallop: How about if you dropped it at least to
13 the extent that the program was already being paid for by the
14 jobs bill?

15 Senator Moynihan: Mr. Chairman?

16 The Chairman: Senator Wallop?

17 Senator Wallop: I was just referring to the article in
18 the paper this morning. A good deal of what we are doing is
19 being done. There would be no point in funding something
20 that is already funded, so if it existed at one level,
21 perhaps we would not want to fund it at another, if we can
22 find a distinction.

23 I do not know if you noticed the article in the Metro
24 Section, but under the jobs bill, the health benefits to
25 unemployed people are being paid for around the country in a

1 series of clinics that are established for just the very
2 purpose that we are duplicating here.

3 The Chairman: Are you aware of that?

4 Ms. Burke: The only thing we are aware of is the
5 provision which allows the states to deduct from the
6 unemployment compensation check an amount which could be used
7 as a premium to purchase or assist in the provision of
8 private health care, but we are not aware of specific funds
9 available under the jobs bill for clinics or things of that
10 nature.

11 Senator Wallop: We will have the article here in about
12 30 seconds.

13 The Chairman: Senator Moynihan?

14 Senator Moynihan: Mr. Chairman, two points. If we want
15 to provide the states the maximum flexibility, which clearly
16 we do, my impression is that the citizens are -- that the
17 bill as drafted leaves this matter to the discretion of the
18 states, and we are indeed providing maximum flexibility.

19 Secondly, I know the Senator from Missouri is using a
20 shorthand, but we are dealing here with a social insurance
21 program. An awards means test is what a social insurance
22 program is meant to avoid. That is what insurance means, as
23 against charity and as against welfare and unemployment.

24 Senator Danforth: I am glad that that is the point that
25 has been raised by Senator Moynihan, because I really think

1 that that is the issue before us. I mean, we just got
2 endlessly bogged down in how the mechanics would be worked
3 out, which is something that I do not particularly care one
4 way or the other, and that is what I do want to leave open
5 here, but I do think that the question of principle is
6 precisely the one you have raised, namely, whether or not
7 this is a program which is to be open to all comers, or
8 instead whether it is going to be one which is targeted to
9 people who are below the median income.

10 It is my view that it should be one that is targeted
11 rather than one that is open-ended, and the reason I feel
12 that way is that I really think that we have a serious
13 problem with the budget, with the deficit, and that if we are
14 going to create yet more programs, we ought to -- we had a
15 debate yesterday on whether or not this is in fact an
16 entitlement program. I think if it is not it is pretty darn
17 close to one.

18 If we are creating a new program, should we create one
19 which is just open to all comers, or should we really limit
20 the new programs to those people who are most in need? And
21 it is my view that we should limit them, the new programs to
22 those who are most in need.

23 The Chairman: Randy, do you have some information that
24 might help our focus on the area?

25 Mr. Weiss: There is some information that is available

1 from income tax returns because families above a certain
2 income level are required to include in their adjusted gross
3 incomes unemployment benefits. In 1981, there were
4 approximately 8.4 million tax returns that reported receiving
5 unemployment benefits. Of those, approximately 2.3 million
6 were required to pay tax on those benefits.

7 The requirement for paying tax on those benefits was that
8 total income had to be greater than \$25,000 for a married
9 couple and \$20,000 for a single individual, which is about
10 the same range that is being discussed. So, I think that is
11 some indication of the frequency, the number of families that
12 might be affected by this requirement.

13 The Chairman: About 25 percent?

14 Mr. Weiss: Well, it is probably somewhat less than that,
15 because the eight million is only those people who actually
16 reported receiving unemployment comp, and there were probably
17 some families that did not file tax returns, because their
18 income was too low and also received unemployment
19 compensation.

20 Mr. Van Erden: We are showing for that same period 9.6
21 million people received at least one unemployment check. So
22 he is reporting 8.4 million returns and 9.6 million first
23 payments for individuals. So that would reduce it by about
24 10 percent, at least. So instead of 25 percent, you are
25 talking maybe 20 percent or slightly less than that.

1 The Chairman: Any other questions?

2 Senator Heinz: Mr. Chairman, I would just like to be
3 sure that if there is an unusual state situation, that there
4 is waiver authority here. I talked this over with Senator
5 Danforth. I think he would agree that we need to be sure,
6 particularly because we have not seen what the legislation
7 actually is going to look like, but we do not want to
8 inadvertently lock ourselves into an absolutely impossible
9 situation, so I would just like to see that there be a
10 limited waiver authority here for either individuals or state
11 programs that for some reason might --

12 The Chairman: Any objection to modifying your amendment?

13 Senator Danforth: I do not at all, Mr. Chairman. I think
14 it is a good idea. I think it is consistent with the
15 flexibility which has been intended in this. Yesterday
16 Senator Heinz raised the question of, well, what happens in,
17 say, a major disaster, Johnstown or something, and there are
18 all kinds of people who are involved, and a clinic is opened,
19 and they want to for some reason use a very simple system. I
20 do not think that that is at all inconsistent with the intent
21 of this, and that is fine.

22 The Chairman: Sheila, would you summarize the
23 amendment? We do not have the technical language, but as it
24 has been presented by Senator Danforth.

25 Ms. Burke: The amendment as I understand it would

1 provide for a means test for those applying for benefits, and
2 would require each state wishing to participate in the
3 program to design a means test program of their choice, but
4 under no circumstances could it be less restrictive than
5 limiting income to those who have incomes that do not exceed
6 100 percent of the state median income level.

7 Senator Danforth: Less unrestrictive, I would say.

8 Ms. Burke: It must at least provide for that. They
9 could if they chose to be more restrictive.

10 Senator Heinz: Now, one thing I would like to be clear
11 on, does this mean a state has to have a system which is 100
12 percent verifiable, or do they have to make best efforts?
13 What is the standard of performance that we expect of the
14 state here?

15 Mr. DeArment: The standard -- I mean, the state would
16 have discretion to administer that means test. They could do
17 it either by simple declaration, without verification, or if
18 they chose to, require greater documentation.

19 Senator Heinz: Let me give you a kind of hypothetical.
20 For instance, suppose a state designed a program that assured
21 that the average income of the people being served by the
22 program was 85 percent of median income, but because they
23 allowed for special situations, there might be 5 percent of
24 the total number of people whose incomes were, say, 100 to
25 110 percent of median income. Would that be permitted?

1 Senator Danforth: Let me answer that. I think, first of
2 all, because of the waiver authority which Senator Heinz
3 offered as an amendment, and because of the fact that the
4 states design their own programs and police their own
5 programs, the answer is that it would be permitted, and
6 again, the effort here is not to try to provide as a matter
7 of absolute certainty that some standard is as a matter of
8 fact met. Rather, it is to insist that the states do put in
9 place a means test in which recipients who have incomes of
10 100 percent of the state median or less are provided for.

11 Senator Heinz: That is a good answer. It satisfies me.
12 May I just ask either you, Jack, or Sheila, one other
13 question? What is the period over which the income stream is
14 going to be measured, or is that left to the discretion of
15 the states?

16 Ms. Burke: The discretion of the states.

17 Senator Heinz: Thank you.

18 The Chairman: Well, do you want to vote on the amendment?

19 Senator Danforth: Yes.

20 Mr. DeArment: Mr. Packwood.

21 [No response.]

22 Mr. DeArment: Mr. Roth.

23 [No response.] m

24 Mr. DeArment: Mr. Danforth.

25 Senator Danforth: Aye.

1 Mr. DeArment: Mr. Chafee.
2 Senator Chafee: Aye.
3 Mr. DeArment: Mr. Heinz.
4 Senator Heinz: Aye.
5 Mr. DeArment: Mr. Wallop.
6 Senator Wallop: Aye.
7 Mr. DeArment: Mr. Durenberger.
8 Senator Durenberger: No.
9 Mr. DeArment: Mr. Armstrong.
10 [No response.]
11 Mr. DeArment: Mr. Symms.
12 The Chairman: Aye.
13 Mr. DeArment: Mr. Grassley.
14 Senator Grassley: Aye.
15 Mr. DeArment: Mr. Long.
16 Senator Long: No.
17 Mr. DeArment: Mr. Bentsen.
18 [No response.]
19 Mr. DeArment: Mr. Matsunaga.
20 [No response.]
21 Mr. DeArment: Mr. Moynihan.
22 Senator Moynihan: No.
23 Mr. DeArment: Mr. Baucus.
24 Senator Baucus: No.
25 Mr. DeArment: Mr. Boren.

1 [No response.]

2 Mr. DeArment: Mr. Bradley.

3 [No response.]

4 Mr. DeArment: Mr. Mitchell.

5 [No response.]

6 Mr. DeArment: Mr. Pryor.

7 [No response.]

8 Mr. DeArment: Mr. Chairman.

9 The Chairman: Aye.

10 On this vote, the ayes are --

11 Mr. DeArment: Seven, and the nays are four.

12 The Chairman: The nays are four. The amendment is
13 agreed to. The absentees will have an opportunity to record
14 their votes --

15 Mr. DeArment: Up to the time of roll call.

16 The Chairman: Right, reporting the bill.

17 Senator Wallop: Mr. Chairman?

18 The Chairman: Senator Wallop.

19 Senator Wallop: Could I ask, in line with the article
20 which I gave you and a copy of which I have given to Sheila,
21 if there is not something the Committee should address itself
22 to in the way of free health care or clinics funded under the
23 jobs bill along with underwritten health insurance? I am not
24 exactly sure what it would be, but it just does not seem to
25 me that we ought to hit it on both sides. That is more

1 public moneys than either the states or the government can
2 afford at the same time.

3 Ms. Burke: My understanding, Senator Wallop, is that the
4 money that is described in the article is money provided to
5 the Public Health Service, which in turn has targeted it to a
6 certain number of clinics throughout the country. Under the
7 legislation before us, the states are free to utilize
8 whatever sources of care they might choose to with respect to
9 providing benefits.

10 For example, they could contract with an HMO. They could
11 contract for clinic services. So indeed you could utilize
12 many of the same type of operations in terms of the delivery
13 of the benefits, so there is no inconsistency in that sense.
14 It is up to the state to target the dollars towards both the
15 beneficiaries and towards the providers of care.

16 Senator Wallop: I understand that, but it just seems to
17 me that in some way, and I guess I will ruminate as to what
18 way that would be, that we would not want to provide federal
19 moneys on the one side for free or low-cost health care and
20 federal-state moneys on the other side to underwrite that,
21 unless we made some specific purpose finding in there that it
22 would be funded by that means and not from the public health
23 service. I do not know what it would be.

24 The Chairman: I wonder if we might, assuming we report
25 the bill out this afternoon, we might look at this more

1 fully. I am not certain what we might do, or if it is
2 something that we do. If there is something we need to do to
3 tighten up, we might do that on the floor.

4 Ms. Burke: The one thing you might want to keep in mind
5 is that there are individuals who will not, because of the
6 targeting of this legislation, will not be eligible, and who
7 might otherwise seek care, people who are unemployed, and
8 have been for a very long period of time, and who do not
9 qualify because of the linkage with the unemployment
10 compensation system required in this legislation, but we can
11 certainly find more information out about the jobs bill.

12 Senator Wallop: I understand that. I do not want it
13 taken away from somebody who does not have the benefit. I am
14 just trying to avoid a double benefit and not remove the
15 benefit from somebody who needs it.

16 The Chairman: The only other issue that I know of
17 outstanding, plus how we pay for it, which would be of some
18 substance, is the formula. Again, I am not certain
19 whether -- we had the proposal by Senator Durenberger offered
20 yesterday afternoon. It has been available now for at least
21 24 hours or more to all members of the Committee, either in
22 person or through members of their staff.

23 As far as the Chairman is concerned, I have no strong fix
24 either way, but I am wondering if it might not be appropriate
25 to go ahead and adopt the formula that we first had before us

1 yesterday, and then if we are satisfied between now and the
2 time this comes to the floor that the Durenberger approach is
3 a better one, I would certainly be willing to entertain a
4 substitute at that time.

5 Senator Moynihan: Mr. Chairman?

6 The Chairman: Senator Moynihan?

7 Senator Moynihan: Mr. Chairman, could I urge that we not
8 proceed in that manner, and that we do adopt Senator
9 Durenberger's formula, or a comparable formula, having one
10 particular point in mind, which seems to me central to the
11 matter of definition of who we are concerned with and what
12 states we are concerned with, and that is that the formula
13 that is in the draft, and correct me, Rob, if I am wrong, is
14 based fundamentally on the insured unemployment rate. Is
15 that right, Sheila?

16 Ms. Burke: That is correct, Senator. It has two primary
17 components, the insured unemployment population and the
18 number of individuals who have been unemployed for 27 weeks
19 or longer, so there are two measures, one the IUR or that
20 volume of individuals, and the other the long-term
21 unemployed.

22 Senator Moynihan: But just the very fact that they do
23 tend to offset a grant, that the insured unemployment rate
24 can mean one of two things, and those are opposite things.
25 It can mean that you have very little unemployment, or it

1 means you have a very great deal of unemployment, and the
2 states with the worst unemployment situations will typically
3 have very low insured unemployment rates, because they will
4 have many persons whose benefits have expired.

5 It seems to me that since it could mean such opposite
6 things, that I think that is what Senator Durenberger was
7 concerned about.

8 Senator Durenberger: Mr. Chairman, maybe by way of
9 recommendation -- this is self-serving -- why do we not adopt
10 my amendment as part of the bill, and then come in with yours
11 as a potential alternative?

12 [General laughter.]

13 The Chairman: I really do not care. I did not know that
14 was mine until I read it on the sheet.

15 [General laughter.]

16 The Chairman: What we are trying to find is the fairest
17 formula, and as Senator Danforth pointed out yesterday, we
18 ought to first look and see how we do, how our states do, and
19 we decide if we do very well it is fair, or if we do better.

20 But I understood there were some areas in the staff
21 discussion last night that they could not find answers to.
22 Now, maybe they are not serious enough to be concerned about,
23 or maybe they can be addressed between now and the time we
24 get to the floor. I do not really care. Whichever the
25 Committee wishes to do.

1 Senator Durenberger: For the sake of something, I will
2 move my amendment then, with the understanding that if I
3 think the Senator from Montana had some concerns, and perhaps
4 others have --

5 Senator Moynihan: Would the Senator yield here? I have
6 a concern from the point of view of a state such as New
7 York. Your formula involves personal income as an indicator
8 of need, and the higher the income, the lower the federal
9 matching share. Well, that has an automatic bias against
10 states in my part of the country.

11 As we know, the Hill-Burton Act used the square of income
12 differential. I have actually proposed square root and did
13 not get anywhere, but tried. And so I mean there are good
14 arguments against that, but the compelling argument is, what
15 is the meaning of IUR?

16 It seems to me you can be so misleading in this regard
17 that it seems to me your formula is the better one.

18 Senator Baucus: Mr. Chairman?

19 The Chairman: Senator Baucus?

20 Senator Baucus: Mr. Chairman, I have several problems
21 with the Durenberger amendment. The most important is, we
22 get hurt. Beyond that, I have a conceptual problem, and that
23 is that it is -- the personal income portion of it is is not,
24 as I understand it, based on per capita income, but is based
25 on total personal income in a state. And if I am wrong, I

1 would like to know that.

2 Senator Durenberger: Total personal income divided by
3 the number of people in the state, which I guess is per
4 capita income. Is that right?

5 Senator Baucus: Well, as I look at the formula that has
6 been passed out, it is complicated.

7 Senator Durenberger: Yes, I know.

8 Senator Baucus: Which I do not understand. It says
9 personal income in the numerator and then has personal
10 income, U.S. personal income, in the denominator.

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1 I do not see anything about per capita in here -- in
2 states like Minnesota with higher personal income total than
3 Rocky Mountain states, particularly my state of Montana.

4 Frankly, I think since it is so complicated and since we
5 do not fully understand it, and further, because the staff,
6 as I understand it, has not yet come back with the answers to
7 questions that have been asked, I think it is best to bring
8 the Durenberger proposal, if it is brought up, sometime
9 between now and the floor, but not at this time. I do not
10 think this is the proper vehicle to be working from.

11 Senator Durenberger: Well, my problem is I hate to adopt
12 one that is clearly discriminatory. The reason I objected to
13 the Dole kind of proposal is this long-term unemployment
14 versus more short-term unemployment. I looked at a state
15 like Georgia in which under the so-called Dole amendment
16 which the Chairman disowns Georgia would have to pay \$6
17 million in order to get \$11 million, but California would
18 only have to pay \$4 million to get \$84 million.

19 That happens to be because California apparently has a
20 lot of relatively short term -- a lot of unemployment, but it
21 is not long term sort of hard core unemployment. So by using
22 this IUR system and factoring that into whatever capacity
23 formula you can come up with, I think we have at least tried
24 to address the problems that come about because of long-term
25 unemployment which ought to be our major concern here.

1 Senator Baucus: I just might add -- and I do not know if
2 it is important or not -- but only three states do better in
3 the federal share and there are many states represented by
4 this Committee that do worse, 17 to 3.

5 More important is the concept, particularly the concept
6 that is so complicated it is so complicated it is not yet
7 fully understood.

8 Senator Long: Could I just ask this point about the
9 Durenberger amendment?

10 I am concerned about the fact that states have to put up
11 more money. Maybe Mr. Stern can help me with this. As I
12 understand it, this would require various states to put up
13 more money, but that does not mean that the federal
14 government, if it puts up more money or less, they put up the
15 same, is that correct?

16 Mr. Stern: There are two separate questions. One is how
17 you distribute the \$750 million among the states.

18 Senator Long: That is not changed, is that right?

19 Mr. Stern: That is not the question that I mentioned to
20 you before. What I was talking about is how much are states
21 required to put up in order to get the federal money, and if
22 you compare the Durenberger amendment with the Dole
23 amendment, under the Durenberger amendment, states with
24 relatively high unemployment have to put up quite a bit more
25 money than they do under the Dole amendment. However you

1 decide to split up the \$750 million is a different question,
2 and I think the distribution is fairly similar between the
3 two.

4 But the amount that states have to put up, if they have
5 relatively high unemployment, is quite a bit more if you look
6 at a state like Louisiana or Montana or states that have 5,
7 6, and 7 percent insured unemployment. I guess Pennsylvania
8 is in that category, too.

9 Senator Long: Here are states that have to put up more
10 money: Alaska, Arkansas, California, Idaho, Illinois,
11 Louisiana, Michigan, Mississippi, Ohio, Oregon, Pennsylvania,
12 Rhode Island and Washington. I assume that there are some
13 others.

14 Is that correct?

15 Mr. Stern: That is correct. I counted something like 26
16 states and jurisdictions.

17 Senator Long: So 26 states have to put up more money.

18 Mr. Stern: The distribution of the \$750 million is about
19 the same between the two. The amount that states have to put
20 up is quite different.

21 Senator Long: If I understand correctly, the Durenberger
22 amendment does not change the amount of federal money that we
23 would get, is that correct?

24 Mr. Stern: The difference is between \$10.6 million and
25 \$10.9 million. So it is quite a small difference.

1 Senator Long: Little difference there.

2 Mr. Stern: Very little difference in how much federal
3 money is available, but Louisiana would have to put up \$1.3
4 million instead of \$600,000.

5 Senator Long: Here is the situation in Louisiana. It is
6 just one example. Since last year Louisiana has fallen on
7 bad times. Unemployment has gone up drastically. State
8 revenues have gone down drastically. The governor, a
9 Republican governor, by the way, is doing the best he can
10 with the situation. He is trying to handle the situation,
11 but he has got a big deficit facing him and he does not have
12 the money.

13 He just got through vetoing the item cutting off all
14 funds for the Office of the Lieutenant Governor of
15 Louisiana. So that that fellow will have no employees at all
16 in his Office of the Lieutenant Governor because the state is
17 in a tight fiscal situation. So they do not have the money.

18 And so, when you increase the amount that the state has
19 got to put up, that just is increasing something that they do
20 not have.

21 Now, we are talking about the states with a high
22 unemployment. Those figure to be the states that have a
23 situation parallel to Louisiana's present situation where we
24 are in trouble from a fiscal point of view because when you
25 have high unemployment you have low state revenues; your

1 state revenues go down.

2 You know, you have got to help these people who are out
3 of work, and you have got less money to help them with
4 because you have got more people unemployed. So it creates a
5 real problem for those that have it.

6 Now, it creates problems for the government.

7 Incidentally, a Republican governor running for
8 re-election is not going to be helped a bit by this. He is
9 going to have a tough time. He has a tough enough time the
10 way it is now. Where is he going to get the money? He does
11 not have it, and I do not know where he is going to get it.

12 And the same thing is true about the others. I assume
13 that they would have problems because these are states that
14 because of high unemployment have low revenues.

15 Senator Baucus: Mr. Chairman? Mr. Chairman?

16 Senator Heinz: Sheila, one mathematical question. Under
17 the Dole amendment, what are the aggregate figures for the
18 state match and for the federal allocation? You have it for
19 the Durenberger amendment. You do not have them added up?

20 Ms. Burke: The federal allocation under both proposals
21 is approximately \$750 million. There is some rounding. The
22 state match requirement under the Dole amendment totals to
23 \$151 million. So there is a difference between the Dole
24 amendment which requires the states to expend \$151 million
25 and the Durenberger amendment which requires the states to

1 spend \$82 million.

2 The Chairman: The states put up less under the
3 Durenberger amendment, is that correct?

4 Ms. Burke: That is correct, Senator.

5 The Chairman: By what, about \$100 million?

6 Ms. Burke: A little less than \$100 million. We
7 recalculated the Dole amendment using a 12 month moving
8 average, and it would require \$151 million on the part of the
9 states. That is between and \$82 million for Senator
10 Durenberger's.

11 Senator Long: Would Louisiana put up less? They would
12 have to put up more. I just want to get it straight.

13 Ms. Burke: They put up more under the Durenberger
14 proposal, Senator.

15 Senator Burke: Here is the problem I have. It is a
16 conceptual problem, maybe the same in Louisiana as it is in
17 Montana. I am not sure. But the problem is this: Montana
18 has above average unemployment. Montana has below average
19 personal income. If you compare the Durenberger with the
20 other that we have here, the fact of the matter is that
21 Montana has to double its contribution and also it is a lower
22 federal payment.

23 It seems to me that if a state has below average personal
24 income and above average unemployment, that it is not right
25 that that state comparatively, by adopting Durenberger, has

1 to double its contribution and also get a lower federal
2 share. Something is wrong if that is the effect of the
3 Durenberger proposal. It seems to me if the state has higher
4 than average personal income, then I could see the argument
5 that that state has to contribute more.

6 Senator Durenberger: Mr. Chairman, would you yield?

7 Senator Baucus: Sure.

8 Senator Durenberger: We keep losing sight of the fact
9 that under the Dole amendment you can only be at 80 or you
10 can only be at 65 or you can only be at 95. Now, when
11 Montana employs about 15 more people, you drop down to 5
12 percent IUR, you are going to drop from the 95 percent
13 matching category to the 80 percent matching category, and
14 very quickly you might get down to the 65 percent category,
15 and you are going to have lost all that benefit that you seek
16 out of that amendment.

17 That will happen to a lot of these. That is the problem
18 with Alaska and so forth. Some of those people came in at 95
19 because they could not come in at 79 or 80. They were
20 probably at 81 or 82, and they got 95, and that is the
21 problem with Louisiana, too.

22 Senator Long: Well, the point is, though, if we get more
23 jobs and have less people out of work, we will be in a better
24 position to put some dough up. That is what the idea is.

25 Senator Moynihan: May I say something? May I?

1 The Chairman: Yes.

2 Senator Moynihan: That IUR rate is so arbitrary and it
3 could mean such different things. What happens is, Russell,
4 you just have 20 percent unemployment and nobody with a job
5 for two years and you will be down at the 50 percent rate in
6 no time because your IUR will disappear on you.

7 Mr. Chairman, I want to put a proposition, just for the
8 comity of this committee and what we take to the floor. I do
9 not think we have worked out this formula.

10 Here is a situation where we all represent our states as
11 we should, but there are two states in the Union that have a
12 rough equivalence in population, California and New York, and
13 there are many similarities in their economies. Under the
14 formula we are talking about, the state match for California,
15 which is the largest state, would be \$4 million, and the
16 state match for New York would be \$25 million.

17 The Chairman: That is the Durenberger proposal.

18 Senator Moynihan: No, sir -- well, it says --

19 The Chairman: Oh, that is my proposal, yes -- the White
20 House input there.

21 [General laughter.]

22 Senator Moynihan: I just do not think we are ready to
23 make a decision that has got such disparate outcomes.

24 Can we not have another day? You know, we can do this on
25 Tuesday. We are not going to get the bill --

1 The Chairman: The only reason we would like to report it
2 out today, very honestly, the House hopes to take action
3 tomorrow on a bill, and we would like them to understand that
4 there is support for this concept in the Senate. We thought
5 if we could report out it might be of some assistance to
6 those in the House who have the bill on the floor tomorrow.

7 Senator Moynihan: Then could we not have some
8 suggestions from the staff about a relatively neutral
9 formula, I mean, based on population.

10 [General laughter.]

11 Senator Moynihan: You will not go very wrong. We are
12 not such a different country, quite seriously.

13 The Chairman: I think Senator Durenberger pointed out
14 there were 194 different formulas, and certainly I do not
15 know which is the better formula. I mean, I am prepared to
16 accept either one or a third one if someone has another one.

17 Senator Heinz: Mr. Chairman, may I?

18 I am not yet at the point where, for example, I can
19 support Senator Durenberger's amendment, although I think in
20 principle what he is trying to do is preferable to the
21 notching that we have here. I think it should be possible
22 for Pat and Dave and myself and others to work out a formula,
23 and let's just vote on either the Dole formula or the
24 Durenberger formula and make a decision and get on with the
25 mark-up.

1 Senator Moynihan: How do you mean --

2 Senator Durenberger: Why do we not go back to the
3 original language, leave both the amendments out, and then we
4 will be forced to deal with one of the two amendments.

5 Can we do that, just the original formula, Sheila?

6 Ms. Burke: Sorry, Senator, I did not hear you.

7 Senator Durenberger: Can we report the bill with the
8 original language in it rather than selecting between the
9 Dole and the Durenberger?

10 Ms. Burke: Yes, sir, we could report that out, and
11 between now and the time that the legislation would go to the
12 floor --

13 The Chairman: What does that formula do, just in case?

14 Senator Heinz: Mr. Chairman, I really do not think we
15 ought to drop back that far.

16 [General laughter.]

17 Senator Heinz: It is one thing to punt, it is another to
18 drop kick.

19 The Chairman: That was a well thought out formula, as I
20 recall.

21 Senator Moynihan: Sheila, speak.

22 Ms. Burke: The original formula is very similar to the
23 modified proposal. It takes into account the insured
24 unemployment rate and the long term unemployed. The major
25 differences are, one, the requirements upon the states. The

1 original formula only allowed the states with IURs of 4
2 percent or more to participate in the program, had a matching
3 rate that went from 80 percent to 95 percent --

4 Senator Heinz: Below 4 percent IUR was zero federal
5 match?

6 Ms. Burke: That is correct, to participate in the
7 program.

8 Senator Heinz: You would not like it, Pat.

9 Senator Moynihan: We happen to be above 4 percent right
10 now. But there is a notch here. It is sort of a sudden
11 death. If you get a new dam project, why suddenly --

12 The Chairman: I wonder if we might do this, report out
13 the original, not the original but the second proposal, and
14 do as Senator Heinz suggested. Those who have some concern,
15 obviously Senator Durenberger, Senator Long, Senator
16 Moynihan, Senator Baucus and others, try to come up with some
17 substitute by the time it gets to the Senate floor, which I
18 assume would be in about two weeks.

19 Senator Moynihan: Could I ask, Mr. Chairman, is it
20 necessary to have a formula in what we report out?

21 Senator Heinz: Could I maybe say something, Mr.
22 Chairman, that might help the Senator from New York?

23 Any formula that we develop is going to have one
24 essential characteristic that will make it attractive to us
25 Senators, and the essential characteristic is that it will

1 require in the aggregate less state match. Dave
2 Durenberger's amendment requires less state match by \$70
3 million, about half of what the Dole amendment does.

4 We would have to really botch the job in order not to
5 find a method of denotching that did not make that attractive
6 to at least a majority of the Senate.

7 So I do not think there is any trap for the Senators from
8 New York here. I think the chips are stacked in favor of a
9 Durenberger-Moynihan-Heinz-Baucus-Long -- I got those orders
10 reversed -- amendment.

11 The Chairman: Without objection, then, we will agree to
12 that.

13 Senator Heinz: It is all right with me, Mr. Chairman.

14 Senator Moynihan: Are we agreed that we will have a
15 consultative process, and if we can, the committee will bring
16 a committee amendment to the floor?

17 The Chairman: That is right.

18 Ms. Burke: Could I clarify which of the formulas?

19 [General laughter.]

20 The Chairman: We have just agreed to the Dole
21 amendment.

22 Senator Heinz: The Dole amendment.

23 The Chairman: The Dole-Reagan amendment has just been
24 agreed to.

25 [General laughter.]

1 Senator Moynihan: There goes New York. I thought you
2 had that election in the bag.

3 Senator Dole: Now as I understand it, that only leaves
4 the final point, which is how do we pay for all of this, and
5 I have suggested a couple of items that we might at least try
6 out on the committee at this time.

7 Ms. Burke: Senator, before you you have a document that
8 is entitled "Additional Budget Options," and I believe in the
9 upper corner or at the top it says "Additional Budget
10 Options," and it should be before you, or will be.

11 [Pause]

12 The Chairman: Could I indicate while we are preparing to
13 discuss the options, I think it is well understood that in
14 addition to spending reduction of revenues in an amount equal
15 to the cost of this program, there would be the additional
16 responsibility of the committee to meet the reconciliation
17 instructions which that \$1.7 billion, and I might add that it
18 is not contrary to anything in the budget to exceed that \$1.7
19 billion over three years. It is my hope that we can exceed
20 that substantially.

21 Senator Moynihan: Mr. Chairman, I wonder if before we
22 proceed there is some question about Sheila's description of
23 this formula as including both the IUR and long term
24 unemployed.

25 Ms. Burke: Yes, Senator. The allocation formula under

1 the Dole proposal is made up of two factors, the long term
2 unemployed and the IUR.

3 Senator Moynihan: Equally weighted?

4 Ms. Burke: They are equally weighted.

5 Senator Moynihan: And that is the allocation?

6 Ms. Burke: That is correct.

7 Senator Moynihan: Mr. Stern has a different reading of
8 it, a different document.

9 Mr. Stern: I am sorry, Senator. That is true of the
10 column that is called federal allocation. The column,
11 however, that talks about the state share did not involve
12 long term unemployment.

13 Ms. Burke: Under the original Dole proposal, the
14 matching rate is determined by the insured unemployment
15 rate.

16 Senator Moynihan: Thank you.

17 The Chairman: Senator Bentsen did not come back, but I
18 want to make certain that we had an understanding that his
19 amendment would be, a two year amendment would be the same as
20 the length of this proposal. I do not believe he has any
21 objection to that.

22 Is that satisfactory?

23 I understand it is satisfactory. The record should so
24 reflect.

25 Senator Moynihan: Mr. Chairman, may I just ask a

1 question?

2 Are you through there?

3 The Chairman: Yes.

4 Senator Moynihan: It is the case that Puerto Rico is
5 involved?

6 The Chairman: We want to clarify that, too, for Senator
7 Moynihan. Puerto Rico is included, is that correct?

8 Ms. Burke: That is correct, Senator.

9 Senator Moynihan: Thank you.

10 The Chairman: Now, there may be a number of options that
11 members would like to discuss. I am certain that they are
12 all controversial, but if in fact we want this program, it
13 would seem to me we must try to fund it in some way.
14 Otherwise it will never happen.

15 We have gone over the list a number of times, and we have
16 a couple of recommendations. There may be others, but why do
17 you not outline the two, Sheila, we discussed earlier.

18 Ms. Burke: The first item before you in that package is
19 a proposal described as modify Part B premium. Under current
20 law, the Secretary of Health and Human Services is required
21 to calculate each year the increase in premiums for those who
22 participate in Part B of Medicare, which is the voluntary
23 portion of the program.

24 The premium rates have traditionally, or at the beginning
25 of the program, reflected 50 percent of the cost of the

1 program. Changes made subsequent to that time limited the
2 increase of the premiums to the increase in the Social
3 Security cash benefits program.

4 As the result of a provision contained in the Tax Equity
5 and Fiscal Responsibility Act of 1982, the limit on the
6 increase in premiums was temporarily suspended for two
7 one-year periods, beginning on July 1 of 1983. During those
8 periods, enrollee premiums would have been allowed to
9 increase to amounts necessary to represent an income or cost
10 of the program of about 25 percent. That limitation that had
11 been previously in effect would then again have applied with
12 respect to periods beginning in 1985.

13 As a result of the Social Security amendments of 1983,
14 the effective date of that provision was postponed until
15 January 1, 1984, to reflect the change in the update with
16 respect to the Social Security cash benefit program. As a
17 result, as of January 1, 1984, the premium will reflect 25
18 percent of the cost of the program. That will then take
19 place for two years.

20 This proposal would provide that beginning in 1985, the
21 limitation on premium increases would effectively be
22 repealed, and as a result, the proportion of the program
23 costs to be met by premiums would be permanently set at 25
24 percent of the program's cost.

25 The savings as a result of that proposal are \$359

1 million.

2 The Chairman: There was another recommendation. Well,
3 there were a number of recommendations.

4 Ms. Burke: The second proposal, which is Item 2 in the
5 package, relates to a freeze on the reasonable charges for
6 physician services. Under present law, Medicare pays for
7 physician services on the basis of Medicare-determined
8 reasonable charge. Those charges are the lesser of either a
9 physician's actual charges, the customary charges made by an
10 individual physician for a specific service, or the
11 prevailing level of charge in the area charged by other
12 physicians for a specific service.

13 The amounts recognized by Medicare as customary
14 prevailing charges are updated annually, and this takes place
15 in July of each year. That update is designed to reflect the
16 increase in the costs of doing business with respect to a
17 physician and are defined as an economic index or described
18 as an economic index which reflect those changes.

19 The proposal -- there are a number of proposals before
20 you. The first proposal would suggest that for all physician
21 services, would provide for a one-year freeze that would
22 effectively limit both the prevailing and the customary
23 charges of physicians.

24 The second proposal would provide for a freeze of
25 in-patient physician services only on both the customary and

1 prevailing charges.

2 The third proposal would provide for a freeze of
3 in-patient services only with respect to the prevailings.

4 Let me, if I may, correct a misstatement on my part on
5 option one. Option one would limit only the prevailing fees
6 of physicians, which is to suggest only those physicians who
7 are at the ceiling with respect to Medicare payments, and
8 that would take place for one year.

9 The savings as a result of the first option, which would
10 be to freeze all prevailing fees, is \$1.3 billion over three
11 years.

12 The savings as a result of option two, which would freeze
13 both the prevailing and customary charges for in-patient
14 services, is \$1.4 billion.

15 And the savings as a result of option three, which would
16 simply put a limit on the prevailing fees for in-patient
17 services, is \$800 million.

18 We would suggest consideration of option one, which puts
19 a limit on prevailing fees for all physicians, for a savings
20 of \$1.3 billion.

21 The Chairman: Now, if that were adopted along with the
22 first recommendation, would it satisfy the needs of the
23 program?

24 Ms. Burke: That would provide for approximately \$1.8
25 billion. It is a little less than that.

1 Senator Grassley: The cost of the program is \$1.8
2 billion as well?

3 Ms. Burke: That is correct, Senator. This would provide
4 for \$1.73, \$1.74 billion. The \$1.8 billion is the cost of
5 the health benefits for the unemployed and does not include
6 the Bentsen amendment.

7 The Chairman: We are having some discussion about the
8 Bentsen amendment. We may have to reconsider that. I
9 thought they had agreed on a two year. I understand that is
10 not the case. We do not want it loaded up with another
11 costly amendment, so we may have to try to eliminate it from
12 this.

13 Are there any discussions of these two? There are a
14 number of other proposals. We might want to just run through
15 some of the others.

16 Senator Heinz: Do they make these look better?

17 The Chairman: They make these look better and better the
18 more you go through the others.

19 [General laughter.]

20 Senator Heinz: I would agree, Mr. Chairman.

21 The Chairman: The other, harder ones will follow after
22 this because we need to move into the reconciliation.

23 Senator Heinz: Mr. Chairman, I do not know. I do not
24 feel it is necessary to ask Sheila to go through this. We
25 are going to have to go through them all for the purposes of

1 reconciliation, unless there are other members who feel
2 strongly about it.

3 Senator Baucus: Mr. Chairman?

4 The Chairman: Senator Baucus.

5 Senator Baucus: Mr. Chairman, as I understand it,
6 reconciliation suggests this committee cut over three years
7 in Medicare and Medicaid about \$1.7 billion. As I further
8 understand what is happening here, in an attempt to finance
9 unemployment health insurance, the suggestion is to make
10 roughly \$1.74 billion worth of Medicare cuts.

11 Now, if we have reconciliation which we have to address
12 tomorrow in addition to making this \$1.7 billion in Medicare
13 cuts, the question that comes to my mind is are we going to
14 make further Medicare cuts tomorrow, and if we are, those
15 cuts will be in excess of what the budget reconciliation
16 suggestion is, and that means that in order to finance
17 unemployment health insurance, we are in the position of the
18 horns of a dilemma in the tradeoff between the unemployed and
19 senior citizens. I do not think that is a position we want
20 to be in.

21 It seems to me if we are going to agree to these cuts
22 here, we should agree also here today to no more Medicare
23 cuts because the figure of \$1.7 billion is what the
24 reconciliation has suggested to this committee. It is what
25 the full Senate has agreed to in adopting the conference

1 report on the budget. The Senate has spoken on this issue
2 and suggested that \$1.7 billion is enough for three years in
3 Medicare cuts.

4 I just frankly think that it is wrong for us to finance
5 this unemployment health insurance program on the backs of
6 senior citizens if it is the intention of this committee to
7 make another \$1.7 billion or \$1.8 billion in cuts on top of
8 this \$1.7 billion, \$1.8 billion when we address the
9 reconciliation tomorrow.

10 So my suggestion is that we either do not finance it this
11 way at all, find some other way to finance unemployment
12 health insurance, so that when we take up a tax bill in
13 September because this unemployment health insurance program
14 can wait, or if we do finance it with Medicare, we agree here
15 and now that we are not going to make any more reconciliation
16 cuts in Medicare, because I do not think it is fair, on the
17 one hand, and second, it is doubling, if we go to \$1.7
18 billion, what the full Senate agreed to in adopting the
19 conference report on the Budget.

20 Senator Heinz: Would the Senate yield?

21 Senator Baucus: Sure.

22 Senator Heinz: Under normal circumstances, what the
23 Senator says might very well be true, that it would somehow
24 be an unattractive tradeoff to help finance a means tested
25 program with a non-means tested program, Medicare. That does

1 not personally offend me. Medicare is not a means tested
2 program. But I think there is an additional and to my way of
3 thinking somewhat compelling reason to look for Medicare
4 savings, and that is the financial condition of the Medicare
5 trust fund.

6 We have had report after report, including one from the
7 General Accounting Office, which says that come 1987, we have
8 a Medicare crisis in financing that is every bit as big as
9 the Social Security crisis that we faced. Now, it does not
10 seem too early to this Senator to kill two birds with one
11 stone, maybe three.

12 One, find, if you will, a veto-proof method of financing
13 the health insurance bill; number two, find a method of
14 meeting our reconciliation target of \$1.7 billion; and three,
15 start saving some money in the Medicare program now so that
16 the problem is not as big as it will otherwise be come the
17 time we eventually get around to acting on it, which, if
18 Social Security is any guide, is at the eleventh hour, which
19 is the toughest time to do it.

20 Let me make one point of emphasis on how we pay for this.

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1 Senator Heinz: I think we are all pretty realistic about
2 the fact that it is going to be very tough to get a tax bill
3 that meets reconciliation. I do not know if there are any
4 votes on the Committee for one, but I do not know if there
5 are any votes on the Ways and Means Committee to send us one,
6 either.

7 About the only way we have to pay for this legislation is
8 through reductions in spending, and I think that if we do not
9 do it that way we will have a real problem ever getting this
10 health insurance for the unemployed enacted.

11 Senator Baucus: If I might respond to the Senator, first
12 of all, as the Senator well knows, the reasons we have such
13 high Medicare bills in our country and the reasons the bills
14 are increasing are due primarily to increases in health care
15 costs generally in the country. They go to technologies,
16 INEMARS replacing CAT-scans, and so on and so forth. So we
17 are not really getting to the heart of the problem here.

18 But second and more important, when the full Senate and
19 the Congress met this issue before, that is adopting the
20 budget, we went through all this and at that time we decided
21 and the Senate decided the \$1.7 billion was enough in cuts in
22 adopting the budget resolution.

23 Since then, the financial position of the Hospital
24 Insurance Trust Fund is much better. The most recent reports
25 that have come out indicate that the trust fund, the Hospital

1 Insurance Trust Fund, even though it is in some difficulty in
2 the future, now is not due to go belly-up, if it is at all,
3 until at least 1990.

4 When we first considered this problem it was in more
5 jeopardy, it was in greater difficulty. It was 1987, 1988,
6 and now the figures are, particularly with the adoption of
7 prospective reimbursement and better economy, et cetera, the
8 financial position of the trust fund is much better than it
9 was then.

10 But more important, what we are talking about here is
11 Part B cuts. So these cuts here do not affect the Hospital
12 Insurance Trust Fund, anyway. So it seems to me that, for a
13 whole host of reasons, that it is not fair and appropriate at
14 this time to try to finance health insurance unemployment
15 benefits on the backs of senior citizens above and beyond
16 financing it on the backs of senior citizens in the amount
17 that this Committee before the full Senate, before the House
18 Commerce Committee, has agreed to.

19 I just do not think it is proper to finance health
20 insurance premiums at this time. We can always address this
21 later. We can come back after the August recess, we can
22 figure out some other way to finance it. But I do not think
23 we want to finance it now, particularly since the Hospital
24 Insurance Trust Fund is in better shape than it was, on the
25 backs of senior citizens.

1 Senator Heinz: Just a point of clarification. I would
2 not want anyone to think that the package we are talking
3 about is largely Part B. It is about \$400 million Part B and
4 the rest is Part A, which is the fund, as the Senator knows.

5 Secondly, it would be this Senator's intention not to
6 look for a lot of additional money in Part B. I would think
7 it could be found fairly easily in Part A.

8 Senator Bradley: Would the Senator yield for just a
9 point of clarification?

10 Senator Baucus: Yes.

11 Senator Bradley: I would like to ask, Senator Heinz. I
12 just did not quite understand what he said.

13 You said that you would like to pay for the health
14 insurance for the unemployed by cuts in Medicare,
15 essentially?

16 Senator Heinz: In spending.

17 Senator Bradley: Is that in addition to what we have to
18 do in reconciliation, or is it your viewpoint that if we deal
19 with the health care for the unemployed that that would also
20 be included in reconciliation?

21 Senator Heinz: I do not think we can get away with
22 having our actions on this count twice. So we would have to
23 do about another \$1.8 billion, not necessarily by Medicare,
24 by the way; all the programs in our jurisdiction, that would
25 come up with that \$1.8 billion over three years. That is

1 about \$600 million a year.

2 I guess this Committee has jurisdiction over \$250 billion
3 to \$300 billion worth of programs a year, and I just reject
4 the notion we cannot do that.

5 Senator Bradley: Is that correct, that we can -- on
6 reconciliation we just have to come up with --

7 The Chairman: \$1.7 billion.

8 Senator Bradley: -- \$1.7 billion, but we can do that in
9 someplace other than Medicare?

10 Ms. Burke: The position the Committee has taken
11 traditionally is that we would within our jurisdiction
12 achieve savings in any of those areas and it could be a
13 combination. We have been reconciled for \$1.7 billion in
14 Medicare. We could choose to take it in Medicare, and
15 traditionally we have followed that pattern.

16 My understanding is that we have also held open to the
17 Committee the option to raise the revenues or the spending in
18 whatever fashion they choose.

19 Senator Bradley: Well, could you tell me, what is the
20 CBO baseline projection for revenue sharing?

21 Ms. Burke: No, Senator, I do not have that information.
22 We can get it immediately.

23 [Pause.]

24 Ms. Burke: In the material just provided to me from the
25 Congressional Budget Office, the baseline in 1984 budget

1 authority for general revenue sharing is \$4.8 billion. The
2 outlay is \$4.7 billion. The 1985 estimate of budget
3 authority, \$5.0 billion; the outlay is \$4.9 billion; budget
4 authority in 1986, \$5.2 billion, with outlays of \$5.2
5 billion.

6 Senator Bradley: So that over that three-year period we
7 would be picking up, if we did freeze general revenue sharing
8 at \$4.6 billion, we would be picking up about \$1.3 billion in
9 budget savings.

10 Now, is it the Chairman's view that we could apply those
11 to reconciliation, or Senator Heinz?

12 Senator Heinz: I cannot speak for the Chairman, but as I
13 understand the rules we operate under we could.

14 Senator Bradley: We could do that?

15 Senator Heinz: Unless the Chairman has a different point
16 of view, that would be my understanding.

17 Let me give you one other example. I am working towards
18 introduction of a pacemaker bill. I think Senator Baucus may
19 have been present at the Aging Committee hearings where we
20 found out that, of the \$2 billion a year that the Government
21 spends through Medicare on pacemakers, we waste maybe as much
22 as half of it.

23 We have a bill that we will be introducing, which we
24 anticipate -- I hope to make it a part of reconciliation, by
25 the way -- that could save, just in that one measure alone,

1 \$200 million to \$300 million a year.

2 Senator Bradley: Well, could I make a suggestion to the
3 Chairman? Instead of going through all these Medicare cuts
4 to pay for health insurance for the unemployed, why can we
5 not just credit the general revenue sharing saving that we
6 have by freezing at \$4.6 billion?

7 The Committee has already frozen it at \$4.6 billion. It
8 is a saving over three years of \$1.3 billion. That is about
9 what this program is going to cost over a three-year period.

10 Senator Heinz: That is a reasonable idea, if the Senator
11 can guarantee the House of Representatives will be reasonable
12 in conference.

13 The Chairman: The only problem is, you know, that I
14 think we are demonstrating how ridiculous the budget process
15 is. We have got deficits of \$700 billion staring us in the
16 face and we are saying we cannot cut, we cannot change our
17 priorities any more on this Committee, we cannot cut anything
18 that is already in law to make room for a program to help
19 people in need, we cannot reduce the growth of spending
20 anywhere. And I do not think that is the case.

21 I have sort of given up on the budget process. We are
22 trying to reduce the deficits, and I would hope that we can
23 at least pay for this program. If we cannot, I must say, I
24 do not intend to report it out of the Committee. If we
25 cannot finance the program, then we just cannot finance the

1 program.

2 I think it is something we ought to pass and should pass
3 before the recess. We have been told there is a great need
4 for this program. The House plans to act tomorrow. It would
5 be my hope that we could act as early as next week, go to
6 conference and resolve the differences, and have a program in
7 place before August 5th.

8 But one thing I think has been made clear is that the
9 President will sign the bill, as I understand it, if in fact
10 somehow we can pay for it. There are a lot of things. You
11 can do it with taxes, you can do it with reductions in
12 spending.

13 I have just read the June report of the trustees on
14 Medicare and Social Security. I do not find those rosy
15 reports that the Senator from Montana referred to. I do not
16 find the precise language.

17 I was told if we did not do something by '88 we would
18 either have to raise taxes, what, by 30 percent or 43
19 percent, and reduce benefits by 30 percent. We are told in
20 this report, and the conclusion is:

21 "The Board recommends that Congress study carefully the
22 Advisory Council's recommendations that take further action
23 to curtail rapid growth in the hospital insurance program
24 which has occurred in recent years and which is anticipated
25 in the future."

1 It would seem to me that we have got a responsibility,
2 unless we are going to appoint another commission and let the
3 commission take over our responsibility, and I hope we do not
4 have to do that.

5 Senator Baucus: Mr. Chairman, on that point, you
6 mentioned hospital costs. I wonder if I might ask Sheila.
7 My understanding is that still these cuts are all Part B
8 cuts, are not Part A cuts, which would not address the
9 hospital insurance fund issue anyway.

10 The Chairman: We will in the reconciliation.

11 Senator Baucus: But this point here will not, and,
12 second, I do not know what the data is you read, but I had
13 read in the press -- I could be wrong --

14 The Chairman: June '83, last week, two weeks ago.

15 Senator Baucus: I read a recent report that it was now
16 1990, not 1988.

17 The Chairman: It all depends on the assumptions.

18 Senator Bradley: Mr. Chairman, I do not see that what I
19 suggested is inconsistent at all with what you have just
20 said. The deficit that is projected at \$200 billion includes
21 spending \$1.3 billion more on revenue sharing.

22 The Chairman: If we do not do that, it is going to be
23 \$198.7 billion.

24 Senator Bradley: This Committee has frozen revenue
25 sharing, so we have in the Committee obtained a budget saving

1 of \$1.3 billion before we even get to Medicare. So we can
2 apply that to the health insurance benefits for the
3 unemployed.

4 Senator Heinz: Mr. Chairman, may I comment on that?

5 Senator Bradley, I think that is ingenious. There is
6 only one problem. The President, when this bill gets to him,
7 is not going to see it that way, because revenue sharing is
8 going to be a part of this bill. And it seems to me that
9 whether your idea is reasonable or unreasonable -- I am not
10 making that judgment about it -- that it is one sure way to
11 make sure this does not become law.

12 I have got a lot of people in my state that need this
13 help. You may be right, but I guarantee you that what you
14 are saying is we are going to report this bill out, it will
15 not have anything in it that says here is how we are going to
16 pay for it, and the President will not have any reason not to
17 veto it. And I do not want to be a part of that strategy.

18 Senator Bradley: Okay. There is more than one way to
19 cut the sausage. Let us say we did the Medicare cuts for
20 this, but then we apply the general revenue sharing savings
21 to reconciliation.

22 The Chairman: That is an argument you can make at that
23 time.

24 Senator Heinz: I am willing to keep an open mind on
25 that.

1 Senator Bradley: Well, that is good news.

2 [Laughter.]

3 The Chairman: It is not without precedent, right?

4 [Laughter.]

5 The Chairman: I think we have a very tight program. In
6 my view it is one that will be helpful to a lot of people. I
7 have had many of my colleagues come to me and say, boy, you
8 are really opening a can of worms here, this is going to be a
9 program that is going to go on forever. I hope that is not
10 the case. I hope unemployment comes down and we do not have
11 the need for the program.

12 But I do believe that unless we are willing to make some
13 reductions and in fact rearrange our priorities a bit, we are
14 going to have difficulty getting it past. And if there are
15 other ways you would like to suggest we pay for it other than
16 the bookkeeping -- I mean, the whole budget process is a
17 mystery, and they play around with numbers and we have to
18 deal with the real thing.

19 They gave us \$73 billion in revenues to raise, too.
20 Maybe we can take that \$1.3 billion we saved in revenue
21 sharing off the revenue number. I would rather do that.
22 Would that be all right?

23 Senator Bradley: Well, we can discuss that after we have
24 raised \$70 billion.

25 Senator Heinz: Maybe we could reduce the fair tax.

1 The Chairman: I wonder if we could vote on these two
2 provisions as a way of funding the program.

3 Senator Baucus: Mr. Chairman, one quick point here. I
4 think we should fund it, too, that is, unemployment health
5 insurance. I think it would be irresponsible not to at this
6 point.

7 The slight problem I have is that this is the first I
8 heard that this is where we are going to finance it, is half
9 an hour ago. And if we had set up different alternative
10 financing proposals raising the revenue one way or another,
11 or some other cuts someplace else, and various options, that
12 might help a little bit. But when we are just presented with
13 one, this is the way we are going to do it, I guess tomorrow
14 we will further cut Medicare another \$1.7 billion or
15 something, and I have trouble agreeing with this first
16 proposal, since I first saw it a half an hour or an hour
17 ago.

18 So that is a big problem I have, too, with this
19 particular method of financing.

20 The Chairman: If you would like to offer a substitute or
21 an amendment --

22 Senator Baucus: Your staff had the benefit of days
23 working on this.

24 The Chairman: There have been a lot of spending
25 proposals floating around.

1 Senator Baucus: What are they? I have not seen them.

2 The Chairman: Everybody has them. Just knock on any
3 door.

4 But these seem to be less painful than others. I did not
5 want it to be too big a shock to start with.

6 Sheila, you might run down quickly some of the others,
7 without going into -- I do not know how long the blue book
8 is. Do you have a blue book there?

9 Ms. Burke: Yes, sir.

10 In front of you is actually a Xerox copy of an item
11 identified as the background data and materials on the fiscal
12 year '84 spending proposals.

13 The Chairman: Has that been available?

14 Ms. Burke: That was distributed to the Committee in
15 June, yes, sir.

16 Senator Bentsen: Mr. Chairman, I seem to have walked in
17 at a very inopportune time, about how to pay for this. Would
18 you tell me what we are referring to?

19 The Chairman: Right now she is discussing -- this is a
20 copy of the spending proposals we suggest that we might use.
21 It is attachment A. We might modify the Part B premium and
22 secondly freeze the reasonable charges for physician
23 services, which would raise about \$1.74 billion, which would
24 pay for the program, about \$1.8 billion.

25 Now, there are a number of other options, and certainly

1 anybody can raise additions.

2 Why do you not just briefly describe those two things,
3 Shirley, and then we can go on to the others.

4 Senator Heinz: Mr. Chairman, could I just inquire? You
5 said freeze the reasonable charges. I think we are really
6 freezing the maximum reasonable charges, not all reasonable
7 charges, and we are only freezing it for one year, not for
8 three years.

9 The Chairman: One year.

10 Ms. Burke: The two proposals, Senator Bentsen, which are
11 described before you: the first is to hold the Part B
12 premium at 25 percent of program costs into the future.

13 The Chairman: That is where it is now, correct? So we
14 are not changing that?

15 Ms. Burke: No, we maintain it at 25 percent for the
16 future.

17 The second proposal would freeze the prevailing fees of
18 physicians for one year, and that is the physician fees that
19 are the ceilings against which other physicians' fees would
20 bounce.

21 The Chairman: That would not freeze those beneath it.

22 Ms. Burke: No, it would not. It would allow those whose
23 customaries are below prevailing to continue to increase.

24 The savings as a result of the Part B premium are \$359
25 million; as a result of the freeze on prevailings, \$1.3

1 billion.

2 The Chairman: Now, if there are any specific ones, Max,
3 that you want us to touch on -- do you want her to go through
4 them?

5 Senator Baucus: Frankly, I am not prepared to go further
6 on this at this point, so it would be futile unless we want
7 to hold over until tomorrow or another day. I am just
8 prepared to vote if you want to vote.

9 The Chairman: Okay, why do we not vote on these.

10 Mr. DeArment: Mr. Packwood?

11 The Chairman: Aye.

12 Mr. DeArment: Mr. Roth?

13 [No response.]

14 Mr. DeArment: Mr. Danforth?

15 The Chairman: Aye.

16 Mr. DeArment: Mr. Chafee?

17 The Chairman: Aye.

18 Mr. DeArment: Mr. Heinz?

19 Senator Heinz: Aye.

20 Mr. DeArment: Mr. Wallop?

21 The Chairman: Aye.

22 Mr. DeArment: Mr. Durenberger?

23 [No response.]

24 Mr. DeArment: Mr. Armstrong?

25 [No response.]

1 Mr. DeArment: Mr. Symms?
2 The Chairman: Aye.
3 Mr. DeArment: Mr. Grassley?
4 The Chairman: Aye.
5 Mr. DeArment: Mr. Long?
6 Senator Long: Aye.
7 Mr. DeArment: Mr. Bentsen?
8 Senator Bentsen: Aye.
9 Mr. DeArment: Mr. Matsunaga?
10 [No response.]
11 Mr. DeArment: Mr. Moynihan?
12 [No response.]
13 Mr. DeArment: Mr. Baucus?
14 Senator Baucus: No.
15 Mr. DeArment: Mr. Boren?
16 [No response.]
17 Mr. DeArment: Mr. Bradley?
18 Senator Bradley: No.
19 Mr. DeArment: Mr. Mitchell?
20 [No response.]
21 Mr. DeArment: Mr. Pryor?
22 [No response.]
23 Mr. DeArment: Mr. Chairman?
24 The Chairman: Aye.
25 On this vote the yeas are ten, the nays are two, and the

1 absentees may record their vote.

2 Senator Heinz: Mr. Chairman, are there any further
3 amendments?

4 The Chairman: Is it satisfactory to limit that to two
5 years?

6 Senator Bentsen: Yes.

7 The Chairman: On the Medicaid amendment?

8 Senator Bentsen: Yes.

9 The Chairman: If there are no further amendments -- any
10 further amendments?

11 [No response.]

12 The Chairman: What do we need to report out the bill
13 now?

14 Mr. DeArment: We need eleven members.

15 The Chairman: Let us see if we can get a few more here.

16 Mr. DeArment: Mr. Chairman, in the meantime while we are
17 waiting, we might take up the Swift nomination.

18 The Chairman: Oh, this morning we did have a Tax Court
19 nominee.

20 Senator Heinz: Mr. Chairman, might I make one quick
21 comment before we go to the Tax Court nominee? I sense that
22 we do have a substantial majority in favor of the bill. I do
23 not think it is going to be unanimous, but I think it will be
24 a substantial majority.

25 As somebody from one of many states that really have been

1 nose to nose with this problem, I want to thank all my
2 colleagues who have voted to finance the bill, to pay for it,
3 and made improvements in it. We know of a few improvements
4 left to make.

5 But I think that we have proved the skeptics wrong. We
6 have all been reading in the newspapers that the House and
7 Senate were never going to be able to agree on any further
8 recession relief measures. This is a major measure. It is
9 going to be very meaningful to up to 11 million people who we
10 are told do not have health benefits.

11 It proves that the Finance Committee in particular, but I
12 think that it will prove that the Senate in general, has a
13 conscience, even though everybody says that we do not need to
14 have a conscience because economic recovery is here or around
15 the corner.

16 And Mr. Chairman, I want to thank you above all, because
17 you have particularly been of incredible help. You have
18 taken this matter very seriously. You have helped. I think
19 it is fair to say we would never have gotten the
20 Administration to change its tune on health care for the
21 unemployed without your having taken a very strong stand.

22 I am deeply grateful to you, and Senator Durenburger
23 also, as Chairman of the Health Subcommittee, for all your
24 help. This is going to be enormously beneficial to people in
25 states like Pennsylvania who have been unemployed for far too

1 long, and I thank you.

2 The Chairman: We thank the Senator from Pennsylvania.

3 One thing that we might discuss, unless there is some
4 objection, there are a number of technical corrections that I
5 understand should be made when we added the hospital
6 prospective payment provision to social security last --
7 well, this year. There are a number of administrative
8 changes of a technical nature that should be made.

9 Sheila, I wonder if you might at least raise that at this
10 time and see if there are any objections. If there are, we
11 will not do it. But I think it might be a good vehicle.
12 Senator Durenberger I know is involved with this, and I think
13 Senator Baucus.

14 Ms. Burke: Again, before you, Senators, is a document
15 identified as "Additional Budget Options." On page 5 of that
16 document there are a group of proposals described as
17 proposals of an administrative and technical nature. These
18 include proposals which do not have any impact on the budget,
19 provide for some suggested changes, modifications and
20 corrections in existing law -- they are in some cases a
21 repeal, for example, of a proposal never implemented --
22 provide for strengthening of collections against third
23 parties.

24 There are a number of them brought to our attention by
25 the Administration and by others. There are one or two we

1 would like to suggest not trying to do today because there
2 have been questions raised. For example, with respect to the
3 requirements for certification in intermediate care
4 facilities, there have been questions raised, and in the
5 interest of perhaps trying to work out an alternative I
6 suggest we not proceed until that time.

7 The Chairman: Has Mr. Hoyer looked at these?

8 Mr. Hoyer, have you had a chance to review these? Are
9 they technical in nature? Are you satisfied?

10 Mr. Hoyer: They are minor and technical in nature, and
11 they are fine.

12 The Chairman: And except for the two -- there are a
13 couple, then, we ought to withhold on?

14 Ms. Burke: I would suggest that the only one we hold off
15 on is the ICF. Senator Chafee, for example, had some
16 questions about that. We would like to try and work that
17 out.

18 The one I might point out that is certainly substantive
19 in nature, but has no budget impact, is the payment for
20 hospice care. We have included in this list a provision
21 which would provide for a \$6500 cap with respect to hospice
22 services, which would alter the legislation. That is item
23 number 20 on page 14 of the materials.

24 The other item I might point out is item 21, which is not
25 truly a proposal with respect of a technical nature, but

1 suggested in the context of physician fees, and that is
2 requiring the Administration to publish a list of physicians
3 who accept assignment, and that this list be made available
4 to social security offices so individuals would be aware of
5 those individuals in their community willing to take
6 assignment a certain percentage of the time.

7 Senator Durenberger: I would hope -- that is a very
8 substantial improvement, I think, to the Medicaid process and
9 one that as far as I can tell has been supported to a degree
10 by physicians, and to a substantial degree by the
11 organizations representing the elderly in this country.

12 Sheila, I had one other on the technical part that maybe
13 Lloyd and a couple other people -- remember the Houston
14 Clinic and the Mayo Clinic and the Cleveland Clinic? We had
15 a situation there where -- and I think we provided exceptions
16 in the law, and I just discovered this on a telephone call --
17 where the prospective payment could not go to the clinic
18 rather than to the hospital that was involved with the
19 clinic.

20 And I do not know how much applicability there is here,
21 but I just found out that HCFA in setting up its regulations
22 is not giving the extra teaching reimbursement to the clinic
23 -- or to the hospitals involved, on the theory that the
24 clinic employs the residents and the interns, rather than the
25 hospital, in those very few situations. And therefore, I do

1 not know whether that is right or wrong, but I thought I had
2 better make a record of it at this point.

3 It certainly would be technical in nature. I think it
4 has very limited applicability. I can just make that record
5 and then we can clarify it. If I am wrong, if it is
6 substantive, I will take it off the table.

7 Ms. Burke: We can certainly check, Senator. I am not
8 aware of the specific problem, but we would be glad to
9 check.

10 I would like to point out one additional change with
11 respect to a provision having to do with venue. This was a
12 concern of Senator Baucus. It is a change that resulted with
13 respect to judicial review, and there was a concern about the
14 effective date. We will make that modification as
15 requested.

16 We understand Senator Heinz had a suggestion also with
17 respect to teaching physicians and a modification with
18 respect to teaching institutions, and wondered whether or not
19 that was prepared.

20 Senator Heinz: I may, Sheila. We are really not ready.

21 Senator Bradley: Mr. Chairman, I would, if I could, like
22 to offer an amendment which would pay for this by the general
23 revenue sharing assumption, in other words by having frozen
24 general revenue sharing at \$4.6 billion. That gets a saving
25 of \$1.3 billion, and I would like to be able to propose that

1 as how we pay for it, instead of cuts in Medicare.

2 The Chairman: Is there any objection to the technical
3 amendments, with the exception of the one you specified?

4 Senator Durenberger: Mr. Chairman, I have a question. I
5 have been just handed this, and there is one called "22.
6 Periodic review of effectiveness of state programs
7 modification."

8 Ms. Burke: Senator, we were only going to include the
9 health provisions and not those dealing with where there
10 might be questions the Committee may wish to discuss.

11 Senator Durenberger: Oh, okay.

12 Senator Roth: May I raise a point with respect to the
13 hospices? In the case of a Delaware hospice, we only have
14 six to ten patients, so that it has been the practice to have
15 a contractual arrangement with the Visiting Nurses
16 Association to provide nursing services. I understand,
17 generally speaking, that we have not wanted to use that
18 approach.

19 But as I say, with six to ten patients it would not be
20 cost effective to hire a nursing staff beyond the Delaware
21 hospice registered nurse who supervises the care plan for the
22 patients. What we were hoping is that in the conference that
23 we could provide certain waivers, give the Secretary of the
24 Department of Health and Human Services the authority to make
25 certain limited waivers to certain hospices to contract for

1 nursing services.

2 What we are proposing is that they be: One, a hospice in
3 existence at the time of passage of the legislation; two,
4 hospices who are the sole community hospice provider; three,
5 hospices who are able to prove that the contractual
6 arrangement is more cost effective than the provision of
7 direct services; and four, to hospices who provide assurance
8 that the contractual nurses are part of the hospice team and
9 under their management and control.

10 The Chairman: Sheila, do you want to comment on this?
11 He called it to my attention earlier and I had forgotten
12 about it.

13 Ms. Burke: Senator Dole, under the legislation as passed
14 by the Congress, hospices are required to provide what are
15 defined as core services, and that is the minimum services,
16 which include nursing services, through the hospice
17 specifically. Since passage of the legislation, a number of
18 hospices have brought to our attention their concerns,
19 particularly those located in rural areas and sole community
20 providers, that they are unable to provide that service and
21 have traditionally done so in a coalition manner, that is, a
22 number of organizations getting together.

23 That is one of the issues that is most controversial
24 about the hospice provision. It is one of the proposed
25 changes that we had hoped to discuss when discussing the

1 hospice amendments once the regulations have been published.
2 We were concerned about making a substantive change at this
3 time until we have had an opportunity to review all the
4 regulations on the entire provision and looked carefully at
5 how you might provide for an opportunity for a hospice,
6 particularly in rural areas, to contract, while not
7 encouraging the development of storefronts.

8 Now, the proposal that would allow only for existing
9 hospices would help that, but I would like to suggest an
10 opportunity to review that with the Administration in the
11 context of the regulations. But I think we would hope to
12 achieve the end Senator Roth has indicated.

13 Senator Durenberger: Mr. Chairman, we are planning a
14 full-fledged hearing on hospices on the 28th of July, I
15 believe. And I am sensitive to the point that the Senator
16 from Delaware made, and we certainly can consider it at that
17 point.

18 Senator Roth: My only concern is that the problem is
19 here and now. I was hoping that at conference we might be
20 able to work some limited -- I am basically sympathetic with
21 the general provisions, but there are certain situations
22 where it makes sense to have an exception.

23 Senator Danforth: We have an even bigger problem with
24 the regulations overall that we need to resolve, and so I do
25 not think we are going to have a time problem with coming to

1 grips with this. It will be done this year.

2 Ms. Burke: The legislation, of course, does not take
3 effect until November, so we still have some opportunity
4 prior to that time to make a change before implementation. I
5 would like to suggest we will perhaps talk with your staff,
6 Senator Roth, and with the Administration, in view of the
7 hearings that will be scheduled on the regulations, to try to
8 work something out that is amenable particularly and
9 addresses your problem respecting small hospices.

10 Senator Roth: All right, that is satisfactory.

11 The Chairman: All right. Then without objection, we
12 will adopt these technical amendments. Are you satisfied,
13 Senator Roth, that they can work this out?

14 Senator Roth: Yes.

15 The Chairman: Senator Packwood is on his way, and I
16 think Senator Moynihan and Senator Grassley, which would give
17 us an adequate number of members, 12. We need 11. And the
18 staff will have the permission to make technical corrections,
19 as customary, in drafting.

20 [Pause.]

21 The Chairman: We could hopefully dispose of the Bradley
22 amendment, either that or it will dispose of us. As I
23 understand, you would use the money we do not have, but we
24 purportedly saved in revenue sharing?

25 Senator Bradley: Well, yes. What I would do is, the CBO

1 baseline assumes revenue sharing costing about \$1.3 billion
2 more than the Committee did when it froze it at \$4.6
3 billion. That thereby gives us \$1.3 billion. I would apply
4 that to this health care for the unemployed to pay for it,
5 instead of cutting Medicare to pay for it.

6 The Chairman: All right. Would you like a vote on
7 that?

8 Senator Bradley: Yes.

9 The Chairman: Let me suggest that I do not quarrel with
10 the concept, but I just know that is smoke and mirrors, and
11 if in fact we want a program for health care for the
12 unemployed we have got to find real reductions in spending.
13 So I would hope the amendment might be defeated.

14 Senator Heinz: Mr. Chairman, if I could just make a
15 comment, which is that if the Committee were to adopt that it
16 is not only, I am afraid, smoke and mirrors, but the
17 President is not going to be fooled by that smoke and
18 mirrors, and it is a sure way to guarantee that health care
19 for the unemployed will never become a reality. And I would
20 hope anybody who is in favor of health care for the
21 unemployed -- and I include the Senator from New Jersey in
22 that -- would not vote for the amendment.

23 The Chairman: Let us vote. Let us have a vote. We now
24 have eleven members, so if we can kill this one we can vote
25 the amendment out.

1 Mr. DeArment: Mr. Packwood?
2 Senator Packwood: Pass.
3 Mr. DeArment: Mr. Roth?
4 Senator Roth: No.
5 Mr. DeArment: Mr. Danforth?
6 The Chairman: Danforth, no.
7 Mr. DeArment: Mr. Chafee?
8 The Chairman: No.
9 Mr. DeArment: Mr. Heinz?
10 Senator Heinz: No.
11 Mr. DeArment: Mr. Wallop?
12 Senator Wallop: No.
13 Mr. DeArment: Mr. Durenberger?
14 Senator Durenberger: No.
15 Mr. DeArment: Mr. Armstrong?
16 [No response.]
17 Mr. DeArment: Mr. Symms?
18 Senator Symms: No.
19 Mr. DeArment: Mr. Grassley?
20 The Chairman: No.
21 Mr. DeArment: Mr. Long?
22 Senator Long: No.
23 Mr. DeArment: Mr. Bentsen?
24 Senator Bentsen: No.
25 Mr. DeArment: Mr. Matsunaga?

1 [No response.]

2 Mr. DeArment: Mr. Moynihan?

3 [No response.]

4 Mr. DeArment: Mr. Baucus?

5 Senator Baucus: Aye.

6 Mr. DeArment: Mr. Boren?

7 [No response.]

8 Mr. DeArment: Mr. Bradley?

9 Senator Bradley: Aye.

10 Mr. DeArment: Mr. Mitchell?

11 [No response.]

12 Mr. DeArment: Mr. Pryor?

13 [No response.]

14 Mr. DeArment: Mr. Chairman?

15 The Chairman: No.

16 Mr. DeArment: Mr. Packwood?

17 Senator Packwood: No.

18 The Chairman: On this amendment the yeas are 2, the nays

19 are 12, the amendment is not agreed to.

20 If there are no other amendments, we now have a

21 sufficient number to vote to report the bill.

22 What about the Tax Court? Let us report the bill and

23 then take the Tax Court nominee.

24 The Clerk will call the roll.

25 Mr. DeArment: Mr. Packwood?

1 Senator Packwood: Aye.
2 Mr. DeArment: Mr. Roth?
3 Senator Roth: Aye.
4 Mr. DeArment: Mr. Danforth?
5 The Chairman: Aye.
6 Mr. DeArment: Mr. Chafee?
7 The Chairman: Aye.
8 Mr. DeArment: Mr. Heinz?
9 Senator Heinz: Aye.
10 Mr. DeArment: Mr. Wallop?
11 Senator Wallop: No.
12 Mr. DeArment: Mr. Durenberger?
13 Senator Durenberger: Aye.
14 Mr. DeArment: Mr. Armstrong?
15 [No response.]
16 Mr. DeArment: Mr. Symms?
17 Senator Symms: No.
18 Mr. DeArment: Mr. Grassley?
19 The Chairman: Aye.
20 Mr. DeArment: Mr. Long?
21 Senator Long: Aye.
22 Mr. DeArment: Mr. Bentsen?
23 Senator Bentsen: Aye.
24 Mr. DeArment: Mr. Matsunaga?
25 [No response.]

1 Mr. DeArment: Mr. Moynihan?

2 [No response.]

3 Mr. DeArment: Mr. Baucus?

4 Senator Baucus: No.

5 Mr. DeArment: Mr. Boren?

6 Senator Long: Aye.

7 Mr. DeArment: Mr. Bradley?

8 Senator Bradley: No.

9 Mr. DeArment: Mr. Mitchell?

10 [No response.]

11 Mr. DeArment: Mr. Pryor?

12 [No response.]

13 Mr. DeArment: Mr. Chairman?

14 The Chairman: Aye.

15 Now, on this vote the yeas are eleven and the nays are
16 four, and the bill will be reported.

17 Now, what about the Tax Court nominee? Do you want to
18 report that?

19 Mr. DeArment: We had the hearing on Mr. Swift for the
20 United States Tax Court in the hearing this morning.

21 The Chairman: Is there any objection to reporting the
22 nominee? We had hearings. As far as we can determine, he is
23 well qualified, there is no conflict of interest. He has
24 been approved by the ethics provisions.

25 [No response.]

1 The Chairman: Without objection, the nomination will be
2 reported.

3 What about the reporting? How much time do we have on
4 the Committee report on the bill itself?

5 Mr. DeArment: On the bill we just reported?

6 The Chairman: Anybody want any special time for views?

7 Senator Bradley: On the Tax Court?

8 The Chairman: On the other one, on health care.

9 Senator Bradley: What time do we have to do that?

10 The Chairman: What is the normal time? We would like to
11 bring it up before the recess.

12 Senator Bradley: I would like to file some views. I
13 could do it probably in the next day or so.

14 Mr. DeArment: That is more than adequate.

15 The Chairman: Thank you very much. We were going to
16 take up -- there is going to be a vote, I understand, in
17 about five minutes. So rather than come back and start on
18 reconciliation, why do I not just advise members when we
19 might all get together again tomorrow, and of course some
20 time next week.

21 [Whereupon, at 5:04 o'clock p.m., the Committee
22 adjourned, to reconvene upon the call of the Chair.]

23

* * *

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COMMITTEE ON FINANCE

Executive Session

Wednesday, July 13, 1983

10:00 a.m. - Room SD-215

1. Spending reduction proposals (Attachment A)
2. Hearing and executive session on the nomination of Stephen J. Swift to the U.S. Tax Court (Attachment B)

A. ADDITIONAL BUDGET OPTIONS1. Modify Part B PremiumCurrent Law

By law, the Secretary of Health and Human Services has been required to calculate each December the increase in premiums of those who elect to enroll in the Supplementary Medical Insurance (or Part B) portion of the Medicare program. The new premium rates have been effective on July 1 of the year following the year in which the calculation was made. Ordinarily, the new premium is the lower of: (1) an amount sufficient to cover one-half of the costs of the program for the aged or (2) the current premium amount increased by the percentage by which cash benefits are increased under the cost-of-living (COLA) provisions of the social security programs.

Premium income, which originally financed half of the costs of Part B, has declined - as the result of this formula - to less than 25 percent of total program income. The "Tax Equity and Fiscal Responsibility Act of 1982" (TEFRA) temporarily suspended the limitation for two one-year periods, beginning on July 1, 1983. During these periods, enrollee premiums would be allowed to increase to amounts necessary to produce premium income equal to 25 percent of program costs for elderly enrollees. The limitation would again apply with respect to periods beginning July 1, 1985 and thereafter.

The "Social Security Amendments of 1983" (Public Law 98-21) postponed the scheduled July 1, 1983 increase to January 1, 1984 to coincide with the delay in the cost-of-living increase in social security cash benefit payments. Future increases will occur in January of each year based on calculations made the previous September. Public Law 98-21 further provided that the suspension of limitations as authorized by TEFRA are to apply for the two-year period beginning January 1, 1984.

Proposal

The proposal provides that beginning in 1985 the limitation on premium increases would be repealed. As a result, the proportion of program costs to be met by premiums would permanently be set at 25 percent.

Effective Date

January 1, 1985.

Cost Savings

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
-	-	-359	-359

2. Freeze "Reasonable Charges" For Physician ServicesCurrent Law

Under present law, medicare pays for physician services on the basis of medicare-determined "reasonable charges." "Reasonable charges" are the lesser of: a physician's actual charges, the customary charges made by an individual physician for specific services, or the prevailing level of charges made by other physicians for specific services in a geographic area. The amounts recognized by medicare as customary and prevailing charges are updated annually (on July 1) to reflect changes in physician charging practices. Increases in prevailing charge levels are limited by an economic index which reflects changes in the operating expenses of physicians and in general earnings levels.

Proposals

OPTION 1) For all physician services, revert to the prevailing charge limits that were in effect prior to the annual updating that occurred on July 1, 1983. For nine months until July 1, 1984, charge limits for all physician services would remain at the levels applicable during the 1982-1983 fee screen year.

OPTION 2) For inpatient physician services only, revert to the customary and prevailing charge limits that were in effect prior to the annual updating.

OPTION 3) For inpatient physician services only, revert to the prevailing charge limits that were in effect prior to the annual updating.

Effective Date

For services rendered on or after October 1, 1983.

Cost Savings

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
OPTION 1	-325	-475	-575	-1,375
OPTION 2	-350	-500	-600	-1,450
OPTION 3	-175	-275	-350	- 800

3. Hepatitis B VaccineCurrent Law

Current law precludes medicare coverage of immunization against viral hepatitis, an infectious disease that produces acute and chronic inflammation of the liver which may then lead to serious illness or death. However, end stage renal disease patients are currently monitored by monthly testing for the virus, and these tests are covered and paid for under the medicare program.

Proposal

Permit medicare coverage of Hepatitis B vaccine for ESRD hemodialysis patients.

Cost Savings

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
.	+2.2	-1.4	-2.2	-1.4

Effective Date

October 1, 1983.

4. Increase Medicaid Ceilings for Puerto Rico and the TerritoriesCurrent Law

Under present law, the Federal Medicaid matching rates for Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marianas are set at 50 percent and Federal matching is subject to annual dollar ceilings. The dollar ceilings are: \$45 million for Puerto Rico; \$1.5 million for the Virgin Islands; \$1.4 million for Guam; \$350,000 for the Northern Marianas; and, \$750,000 for American Samoa.

Proposal

Increase funding to Puerto Rico and the Territories by the following amounts: Puerto Rico, \$18.4 million ; Virgin Islands, \$600,000; Guam, \$600,000; Northern Marianas, \$200,000; American Samoa, \$400,000. Total approximate increase: \$20 million.

Effective Date

October 1, 1983.

Cost

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
+ \$20	+ 20	+ 20	+ 60

5. Increase Authorization for Maternal and Child Health
Block Grant Program

Current Law

The present authorization level for the Maternal and Child Health (MCH) Services block grant program is \$373 million. Congress originally appropriated this amount, but has since added (under P.L. 98-8) \$105 million in additional appropriations to increase the availability of essential health services for disadvantaged children and mothers.

Proposal

The proposal permanently increases the authorization level for the MCH block grant program to \$455 million by 1986.

Effective Date

Enactment.

Cost

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
+ \$79	+ 80	+ 82	+ 241

The expenditures resulting from this proposal are assumed in the Senate Budget Resolution.

E. PROPOSALS OF AN ADMINISTRATIVE AND TECHNICAL NATURE

1. Elimination of Part B Deductible for Certain Diagnostic Laboratory Tests

Current Law

Present law authorizes the Secretary to negotiate a payment rate with a laboratory that is considered the full charge for diagnostic tests. Payment is made to the laboratory on the basis of an assignment at 100 percent of the negotiated rate (that is, the beneficiary is not charged any coinsurance amounts). However, payments made on the basis of the negotiated rates are subject to the annual part B deductible (\$75).

Proposal

The proposal would eliminate application of the annual part B deductible in the case of diagnostic tests performed in a laboratory which has entered into a negotiated rate agreement with the Secretary.

Effective Date

Enactment.

2. Payment for Services Following Termination of Participation Agreements with Home Health Agencies

Current Law

Under current law, if the participation in medicare of a home health agency or a hospice is terminated, the Secretary is required to continue to pay for services provided to a beneficiary until the end of the calendar year in which the termination took place. This requirement is only applicable to services provided under a plan of care established prior to the termination of the agency.

Proposal

The proposal would change from the end of the calendar year to 30 days after termination, the ending of coverage for services provided under a plan established prior to the termination date of the participation agreement.

Effective Date

Terminations issued on or after October 1, 1983.

3. Repeal of Special Tuberculosis Treatment Requirements of Medicare and Medicaid

Current Law

Present law contains a number of provisions intended to assure that institutional services provided to medicare and medicaid patients suffering from tuberculosis are not custodial in nature and that such treatment can reasonably be expected to improve the patient's condition or render the condition noncommunicable.

Proposal

The proposal would repeal such provisions, since advances in the active treatment of tuberculosis make such safeguards against paying for custodial care for tuberculosis patients unnecessary. The proposal also eliminates the special provider category in present law for tuberculosis hospitals in the Medicare and Medicaid programs.

Effective Date

Enactment.

4. Medicare Recovery Against Certain Third Parties

Current Law

Under the present law, the Medicare program may make benefit payments for services for which other third party insurance programs (e.g., workmen's compensation, auto or liability insurance, employer health plans, etc.) are ultimately liable for some or all of the costs of such services. However, the Secretary does not now have the right of subrogation to become a party to claims against other liable parties or to recover directly from such parties.

Proposal

The proposal would establish the statutory right of Medicare to recover directly from a liable third party, if the beneficiary himself does not do so, and to pay a beneficiary, or on the beneficiary's behalf, pending recovery where such third party is not expected to pay promptly. The proposal would also permit the Secretary to recover directly from the third party whether or not the beneficiary brings suit to recover and subrogate to the United States the right of the individual or anyone else to payment from the third party.

Effective Date

Enactment.

5. Indirect Payment of Supplementary Medical Insurance Benefits

Current Law

Present law, in general, prohibits payment of supplementary medical insurance (SMI) benefits to anyone other than a beneficiary or an entity providing services.

Proposal

The proposal would permit SMI payments to be paid to a health benefits plan whose payment is accepted by the physician or other supplier as payment in full.

Effective Date

Enactment.

6. Elimination of Health Insurance Benefits Advisory Council

Current Law

Present law (Section 1867) provides for a 19 member panel of health experts (the Health Benefits Advisory Council or HIBAC) appointed by the Secretary to advise on matters of general policy with respect to the Medicare program.

The Council was very active in the early years of the medicare program when regulations were first promulgated. As the Federal Government gained experience in administering the medicare program, the Council's advisory functions with respect to regulations became less important. With passage of the Social Security Amendments of 1972, Public Law 92-603, the Council's authority to review regulations and recommend changes was specifically deleted, and its role limited to advice on matters of "general policy." Also, its purview was extended to include the medicaid program. However, HIBAC has not been called upon to advise the Secretary since late in 1976, and there are currently no members.

Proposal

The proposal would repeal Section 1867. The council has not been active for a number of years.

Effective Date

Enactment.

7. Information From Accreditation Surveys of the
American Osteopathic Association

Current Law

Present law contains certain disclosure safeguards relating to survey information used by the Secretary in connection with the hospital certification process under Medicare. However, the law only specifically refers to surveys conducted by the Joint Commission on the Accreditation of Hospitals (JCAH).

Proposal

The proposal would extend the same disclosure protections given JCAH survey information to similar survey information provided to the Secretary by the American Osteopathic Association.

Effective Date

Enactment.

8. Flexible Sanctions for Noncompliance with Requirements
for End Stage Renal Disease Facilities

Current Law

Present law and regulations provide for decertification of end-stage renal disease (ESRD) facilities that are not in complete compliance with Medicare program requirements.

Proposal

The proposal would allow the Secretary to apply intermediate sanctions, such as a graduated reduction of reimbursement to ESRD facilities, when noncompliance does not jeopardize patient health or safety or justify decertification of such facilities. Noncompliance would, in these cases, deal primarily with administrative requirements.

Such an amendment makes the treatment of ESRD facilities comparable to the treatment of nursing homes which are out of compliance.

Effective Date

Enactment.

9. Use of Additional Accrediting Organizations Under Medicare

Current Law

Under present law, the Secretary has authority to rely on certain accrediting organizations in determining whether hospitals, skilled nursing facilities, home health agencies, ambulatory surgical centers and hospice programs meet Medicare requirements.

Proposal

The proposal would extend the Secretary's authority to permit him to rely on such organizations in determining whether rural health clinics, laboratories, clinics, rehabilitation agencies, and public health agencies meet Medicare requirements (and clarify his authority with respect to ambulatory surgical centers). The standards of an accrediting organization must be at least equivalent to those of the Secretary, and it must have a satisfactory record of application of such standards.

Effective Date

Enactment.

10. Repeal of Exclusion of For-Profit Organizations from Research and Demonstration Grants

Current Law

Present law limits the awarding of grants (under sections 1110 and 222(b) of the Social Security Act) for the conduct of research and demonstrations to non-profit organizations. However, contracts are permitted to be awarded to both for-profit and non-profit organizations.

Proposal

The proposal would extend the research and demonstration grant authority to for-profit organizations as well as non-profit organizations.

Effective Date

Enactment.

11. Requirements for Medical Review and Independent Professional Review

Current Law

Under current law, medical review requirements for skilled nursing facilities (SNFs) and independent professional

review for intermediate care facilities (ICFs) under Medicaid both call for teams of physicians, registered nurses and other appropriate personnel to conduct virtually similar kinds of review.

Proposal

The proposal would make consistent State plan requirements for medical review and independent professional review. Such an amendment would clarify that there is no substantial statutory difference between review of these organizations. The proposal also corrects a technical error in present law to assure the Christian Science sanatoria are excluded from the revised medical review/independent professional review requirements.

Effective Date

Enactment.

12. Flexibility in Setting Rates for Hospital Furnished Long Term Care

Current Law

Present law establishes a very specific methodology for Medicaid reimbursement for hospital-furnished long-term care services.

Proposal

The proposal would eliminate the specific requirements for setting payment rates applicable only to hospital furnished long-term care services, and provide instead that such rates meet the same general criteria applicable to rates for other similar services provided by long term care institutions to Medicaid recipients.

Effective Date

Enactment.

13. Authorize Secretary to Issue and Enforce Subpoenas

Current Law

Present law authorizes the Secretary to issue and seek enforcement of subpoenas under Medicare to obtain information needed in connection with hearings, investigations and other matters related to program fraud and abuse.

Proposal

The proposal would authorize the Secretary to issue and seek enforcement of subpoenas under Medicaid to the same extent that he has authority under the Medicare program.

Effective Date

Enactment.

14. Repeal Authority For Payments to Promote Closing and Conversion of Underutilized Hospitals

Current Law

Under present law, the Secretary may make Medicare and Medicaid payments to cover capital and increased operating costs associated with the conversion or closing of underutilized hospital facilities. The law, which has never been implemented, restricts the number of facilities which may receive these funds to no more than 50 prior to January 1, 1984.

Proposal

The proposal would repeal this authority.

Effective Date

Enactment.

15. Appointment of and Pay Rate for Administrator of HCFA

Current Law

Under current law, the Administrator of the Health Care Financing Administration (HCFA) is in the Senior Executive Service and is appointed by the Secretary of Health and Human Services.

Proposal

The proposal would provide for appointment of the Administrator of HCFA by the President, with the advice and consent of the Senate, and increase the position and pay of the Administrator to Level IV of the Executive Schedule.

Effective Date

Applies to appointments to the position made after enactment.

16. Exclusion of Entities Owned or Controlled by Individuals
Convicted of Medicare or Medicaid Related Crimes

Current Law

Present law authorizes the Secretary to deny participation in the Medicare and Medicaid programs by providers in which a significant interest is held by a person convicted of program-related criminal offenses.

Proposal

The proposal would extend the Secretary's authority to also exclude from participation any entity or supplier of services in which a significant ownership or controlling interest is held by a person convicted of program related criminal offenses.

Effective Date

Enactment.

17. Judicial Review

Current Law

The 1983 prospective payment legislation permits groups of providers to bring action in the judicial district in which the largest number of them are located. Under prior law, group judicial appeals could only be made in the District of Columbia. The 1983 legislation also requires certain appeals by providers which are under common ownership or control to be made as a group.

These provisions were included in a section of the 1983 legislation entitled "Conforming Amendments" and were not assigned a specific effective date. Therefore, like most of the other prospective payment changes, the new judicial review provisions will "apply to items and services furnished by ... a hospital beginning with its first cost reporting period that begins on or after October 1, 1983."

Proposal

Make the provision effective with court action brought on and after the date of enactment of this proposed legislation.

18. Access to Home Health Services

(1) Current Law

A physician must certify to a patient's health needs and establish a plan for his care before the patient can qualify for home health benefits. The Secretary is directed, however, to prescribe regulations to disqualify physicians from carrying out these functions for patients of any agency in which they have a significant ownership interest or a significant financial or contractual relationship.

The regulations, which were intended to prevent potential conflicts of interest, create a serious problem for the relatively few patients whose physician has an interest in the only agency in the area. These patients cannot qualify for home health benefits unless they switch physicians.

Proposal

Permit a physician who has a financial interest in an agency which is a sole community provider to carry out the certification and plan-of-care functions for patients who will receive services from the agency.

(2) Current Law

In specifying which physicians are disqualified from carrying out the certification and plan-of-care functions for the patients of a home health agency, the Secretary's regulations include physicians who are uncompensated officers or directors of incorporated agencies even though they have no financial interest in its operation.

Proposal

Since such physicians do not stand to gain or lose financially from referrals to the agency, it is proposed that they be deleted from the list of disqualified physicians.

Effective Date for Both Proposals

Enactment.

19. Frequency of Physician Certifications of Need for Intermediate Care Facility (ICF) Care

Current Law

The Medicaid law requires a physician to certify that each ICF and SNF (skilled nursing facility) patient needs the

level of institutional care he is receiving. The certification must be made at least every 60 days whether the patient is receiving the relatively intensive care provided by SNF's or the less active program of care that ICF's provide for the more stable patient.

Proposal

Modify the ICF certification requirement by reducing the required frequency of physician certification to every 6 months in the second year of the patient's institutionalization and to an annual certification thereafter. As under present law, certification would be required every 60 days during the first year of institutionalization.

Effective Date

Enactment.

20. Payment for Hospice Care

Current Law

Under present law, medicare reimbursement for hospice care is subject to an area adjusted limit or cap set at 40 percent of the average medicare per capita expenditure during the last six months of life for medicare beneficiaries dying of cancer. Under the current law provision, the cap amount equates to about \$4,200 for the first year of the program.

Proposal

The proposal would set the cap amount for the first year at \$6,500 instead of equating it to 40 percent of the cost of care during the last six months of life for cancer patients.

Effective Date

For hospice care provided on or after November 1, 1983.

RESUME

JUNE, 1982

STEPHEN J. SWIFT

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Bank of America N.T. & S.A.
Bank Tax Department #3245
P. O. Box 37000
San Francisco, CA 94137
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PERSONAL

Married 6'1" 175 pounds 39 years old

EMPLOYMENT
EXPERIENCE

1977 to Present

Senior Tax Counsel in the Tax Department of Bank of America N.T. & S.A. Responsible for all tax litigation, audits and appellate protests in which the holding company and all bank and non-bank subsidiaries are involved. Litigation presently pending or successfully completed on behalf of the Bank in Federal district court in San Francisco, U.S. Court of Claims, U.S. Tax Court, U.S. Court of Appeals for the Ninth Circuit and the District Court of Guam. See, for example, litigation pertaining to a Section 482 issue in Bank of America v. United States, 79-1 U.S.T.C. par. 9170 and 76-2 U.S.T.C. par. 9493 (N.D. Calif.).

Also, since September 1980, manager of six attorneys rendering tax advice to all Bank units on employee benefits, ERISA, leasing and other federal tax matters. Management responsibilities include supervision of additional 17 accountants and attorneys rendering advice and preparing tax returns for U.S. expatriate employees of the Bank.

Adjunct Professor, Golden Gate University Graduate School of Taxation. Part-time beginning February, 1976 through the present. Teach classes on Federal tax procedures (material for which covers tax litigation in the U.S. Tax Court, Federal district courts and the U.S. Court of Claims) and classes on the Federal and state taxation of banks and other financial institutions.

EMPLOYMENT
EXPERIENCE

- (Cont.)

Assistant United States Attorney
Tax Division

United States Attorney's Office
San Francisco, California 94102
May, 1974, through April, 1977.

Responsible for all phases of litigation of civil and criminal tax suits in Federal and state courts in Northern California.

Grader for Bay Area Review Course of its practice bar exam questions. May, 1975 to April, 1977.

Trial Attorney, Honors Program, Tax Division United States Department of Justice, Washington, D.C. July, 1970 through April, 1974. Responsible for all phases of litigation of civil tax refund suits in the Federal district courts of Missouri, Nebraska, Kansas, Arizona, Colorado, Wyoming, Nevada, and Utah. Cases involved all types of taxes — individual and corporate income, excise, employment, wagering, civil fraud penalties, and estate and gift taxes. Worked primarily under the supervision of Stanley F. Krysa and Jerome Fink.

Legal Assistant, Department of Justice, Tax Division.
Legal Research and trial preparation. Full time summer of 1969 and part time September, 1969 through June, 1970 in the Office of the Deputy for Refund Litigation, Mr. Abbott M. Sellers, primarily under the supervision of Special Assistant for Civil Trials, Mr. Arthur I. Biggins.

Law Clerk from October, 1967 to May, 1969 with the law firm of Koteen & Burt, Washington, D.C.

Dormitory Resident Assistant. George Washington University, Washington, D.C. September, 1968 to June, 1970. This position involved counseling the under-graduate students and handling the administrative problems of the dormitory. There were approximately 140 residents.

EDUCATION

J. D. George Washington University Law School.
Graduated in June of 1970 with honors.

B.A., 1967 Brigham Young University
Major: Political Science; Minor: German.
Graduated in top 10% of class and was on the Dean's List.

San Jose State College - 1966. Attended two semesters and was on the Dean's List.

UNIVERSITY
ACTIVITIES

Vice President of the International Relations Club.
German Club.

BACKGROUND

Was raised on the San Francisco Peninsula. Attended Hillview Elementary School and Menlo Atherton High School in Menlo Park, California. I interrupted my undergraduate studies for two-and-a-half years to serve a Mission for the Mormon Church in Germany

INTERESTS

Primarily interested in outdoor activities, sports, and reading. Also enjoy social work; e.g., I participated in the Big Brother Program in the District of Columbia.

REFERENCES

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FEDERAL JUDGES

The Honorable John P. Wiese
United States Court of Claims
717 Madison Place, N.W.
Washington, D.C. 20005
(202) 633-7253

The Honorable Aldon J. Anderson
United States District Court
for the District of Utah
350 South Main Street
Salt Lake City, UT 84101
(801) 521-5625

The Honorable Spencer Williams
United States District Court
for the Northern District of
California
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 556-3037

The Honorable Alfonso J. Zirpo
United States District Court
for the Northern District of Cal
450 Golden Gate Avenue
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The Honorable Samuel P. Conti
United States District Court
for the Northern District of Cal
450 Golden Gate Avenue
San Francisco, CA 94102
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Partial List of Litigation Handled in the Federal Courts by
Stephen J. Swift

July 19, 1982

- 1) Bank of America v. United States,
1981-1 U.S.T.C. par. 9161 (Ct. Cl. Trial Judge's Decision).

Negotiation, confirmation and acceptance commissions earned by a bank in connection with letter of credit financing were governed for source-of-income purposes by the location of the credit risks assumed by the bank. In ruling in the bank's favor, Trial Judge Wiese rejected the government's argument that the commissions represented income from personal services and agreed with the Bank that financing through letters of credit and bankers' acceptances is analogous to direct loan financing and therefore the commissions should be governed by the interest source-of-income rule. The Trial Judge's decision on confirmation and acceptance commissions was recently affirmed on appeal by the government to the Full Court of Claims. (Decision rendered June 2, 1982, Docket No. 402-71)

- 2) Bank of America v. United States,
79-2 U.S.T.C. par. 9699 (C.D. Calif.).

The bank's security interest in a hospital's accounts receivable had priority over an IRS tax lien. Even though the bank's interest had been perfected under the California Uniform Commercial Code prior to the creation of the tax lien, the government argued that a California statute precluding assignments to third parties of the particular accounts receivable involved made the bank's interest inchoate under federal law and therefore junior to the IRS lien. The court rejected this argument and held that if a creditor has taken all necessary steps under state law to perfect his interest in the property of the debtor, the creditor need not also satisfy the federal choateness doctrine.

- 3) Bank of America v. Guam,
79-1 U.S.T.C. par. 9232 (D.C. Guam).

The District Court of Guam held that the bank's Guam branch was not liable for withholding taxes under I.R.C. Section 1441 for interest payments which a debtor (the former governor of Guam) made to a Hong Kong subsidiary of the bank. Merely because the bank made the interest payments, did so at the debtor's instructions and out of the debtor's account at the bank's Guam branch, the bank did not have sufficient control over the payments to be treated as the withholding agent.

- 4) Bank of America v. Blas,
1977-1 U.S.T.C. par. 9287, aff'd by C.A. 9 in unpublished opinion.

Interest income earned by the bank in the U.S. on U.S. government securities was not effectively connected to the bank's business activities in Guam even though the securities were used as collateral for Government of Guam public deposits in the bank's Agaña branch.

- 5) Bank of America v. United States,
79-1 U.S.T.C. par. 9170, (N.D. Calif.).

The bargain sale by a subsidiary of its overseas branches to the bank was held to be eligible for the non-recognition treatment of I.R.C. Section 311 and not subject to a Section 482 adjustment. The court held that Section 482 could only override a non-recognition provision of the Code where some abuse of the non-recognition provisions was present.

- 6) Bank of America v. United States,
78-2 U.S.T.C. par. 9493 (N.D. Calif.).

The Federal District Court in San Francisco held that a taxpayer could obtain, under the discovery provisions of the Federal Rules of Civil Procedure, the government's background file reflecting the development and finalization of Treasury Regulations under I.R.C. Section 482.

The court adopted the bank's position that the test for disclosure of government records under the Freedom of Information Act should be applicable to discovery disputes under the Federal Rules of Civil Procedure. That test requires the production of all internal government records of a factual nature, as well as records containing analytical material to the extent such analytical records are intended as "explanatory" of the rules and regulations finally adopted. In order to be protected from discovery the records must pre-date the finalization of the government's position on the issue and be deliberative, rather than explanatory, in nature.

- 7) Bank of America v. United States,
76-2 U.S.T.C. par. 9588 (Ct. Cls.).

The trial judge and the court held that the government was precluded from raising an offset issue. The government's attempt to amend its answer and raise the new issue (the treatment for source-of-income purposes of acceptance discount income) was dilatory and prejudicial to the bank. Significant to the government's right to raise an offset issue was the court's statement that a taxpayer's showing of undue delay on the part of the government in raising new issues establishes a prima facie showing of prejudice to the taxpayer and no showing of specific prejudice must be made.

- 8) The Hibernia Bank v. United States,
75-2 U.S.T.C. par. 13,102, aff'd 78-2 U.S.T.C. par. 13,261 (9th Cir.).

Post death interest expenses incurred by an estate were not reasonable expenses of administration and therefore were not deductible under I.R.C. Section 2053.

- 9) Donia Smith v. United States,
76-2 U.S.T.C. par. 9621 (N.D. Calif.), aff'd per curiam
79-1 U.S.T.C. par. 9248 (9th Cir.).

An I.R.S. levy on funds seized from a safe deposit box was valid. Contrary to plaintiff's trial testimony, the credible evidence demonstrated that the taxpayers owned the property in question and it was therefore subject to seizure to pay the taxpayer's delinquent tax liabilities.

- 10) Colorado Springs National Bank v. United States,
73-2 U.S.T.C. par. 9795 (D.C. Colo.), aff'd 74-2 U.S.T.C. par. 9809 (10 Cir.)

A one-time membership fee in the Master Charge credit card association was a non-deductible capital expenditure. Other miscellaneous expenses of start-up its credit card operation were deductible by the bank.

- 11) Ray C. Imel v. United States,
73-1 U.S.T.C. par. 9617; 74-1 U.S.T.C. par. 9459 (D.C. Colo.), aff'd 75-2 U.S.T.C. par. 9698 (10 Cir.).

A wife's interest acquired upon divorce in her husband's separate property was held, for federal income tax purposes, to constitute quasi-community property. This allowed the husband to avoid recognition of appreciation in the value of the property which was transferred to the wife pursuant to Colorado divorce proceedings.

- 12) Great Lakes Pipeline Co. v. United States,
73-1 U.S.T.C. par. 9156 (W.D. Mo.), aff'd per curiam by the Tenth Circuit.

Expenses incurred at the time of a Section 337 liquidation were not deductible since they related primarily to the sale of assets, not to the liquidation.

- 13) John A. Kroh v. United States,
73-1 U.S.T.C. par. 9141 (D.C. Kan.).

A second examination of taxpayer's books and records did not occur. Furthermore, even if an unauthorized second examination had occurred, it would have had no effect on the tax deficiency.

- 14) Eleanor Quick v. United States,
73-2 U.S.T.C. par. 9742 (D.C. Colo.), aff'd 74-2 U.S.T.C. par. 9700 (10 Cir.)

The estate tax deduction provided by I.R.C. Section 691(c) was applied against the sum of the net long-term capital gain (after the Section 1202 50% capital gains deduction) and ordinary income.

- 15) John Emberton v. United States,
73-2 U.S.T.C. par. 9575 (D.C. Nev.), aff'd in unpublished opinion January 22, 1975 (9th Cir.).

Daily expenses of traveling from their homes in Las Vegas to the remote Nevada Test Site were non-deductible commuting expenses.

- 16) Therm. Estate of Joseph K. v. United States,
1974-2 U.S.T.C. par. 13,025 (D.C. Utah).

The amount of the marital deduction was properly reduced by the wife's share of estate taxes attributable to the property she received from the decedent.

- 17) Anderson v. United States,
78-1 U.S.T.C. par. 9369 (D.C. Calif.).

An employee's dominant intent in making certain loans was for business purposes and losses with respect thereto were ordinary. The dominant intent in making other loans was for investment purposes and losses on those loans were treated as capital losses.

- 18) Kelson v. United States,
73-2 U.S.T.C. par. 9565 (D.C. Utah), rev'd 74-2 U.S.T.C. par. 9714 (10 Cir.).

Alleged supplemental and informal claims for refund were allowed by the district court (per Judge Willis Ritter) but disallowed by the Tenth Circuit.

- 19) United States v. Woodrow F. Moran,
(N.D. Calif. 1976).

This was a successful 23 count criminal tax prosecution against an income tax return preparer. Charges were brought under Section 7206(1) and (2).

- 20) United States v. Johnny Chang,
(N.D. Calif. 1975).

This case involved a four year tax evasion prosecution under Section 7201. The defendant was convicted on three counts. The specific item method of proof was utilized.