

1 EXECUTIVE COMMITTEE MEETING TO CONSIDER  
2 HEALTH CARE REFORM  
3 WEDNESDAY, SEPTEMBER 30, 2009  
4 U.S. Senate,  
5 Committee on Finance,  
6 Washington, DC.

7 The hearing was convened, pursuant to notice, at  
8 10:21 a.m., in room 216, Hart Senate Office Building,  
9 Hon. Max Baucus (chairman of the committee) presiding.

10 Present: Senators Rockefeller, Conrad, Bingaman,  
11 Kerry, Lincoln, Wyden, Schumer, Stabenow, Cantwell,  
12 Nelson, Menendez, Carper, Grassley, Hatch, Snowe, Kyl,  
13 Bunning, Crapo, Roberts, Ensign, Enzi, and Cornyn.

14 Also present: Democratic Staff: Bill Dauster,  
15 Deputy Staff Director and General Counsel; Elizabeth  
16 Fowler, Senior Counsel to the Chairman and Chief Health  
17 Counsel; Cathy Koch, Chief Tax Counsel; and Kelly  
18 Whitener, Fellow. Republican Staff: Kolan Davis, Staff  
19 Director and Chief Counsel; Mark Prater, Deputy Chief of  
20 Staff and Chief Tax Counsel; Mark Hayes, Republican  
21 Health Policy Director and Chief Health Counsel; Rodney  
22 Whitlock, Health Policy Advisor; Becky Shipp, Health  
23 Policy Advisor; Kevin Courtois, Health Staff Assistant;  
24 Sue Walden, Health Policy Advisor; and Andrew McKechnie,  
25 Health Policy Advisor.

1           Also present: Josh Levasseur, Deputy Chief Clerk and  
2           Historian; Athena Schritz, Archivist; Mary Baker,  
3           Detaillee; David Schwartz, Professional Staff; Thomas  
4           Reeder, Senior Benefits Counsel; Thomas Barthold, Chief  
5           of Staff of the Joint Committee on Taxation; David  
6           Hughes, Senior Business and Accounting Advisor; Neleen  
7           Eisinger, Professional Staff; and Tony Clapsis,  
8           Professional Staff.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM  
2 MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

3

4 The Chairman. The Committee will come to order.

5 Good morning, everybody. This is our sixth day of  
6 consideration of America's Healthy Future Act. Now, in 6  
7 days, the good Lord created the heaven and earth.

8 [Laughter.]

9 The Chairman. And even though we have a little  
10 less going on for us, I am hoping we can still finish  
11 this bill in only a little bit more time, give or take.

12 Yesterday, the Committee considered 23 amendments.  
13 We have thus considered a total of 81 amendments so far.

14 This morning I hope we can begin to consider some  
15 financing amendments. Senators can still offer their  
16 coverage and delivery amendments, if they wish, but I  
17 hope we can begin addressing the major financing issues  
18 this morning.

19 For the information of Senators, we will break  
20 between 12:45 and 2:15 for the party caucus lunches, and  
21 we will break again between 4:45 and 6:30 for votes,  
22 dinner, and a classified briefing. Once again, we will  
23 go late tonight.

24 We are making good progress, and I hope we can have  
25 a productive day.

1           Senator Hatch.    Mr. Chairman?  Mr. Chairman?

2           The Chairman.    Senator Hatch.

3           Senator Hatch.    I would like to call up an  
4 amendment.

5           The Chairman.    Actually, Senator Hatch, I have got  
6 another amendment I have got lined up.  We will get to  
7 you later.

8           Senator Hatch.    Can I do mine after yours then?

9           The Chairman.    Well, let us see where we are.  I  
10 will try to accommodate you.

11          Okay, Senator Kerry.

12          Senator Kerry.    Mr. Chairman, I would like to call  
13 up amendment number 469, Kerry F-1.  Mr. Chairman, I am  
14 not going to ask for a vote on this amendment, but I do  
15 want to talk about it for a moment, and the reason I am  
16 not asking for a vote is that you have been very  
17 accommodating in working with us, both in the mark as  
18 well as ongoing, in order to try to see if we can find  
19 the sweet spot on the changes here.

20          But this is an amendment which Senators Rockefeller,  
21 Schumer, Stabenow, Cantwell, and Menendez are all  
22 cosponsors of, and I want to begin comments just by  
23 thanking you, Mr. Chairman, for moving in the right  
24 direction on the excise tax on the high-cost insurance by  
25 incorporating some of the provisions of this amendment in

1 the modifications. Increasing the indexing of the  
2 threshold on the Consumer Price Index to the consumer  
3 price index plus one percent I believe will prevent the  
4 provision from having unintended consequences in the out-  
5 years, and that change will also help to prevent the tax  
6 from expanding rapidly over time, impacting too many  
7 health insurance plans.

8 Also, providing a higher threshold for retirees over  
9 age 55 and plans that cover high-risk professions I  
10 believe is the right thing to do. As you know, some  
11 health insurance plans have high costs not because they  
12 provide generous coverage, but because they cover older  
13 workers. And other plans have high costs because they  
14 cover professions for which employees are engaged in  
15 high-risk activities. It is usually more expensive to  
16 insure mine workers and firefighters due to the nature of  
17 their work, and we do not want people unfairly penalized.

18 But I am concerned, as I have mentioned to you a  
19 number of times, Mr. Chairman--and I think you are aware  
20 from other people--that the threshold is currently set at  
21 a level that is too low. I think it ought to be higher.

22 I had contemplated it as being higher when I proposed  
23 this to the Committee, and I understand that there is a  
24 cost to my amendment. Right now we are working to find  
25 an offset that all of us can agree on.

1           So for that reason, after a couple more comments, I  
2 will withdraw the amendment, but I want to have your  
3 assurance that we are going to work in good faith in  
4 these next days as we go towards the melding process out  
5 of Committee in order to try to fix this issue between  
6 now and the floor consideration.

7           Let me mention a revenue offset that is not part of  
8 the amendment, but, frankly I believe could be used to  
9 offset the cost of the threshold, and that is the capping  
10 of itemized deductions. Not all of us agree on this,  
11 but, frankly, the current deduction system is both  
12 inefficient and unfair. High-income individuals benefit  
13 much more than middle-income or, obviously, as you know,  
14 people on the margins of where they begin to pay taxes in  
15 the country.

16           A wealthy banker with income over \$1 million  
17 benefits far more from the itemized deduction than a  
18 hard-working teacher or someone else at a middle-income  
19 level who would want to seek a deduction. As we have all  
20 talked about in the last days, there is more to providing  
21 health care to people than just the insurance process.  
22 There is the moral and structural questions that are  
23 raised in terms of the country and what we ought to  
24 properly be doing for people. And I think those of us in  
25 the upper-income brackets--and because of our salaries

1 here in the United States Senate, that is everybody here.

2 Those of us in the higher-income bracket should forego a  
3 tax break in order to help millions of people who do not  
4 have health care.

5 The amendment that I have put forward that does not  
6 include that offset, Mr. Chairman, would increase the  
7 threshold for individual coverage from \$8,000 to \$9,800  
8 and for family coverage from \$21,000 to \$25,000. And as  
9 you know, when I originally proposed this back in July,  
10 we were looking for about \$120 to \$140 billion of  
11 revenue. Currently, this provision has been used to find  
12 about \$210 to \$215 billion.

13 I also proposed it as a way to leverage high-cost  
14 plans to reduce health care costs, and all the actuaries  
15 and everybody who has looked at this are convinced that  
16 this will drive down costs. And that is why I continue  
17 to believe it is a good idea. But I think we ought to  
18 adjust it preserve the cost-containing effect while  
19 simultaneously guaranteeing that it does not have an  
20 adverse impact on some sector of the workforce that we do  
21 not want it to have an impact on.

22 The remaining provision of the amendment would  
23 exempt existing collective bargaining agreements from the  
24 threshold, and I think that would give plans subject to  
25 the agreement time to renegotiate, which is an important

1 part of sort of extending fairness to every sector of the  
2 workforce.

3 So I urge all of us to work on this, but, Mr.  
4 Chairman, I would specifically ask you for the commitment  
5 to try to see if we cannot further refine the changes  
6 that have already been made to try to adjust this so that  
7 we can address the concerns that I have expressed.

8 The Chairman. Thank you, Senator. I appreciate  
9 your amendment. I think we all recognize one of the  
10 major goals of health care reform is to lower the rate of  
11 growth of health care costs in this country, and as the  
12 budget resolution states, any action we take must be  
13 deficit neutral over 10 years.

14 To be frank, this Committee, I think more than other  
15 committees, includes provisions which, in fact, do bend  
16 the cost curve. It is in my judgment critical that we  
17 not only provide health care coverage, we not only  
18 include delivery system reform, and not only reform the  
19 health insurance market, but we must bend the cost curve.

20 We must bend it, in the right way not the wrong way.  
21 And all of us were very pleased with the decision by the  
22 Congressional Budget Office that the mark is not only  
23 deficit neutral over 10 years but a slight surplus in the  
24 last year of the 10-year period. Even more importantly,  
25 it starts to bend the cost curve in the right way in the

1 second 10 years. I think that is critical for many  
2 reasons.

3 Now, one provision that does bend the cost curve is  
4 the item that you are talking about, high-cost insurance  
5 excise tax on high-cost plans. In fact, it is kind of  
6 interesting. I woke up this morning and saw an article  
7 in one of the newspapers today stating that, highlighting  
8 this provision in the mark, that this does have a  
9 positive effect--it was a positive article in one of  
10 today's newspapers. And it is reaffirming what we have  
11 to do here.

12 Now, I also further recognize that there are other  
13 people trying to address some of the concerns that some  
14 people have with the earlier provision in the mark. We  
15 have modified the mark which in some of the provisions, I  
16 might add, that increase the threshold level by \$2,000  
17 for families and \$750 for individuals for pre-Medicare  
18 retirees over the age of 55. So that was an improvement.

19 In addition, we provide for an increase for plans  
20 with high levels of certain high-risk workers, and also  
21 an increase in the index to the threshold. The threshold  
22 was CPI. We increased the threshold, and, of course, the  
23 more the threshold is increased, the more it does not  
24 bend cost curve on down the road.

25 The key here is balance. It is balance between the

1 objectives I just outlined and also the effect it will  
2 have on certain populations, certain folks, and you have  
3 recognized--you have named, you have mentioned groups of  
4 people, inferentially anyway, impliedly anyway, which do  
5 need a little bit of relief here--namely, by raising the  
6 threshold for individuals by \$1,000 and for families by  
7 \$4,000, and I appreciate that. And as we work with you  
8 and with other Senators, frankly, and the other concerns,  
9 we are just trying to find a balance for everybody  
10 because--I will not say it is totally a zero-sum game,  
11 but it is in the nature of a zero-sum game how we work  
12 with what we have and find a balance. I deeply  
13 appreciate your amendment, and I pledge to you that we  
14 will work very hard to try to help address the issues  
15 that you have raised, but also recognize we have to do it  
16 in the context of balancing it out with other--

17 Senator Kerry. Well, I understand that, Mr.  
18 Chairman. I would just reiterate this is a proposal  
19 which is here because, as you know, I offered it. And I  
20 would hate to see it extrapolated beyond its original  
21 intent. So I would like to see if we can work on it  
22 because a lot of people were supportive of this with the  
23 understanding that it would be X; now it is Y. And I  
24 would like to see if we cannot continue to work at it.  
25 And I appreciate that very much.

1           So I will withdraw the amendment and look forward to  
2 working with you.

3           Senator Rockefeller. Mr. Chairman, I would like to  
4 speak in strong support of Senator Kerry's amendment #F-  
5 1.

6           In West Virginia, coal miners need more expensive  
7 coverage, not because they are getting unnecessary  
8 procedures, but because they risk their lives in  
9 dangerous jobs that take a serious toll on their health  
10 as they work to provide everyday electricity to the  
11 nation. Taxing that coverage would impose a new cost and  
12 ultimately cut benefits -- and that is not acceptable to  
13 me.

14           Across the nation, first responders, firefighters,  
15 law enforcement officers, and others are facing the same  
16 threat. These workers do their jobs honorably, day-in  
17 and day-out, and put their lives on the line for our  
18 safety.

19           Mr. Kerry's amendment, which I cosponsor, includes  
20 an enormously important exemption for high-risk workers  
21 like West Virginia's coal miners and first-responders  
22 everywhere.

23           This amendment would also increase the overall  
24 thresholds of the excise tax to \$9,800 for individual  
25 coverage and \$25,000 for family coverage. This increase

1 would make sure families, older workers, and retirees who  
2 truly require expensive health care do not see their  
3 benefits cut as a consequence of the excise tax.

4 I understand the need to raise revenue to pay for  
5 health care reform. But we must do it sensibly, without  
6 preventing families and high-risk workers from getting  
7 the coverage and the care they have earned and deserve.  
8 We do not want to hurt the very same people we are trying  
9 to help.

10 For all these reasons, I strongly support the  
11 modified Chairman's mark which increases the excise tax  
12 limits for plans that cover employees engaged in high-  
13 risk professions by \$750 for individual coverage and  
14 \$2,000 for family coverage. This provision is adapted  
15 from an amendment I filed, and I appreciate the  
16 Chairman's work on this issue.

17 However I want to make clear, we can and should do  
18 more. I will continue fighting for additional relief for  
19 coal miners and high-risk workers as we continue working  
20 on this bill through Conference.

21 Thank you, Mr. Chairman, and I look forward to  
22 continuing to work with you on this issue on the Senate  
23 floor.

24 Senator Stabenow. Mr. Chairman?

25 The Chairman. Senator Stabenow.

1           Senator Stabenow.    If I might as a cosponsor of the  
2 amendment just speak in support of it.

3           The Chairman.    Sure.

4           Senator Stabenow.    I appreciate that it is going to  
5 be withdrawn.  I very much appreciate Senator Kerry's  
6 leadership on this, and, Mr. Chairman, I understand what  
7 we are trying to do overall in terms of bringing down  
8 costs long term and trying to address a number of issues.

9           I am very concerned about this provision and believe  
10 that we need to increase the thresholds both for  
11 individuals and families because there is, I think, a  
12 discussion that goes on about these Cadillac plans that  
13 really does not hold true from many, many working  
14 Americans who over the years have given up salary  
15 increases to get their increased benefits, to have health  
16 care for themselves and their families, and they are now,  
17 because of cost increases--the same cost increases we are  
18 trying to address overall in reform--they are seeing  
19 their copays and deductibles go up.  It is a high-value  
20 plan, but they are paying more and more for it.  It is  
21 squeezing them.  And I do not want to see them, in  
22 addition to that, have to add an additional tax to them  
23 as they are trying to figure out how to keep their health  
24 insurance.

25           A lot of the plans we are talking about cost more

1       because the workforce is older, and I am particularly  
2       concerned about those who have retired early, not  
3       necessarily of their own voluntary decisions, at age 55  
4       or 60, who are paying more because of age rating, because  
5       of the way the insurance system is set up, not because  
6       they are getting some kind of a Cadillac plan. They are  
7       paying more.

8               Mr. Chairman, I appreciate the modified mark to  
9       begin to show some sensitivity to that in terms of  
10       increased threshold for retirees, but certainly for us in  
11       our State, when we look at what has happened with the  
12       VBAs, the voluntary arrangements where retirees are now  
13       taking over and assuming the cost of their health care,  
14       their costs are much higher than the thresholds currently  
15       in the mark. And that is of great concern to me.

16               We also have complications with multi-employer plans  
17       under the Taft-Hartley Act where they are structured  
18       differently and employers and employees pay in in self-  
19       insured plans.

20               And so there are a number of issues involved here,  
21       and I am very, very concerned and committed that, before  
22       this bill is signed into law, we address these issues  
23       effectively, that we make sure that we are not adding a  
24       tax on middle-income workers or on retirees.

25               So, Mr. Chairman, I hope we are going to continue to

1 work on this. I am hopeful that, before our process in  
2 the Committee is done, we can, in fact, see some  
3 additional movement in the right direction. I think that  
4 is a very, very important issue for families who are  
5 seeing a loss of everything else, but they are trying to  
6 hold on to their health care for their families. And I  
7 do not want to add an additional tax burden to them.

8 Senator Grassley. Mr. Chairman?

9 The Chairman. Senator Grassley.

10 Senator Grassley. I assume we are going to go back  
11 and forth between Republican amendments--

12 The Chairman. Yes, that is correct.

13 Senator Hatch. Mr. Chairman, I am prepared.

14 Senator Schumer. Mr. Chairman?

15 The Chairman. Senator Schumer.

16 Senator Schumer. I will just be very brief. I  
17 feel strongly about this amendment, but I know you want  
18 to move the process forward, so I will ask unanimous  
19 consent my statement be put in the record and just say I  
20 want to echo Senator Kerry, whose leadership on this  
21 issue I appreciate, as well as Senator Stabenow. We have  
22 made some changes. There is a need to go further given  
23 the exigencies of middle-class people who have worked  
24 hard in our States, and I know you are working on that,  
25 and we look forward to working with you on it.

1 Thank you.

2 [The statement appears at the end of the  
3 transcript.]

4 Senator Hatch. Mr. Chairman?

5 The Chairman. Thank you, Senator, very much. I  
6 appreciate that.

7 Senator Hatch. Mr. Chairman?

8 The Chairman. Okay. We are going to alternate  
9 back and forth. Senator Hatch?

10 Senator Hatch. Thank you, Mr. Chairman.

11 The Chairman. Would you identify your amendment,  
12 please? Is that filed?

13 Senator Bunning. Excuse me. May I question  
14 someone on Senator Kerry's amendment?

15 The Chairman. Well, he has withdrawn it. I  
16 recognized Senator Hatch.

17 Senator Hatch. I call up amendment number C-14. I  
18 do not intend to take a lot of time on this. I have two  
19 amendments that I would like to dispose of. I could  
20 probably do them both--not together, but one right after  
21 the other, if the Chairman wants me to.

22 My amendment is simple. It states that Federal  
23 taxpayers' dollars cannot be used to pay for subsidized  
24 abortion of the news programs and plans created in this  
25 bill. It essentially codifies the Hyde language, which

1 we have all included in appropriations bills for many  
2 years.

3 Now, to be clear today, the Hyde language only  
4 applies to programs appropriated through the annual  
5 Labor-HHS appropriations bill. The current Hyde language  
6 would not--let me make that clear--would not apply to the  
7 new programs and subsidies created through this mark  
8 because they are not part of the Labor-HHS appropriations  
9 bill. My amendment applies to Hyde language in these new  
10 programs and subsidies.

11 Now, during the HELP Committee's consideration of  
12 the health reform bill, I offered an amendment to reflect  
13 that intent. The goal of my amendment here today is to  
14 incorporate that same legislative language in the Finance  
15 bill reported to the Senate.

16 Last week, I feel like I had a good conversation  
17 with counsel who assured Committee members that Federal  
18 funding for elective abortions would not be covered under  
19 the Chairman's mark. The only exceptions would be those  
20 covered by the Hyde language. Again, those exceptions  
21 are pregnancies resulting from rape or incest or when the  
22 life of the mother is in danger. My amendment simply  
23 adds that legislative language to this bill.

24 Now, one of the arguments I have heard is that this  
25 amendment is not necessary because the Hyde amendment

1 prevents Federal funding of abortion or the purchase of  
2 plans that cover abortion. Because this bill both  
3 authorizes and provides the funding for the premium  
4 subsidies, no future appropriations bill would be  
5 necessary in regards to this specific funding.

6 Mr. Chairman, you have made it clear during this  
7 markup that you do not want Federal taxpayer dollars to  
8 pay for abortions. I know you are a man of your word.  
9 But I also want assurances that it is clear in the bill's  
10 language that taxpayers' dollars will not be used to fund  
11 abortions through the new programs or subsidies created  
12 in this bill. And that is why I am offering this  
13 amendment. It is a simple amendment that really says  
14 what you and I have agreed ought to be done.

15 It is my hope that this amendment will be accepted  
16 by the Committee, and just a main point. If the intent  
17 of the Finance Committee mark is that we do not want to  
18 fund or subsidize abortions, let us be very clear. Let  
19 us put specific language from my amendment in the bill  
20 text, and that will solve that problem.

21 That is all I need to say about it. I hope you will  
22 accept this amendment, and we will go from there.

23 The Chairman. I might ask the staff what  
24 protections are there, what provisions are there in the  
25 modified mark that prohibits Federal funds to be spent on

1 abortions? If you could just describe the mark in that  
2 respect.

3 Ms. Henry-Spires. Sure. There are a couple of  
4 things in the mark, Chairman, that prohibit the use of  
5 Federal funds for abortion.

6 One, abortion cannot be mandated as a part of a  
7 minimum benefits package. Plans are prohibited from  
8 providing--or not prohibited from providing abortion  
9 coverage, but Federal funds continue to be prohibited for  
10 abortion except where permitted by Hyde, as Senator Hatch  
11 said, and those cases would be in rape, incest, or the  
12 life of the mother.

13 Secondly, private funds used to cover abortion must  
14 be segregated from Federal funds. Insurance companies  
15 would be required to provide HHS with assurances that it  
16 is keeping private funds separate from Federal funds and  
17 that only a portion of those private funds held  
18 separately could be used to provide any abortion coverage  
19 if the plan offers it.

20 The Chairman's mark states specifically and clearly  
21 that no tax credits, not cost sharing, no Federal funds  
22 can be used to cover abortion. As Senator Hatch pointed  
23 out, last Friday we went through the mark and showed  
24 three specific places where the language "no Federal  
25 funds" or "no tax credits" can be used to cover

1 abortions.

2 Senator Hatch. Can you tell us which page that is  
3 on?

4 Ms. Henry-Spires. Sure. If you just give me one  
5 second, I believe it is on page 26. The language on  
6 abortion goes from page--somewhere from page 24 to page  
7 26 of the actual mark.

8 So on page 26 of the mark, under the section that  
9 begins on page 25 that says "Abortion coverage prohibited  
10 as part of minimum benefits package," on the last  
11 sentence of the first paragraph on page 26, it says,  
12 "Federal funds continue to be prohibited from being used  
13 to pay for abortions unless the pregnancy is due to rape,  
14 incest, or the life of the mother is in danger." And  
15 that is stating the Hyde exception.

16 The other place where it is specifically mentioned  
17 is the following paragraph, the first sentence, which  
18 says, "No tax credit or cost-sharing credits may be used  
19 to pay for abortions," and then it says "beyond those  
20 permitted by the most recent appropriation for the  
21 Department of Health and Human Services," which also  
22 references Hyde--rape, incest, or the life of the mother.

23 And I think there is another one, but those are two.

24 Senator Hatch. Let me ask counsel, even if tax  
25 credits and cost-sharing credits are prohibited from

1 paying for abortion, would that apply to reinsurance and  
2 risk adjustment payments? I would appreciate it if you  
3 would answer that. Before you answer that question, let  
4 me read from page 26 of the mark. It says this:

5 "No tax credits or cost-sharing credits may be used  
6 to pay for abortions beyond those permitted by the most  
7 recent appropriation for the Department of Health and  
8 Human Services. In addition, insurers participating in  
9 any State-based exchange that offer coverage for abortion  
10 beyond those permitted by the most recent appropriation  
11 for the Department of Health and Human Services must  
12 segregate from any premium or cost-sharing credits an  
13 amount of each enrollee's private premium dollars that is  
14 determined to be sufficient to cover the provision of  
15 those services. The Secretary shall also establish a  
16 process using an estimated actuarial value by which  
17 insurers that provide coverage for abortions beyond those  
18 permitted by the most recent appropriation for the  
19 Department of Health and Human Services must demonstrate  
20 that no Federal premium and cost-sharing credits are used  
21 for the purpose of paying for such abortions."

22 So even if tax credits and cost-sharing credits are  
23 prohibited from paying for abortion, the question whether  
24 reinsurance, risk adjustment payments, and other matters  
25 that are in this later bill actually are covered.

1           Ms. Henry-Spires. Okay. I may need to take your  
2 question in two parts to do it justice.

3           The issue of reinsurance, when we looked to find  
4 examples of segregation of funds to see if this was even  
5 plausible, if insurance companies really can segregate  
6 funds, one of the good examples that we found was an  
7 example of reinsurance. Where it is a practice of some  
8 insurance companies to separate out money for--a portion  
9 of premium, private premium dollars for catastrophic  
10 events, like transplant surgery, they separate those  
11 funds, hold them in a separate account, and some smaller  
12 plans use those premium dollars, a portion of private  
13 premium dollars, to then purchase or pay a premium for  
14 reinsurance.

15           So it actually in some cases is a good example of  
16 ways to segregate money and make sure that you are  
17 keeping a portion of private premiums separate from other  
18 dollars.

19           To your second question--and forgive me if I--your  
20 second question, as I understand it, what the Chairman's  
21 mark is stating is that in plans that offer abortion--and  
22 not all plans under the Chairman's mark would offer  
23 abortion, but in ones that do, Federal funds must be kept  
24 separate from private premium dollars used to cover  
25 abortion, and it says further to make it a sincere effort

1 at separating those funds, the Secretary must require  
2 insurance companies to set a value for what those  
3 abortion services would cost and segregate further from  
4 the premium dollars that amount of money. Without that  
5 actuarial cost or actuarial estimation, there is no real  
6 way to know sincerely that the insurance company has kept  
7 the appropriate amount of money separate.

8 So the Chairman's mark really strives to make sure  
9 that the separation and segregation of Federal funds and  
10 premium dollars that go to abortion is real and sincere  
11 by requiring an actuarial value to be set and that amount  
12 of money to be kept separate. That is something that can  
13 be checked on and ensured by the Secretary.

14 Senator Hatch. On the same page 26, it does have  
15 this sentence: "Federal funds continue to be prohibited  
16 from being used to pay for abortions unless the pregnancy  
17 is due to rape, incest, or the life of the mother is in  
18 danger."

19 Now, what does that mean? And how would Hyde be  
20 impacted if it is not included in appropriations down the  
21 road? I would like to codify it so we do not have to go  
22 through this every year, and we have been doing it for  
23 many years now. And why not just codify it and make sure  
24 that we cover all these contingencies that could arise?  
25 But go ahead. You can explain that if you would care to.

1           Ms. Henry-Spires. Sure. This points to the  
2 Chairman's mark commitment to maintaining the status quo.  
3       Those were some of the principles that came into this  
4 conversation.

5           The Chairman in his instruction to staff was clear  
6 that this was to be a health reform bill and not an  
7 abortion bill, so that we were to maintain the status quo  
8 wherever possible, respect current law and not advance--  
9 not move the ball in either direction.

10          So in this sense, the Chairman's mark references  
11 current law and makes current law the rule for these  
12 provisions. It does not advance the ball in either way,  
13 but respects Hyde, references Hyde multiple times, and  
14 holds it steady.

15          The Chairman. I might say basically this is a  
16 health care bill. This is not an abortion bill, and we  
17 are not changing current law. That is fundamentally what  
18 is going on here, and that is important, I think, for us  
19 to remember.

20          Senator Snowe?

21          Senator Snowe. Yes, Mr. Chairman. I think you  
22 indicated, correctly I know, that based on the Group of  
23 Six discussions, the true intent was to maintain current  
24 law and not create any unintended consequences or any  
25 other changes in current policy.

1           Can you cite examples of where we have segregated  
2 funds in other programs? For example, in Medicaid there  
3 are 17 States that go beyond the restrictions of Hyde,  
4 for example, and they have set up separate funding,  
5 separate coding and so forth, or international family  
6 planning programs, we require separation of funding as  
7 well so that we avoid any commingling of funds. Can you  
8 inform the Committee of those examples? Because I think  
9 that that is also important to the essence of Senator  
10 Hatch's question and what the intent is in the current  
11 mark.

12           Ms. Henry-Spires. Sure. The Senator is exactly  
13 right. In Medicaid, a program that receives Federal  
14 funds, there are 17 States that use State funds to  
15 provide abortion coverage. In those States, Federal  
16 funds are still strictly prohibited from being used to  
17 provide abortion coverage beyond the Hyde exceptions. In  
18 order to do this, those States' Medicaid programs set up  
19 separate billing accounts. They set up separate billing  
20 codes so that you know what is Federal money that has  
21 come in, what is State dollars that have come in, and  
22 then what those funds can be used for. And they must  
23 correspond one to another. So this segregation of funds,  
24 there are State examples, there are also insurance  
25 examples.

1           Another example from the world of insurance, Senator  
2           Snowe, is one where insurance commissioners often require  
3           that insurance companies maintain a reserve. Those  
4           reserves have to be held separate from operating funds  
5           and have to be held in a separate account. So there are  
6           examples of this. There are real-life examples.

7           Senator Snowe. Thank you.

8           The Chairman. Further discussion? Senator  
9           Stabenow.

10          Senator Stabenow. Thank you, Mr. Chairman. First  
11          let me say I know that people have strong feelings on  
12          both sides on this. This is a difficult, personal issue  
13          for people. The Chairman, I believe, has gone above and  
14          beyond to address this in a way that guarantees nothing  
15          is changed about current law. My preference would have  
16          been actually to have other language in this mark, which  
17          is not here, and I appreciate the fact that this is an  
18          effort to make sure that we maintain the status quo.

19          This amendment does not maintain the status quo. In  
20          fact, with all respect to my friend, as a woman I find it  
21          offensive that in here any woman, any family purchasing  
22          through the exchange, if they did not receive any tax  
23          credit, would be prohibited from having the full range of  
24          health care options that they may need covered. This  
25          does not just refer to the tax credits. As I read this,

1 "prohibit private insurers offering through the exchange  
2 from offering coverage." This is an unprecedented  
3 restriction on people who pay for their own health care  
4 insurance.

5 Then when we look at the fact that this offers that  
6 people could have a supplemental single-service rider,  
7 the assumption that somehow a woman or a family would  
8 say, you know, someday we may have an unintended  
9 pregnancy, so we are going to get a separate rider, or  
10 maybe my pregnancy is going to have a crisis, many, many  
11 crises, and so we are going to try to find some other  
12 rider, it is--in my judgment, I do not even know how that  
13 would work.

14 In the few States that have tried to do that, there  
15 is no evidence that even those kinds of riders are  
16 available. I mean, just--it goes to the point of moving  
17 this from a bill that is neutral, which those of us who  
18 believe that choice should be available, are willing to  
19 accept as fairness in this bill, to a bill where we would  
20 be saying to anybody who purchased insurance, who needs  
21 insurance now--we have already debated whether or not we  
22 should cover maternity care and prenatal care and make  
23 sure babies can live through the first year of life by  
24 having prenatal care. And now the question is whether or  
25 not women are able to have the option and choice

1 available to them, most in the worst possible situations,  
2 excruciating choices, great tragedies, and whether or not  
3 women should be covered under the health care exchanges  
4 for their reproductive health choices.

5 I find this personally just an extreme amendment,  
6 and I would oppose it. I would hope that we would vote  
7 no.

8 Senator Hatch. Well, Mr. Chairman, let me answer  
9 that. I would be the last person on Earth--

10 The Chairman. Senator Hatch.

11 Senator Hatch. I would be the last person on Earth  
12 who would want to offend you or any other woman. All I  
13 am trying to do is make sure that--and I do not think it  
14 makes it an abortion bill. It just says we are going to  
15 codify what we believe to be the case.

16 Millions of people, even pro-choice people, do not  
17 believe that the taxpayers should have to pay for  
18 abortions. But there are a huge number of people, almost  
19 50 percent or more--I think it actually is more--who are  
20 against abortion, who really find it highly offensive  
21 that they have to pay taxes that will be used for  
22 abortion purposes.

23 Now, look, I--

24 Senator Stabenow. May I ask my friend a question?

25 Because I--

1           Senator Hatch.    If I could just finish.

2           Senator Stabenow.   --understand what you are  
3 saying.

4           Senator Hatch.    If I could just finish, then I will  
5 be happy to turn to you with the Chairman's mark's  
6 permission.

7           Under my amendment, current law would be maintained  
8 in that the Federal Government will not pay for abortions  
9 or subsidize plans that cover abortion. Now, my  
10 amendment does not prevent individuals from purchasing  
11 with their own money a supplemental policy for abortion  
12 coverage. Nothing--it does not interfere with that at  
13 all. It just says, look, to the 100 million-plus people  
14 our there--and I think it is plus by quite a margin--who  
15 do not think that the Government should be paying--using  
16 taxpayer dollars--everybody's taxpayer dollars paying for  
17 abortion, we want to make sure that the Government does  
18 not do that.

19           And let me just make another point here. The  
20 language in the bill that really makes, I think, my  
21 point, in addition--it says, "In addition, insurers who  
22 participate in any State-based exchange that offer  
23 coverage for abortion beyond those permitted by the most  
24 recent appropriation for the Department of Health and  
25 Human Services must segregate from any premium or cost-

1 sharing credits an amount of each enrollee's private  
2 premium dollars that is determined to be sufficient to  
3 cover the provision of those services."

4 Under Medicaid, in States that cover non-Hyde  
5 abortions with State-only dollars--which States can do.  
6 You just said that those States use completely separate  
7 codes, approaches to do it. The mark does not specify  
8 the level of segregation of funds that staff just  
9 described. And what my amendment does is it clarifies it  
10 and makes it very clear that we are just not going to use  
11 taxpayer dollars to pay for something that I think a vast  
12 majority of taxpayers do not think taxpayer dollars  
13 should be used for. It does not interfere with the  
14 individual's right to purchase additional insurance so  
15 that they can cover their own abortions.

16 And, frankly, on page 26 of the mark also does not  
17 call--it does not call for separate supplemental coverage  
18 of non-Hyde abortions, which is what States do under  
19 current law to comply with the Hyde amendment. And  
20 without that separation, there is no way to guarantee  
21 that Federal funds are not used for non-Hyde purposes.

22 So all we are trying to do is just clarify this, get  
23 it straight, make sure taxpayer funds are not used for  
24 this purpose. Whether you are for or against abortion, I  
25 think most people have concerns about that. And I am

1 certainly not trying to offend my dear friend from  
2 Michigan.

3 Senator Snowe. Mr. Chairman?

4 The Chairman. Senator Snowe.

5 Senator Stabenow. Mr. Chairman, if I might  
6 respond.

7 The Chairman. Senator Snowe. Senator Snowe.

8 Senator Snowe. Mr. Chairman, I think that we all  
9 agree with the goal. We all share the same goal. It is  
10 how best to accomplish it. And I would appreciate a  
11 response from the staff on this very question, because,  
12 really, it is a difference between whether or not we are  
13 prohibiting that, prohibiting the use of Federal funds  
14 beyond what is in current law for abortions. But  
15 requiring a supplemental policy would mean that somebody  
16 would have to assume they are undergoing an abortion, and  
17 it is privacy concerns that will affect women.

18 So that the States are able to accomplish this, how  
19 can we accomplish that in this legislation without  
20 requiring a supplemental policy that raises significant  
21 issues? Because we do not disagree with the goal of  
22 Senator Hatch, and that is what we discussed at great  
23 length in the Group of Six about how best to achieve  
24 that.

25 So I would appreciate hearing from the staff on that

1 question. Is there a way of accomplishing that short of  
2 a supplemental policy? Because you would have to assume  
3 that the women is assuming to an abortion. You know,  
4 most of these pregnancies that result in abortion are not  
5 planned pregnancies. And so I think that we have to  
6 really address the central question how best to  
7 accomplish that without, I think, abrogating one's  
8 privacy rights.

9 Ms. Henry-Spires. That is right. To accomplish  
10 that is what the Chairman's mark does. It requires the  
11 segregation. It requires the determination of an  
12 actuarial cost so you know exactly how much money in  
13 private premium dollars must be separated.

14 We did look at--we really did explore as staff the  
15 idea of doing a supplemental policy and a rider, but we  
16 came to the same place. Even with a supplemental policy,  
17 you have one insurer receiving monies from the Federal  
18 Government or private dollars, and with the supplemental  
19 policy, receiving more private dollars, but they are  
20 still going to the same entity. So you still need the  
21 actuarial value. You still need to be able to separate  
22 and segregate these costs.

23 The difference is when you do this in a rider as  
24 opposed to the construct that is in the Chairman's mark,  
25 you are not altering the way that women receive coverage.

1 Many women are already covered for this today. Abortion  
2 coverage is offered in many plans. There are arguments  
3 as to what statistic is right. Is it 45 to 85 percent?  
4 We can agree it is somewhere in that range. But there  
5 are plans that offer this coverage today.

6 So you would be changing the way that women get this  
7 coverage and bringing up all kinds of--as you already  
8 indicated--privacy issues with women having to somehow, I  
9 do not know, plan for an unintended pregnancy and  
10 purchase this rider. We could not get around those  
11 issues.

12 So the Chairman's mark really struck the balance.  
13 The fiduciary issues is what the Chairman's mark was  
14 addressing. How do you keep these two pots of money  
15 separate and further ensure that no Federal funds are  
16 used to pay for abortion.

17 Senator Snowe. May I ask a further question, Mr.  
18 Chairman? Have there been any violations among the  
19 States that exceed the Hyde restrictions?

20 Ms. Henry-Spires. No.

21 Senator Snowe. You do not know of any?

22 Ms. Henry-Spires. No.

23 Senator Snowe. Thank you.

24 The Chairman. Okay. We are ready for a vote.

25 Senator Stabenow. Mr. Chairman?

1           Senator Hatch.    She wanted to speak, and then I  
2    need to--

3           The Chairman.    Senator Stabenow.

4           Senator Stabenow.   Mr. Chairman, just briefly, I  
5    did want to emphasize again what is in the Chairman's  
6    mark that guarantees that at least one plan in the  
7    exchange does not offer abortion coverage and that at  
8    least one does.   And that certainly seems like the  
9    fairest approach.

10          I would, secondly, just emphasize again this is not  
11    just about taxpayers' dollars.   This is about any  
12    insurance company in the exchange.   And if I do not  
13    receive any of the tax credits, if I am just trying as a  
14    small business or an individual to go through the  
15    exchange to get a better deal on insurance, this is  
16    unprecedented restrictions on what people can buy in the  
17    private insurance market.

18          And so I believe this is an extreme version of what  
19    has been trying to be accomplished.   I hope we are going  
20    to vote no on this.

21          The Chairman.    Okay.   Let us--

22          Senator Hatch.    Mr. Chairman?

23          Senator Cantwell.   Mr. Chairman?   Mr. Chairman?

24          The Chairman.    Senator Hatch wants to close, but,  
25    Senator Cantwell, I will recognize you before Senator

1 Hatch closes.

2 Senator Cantwell. Thank you, Mr. Chairman. I will  
3 be short because I obviously do not want the private  
4 sector insurance to now start discriminating against the  
5 full health care coverage that women deserve to have.  
6 This is not keeping the status quo. I know the Senator  
7 from Utah might have a different perspective, but I think  
8 we have the legal advice here. It is changing the status  
9 quo. Because of the exchange and the purchase of private  
10 insurance with subsidized contributions from the Federal  
11 Government, this will put those subsidies under this  
12 amendment if it passes, which says then that those  
13 private insurers have to deny women these full  
14 reproductive choices.

15 So I hope that we defeat this amendment. It is a  
16 major, major change, and I think a poison pill for this  
17 bill if it is hung on this legislation. So I urge my  
18 colleagues to defeat it.

19 Senator Hatch. Mr. Chairman, I will be short.

20 The Chairman. Senator Hatch.

21 Senator Hatch. Look, five States already require  
22 complete separate supplemental policies for non-Hyde  
23 abortion coverage. The mark also appears to reverse  
24 these constitutionally valid State laws. And it is clear  
25 here that the attempt at full segregation of public funds

1 falls short.

2 In these ways, there is no complete segregation.  
3 There is no supplemental that is completely separate.  
4 The provision does not apply to reinsurance payment to  
5 plans, and there is no accounting mechanism. So,  
6 clearly, the bill falls short.

7 Look, all I am asking, my gosh, is for specific  
8 language in the bill that prohibits Federal dollars being  
9 used to pay for abortions. Now, I believe that putting  
10 specific language in the bill is the way to accomplish  
11 this goal, instead of--you know, instead of referencing  
12 an annual appropriations bill. So that is all we do  
13 here.

14 Now, if somebody can improve that language, I would  
15 be happy to work with you. But, my gosh, that is not  
16 asking for a lot. It is not trying to change the law.  
17 It is not trying to infringe on a woman's right to have  
18 an abortion. It is not trying to infringe on the States'  
19 rights to handle this the way they want to handle it. It  
20 just says let us codify it so that we do not have to come  
21 up every year on appropriations and pass the Hyde  
22 language every year.

23 Senator Cornyn. Would the Senator yield for a  
24 question?

25 Senator Hatch. Yes, I would be happy to.

1           The Chairman.    Go ahead, Senator Cornyn.

2           Senator Cornyn.   My understanding of the thrust of  
3 the amendment is that Federal funds should not go to  
4 plans to cover abortion.

5           Senator Hatch.    That is right.

6           Senator Cornyn.   And I would just ask the Senator,  
7 is this a different rule than appears to apply to Federal  
8 Employees Health Plans or TRICARE and Medicaid? It is my  
9 understanding that this would propose a different rule  
10 than already applied to those Government programs.

11          Senator Hatch.    Are you talking about the mark or  
12 my amendment? The mark applies a different rule.

13          Senator Cornyn.   The mark applies--that is my  
14 question. Does the mark apply a different rule than  
15 applies to Federal Employees Health Plans, TRICARE, and  
16 Medicaid?

17          Senator Hatch.    Of course it does. That is why I  
18 read that provision, and pretty much the counsel has  
19 indicated that there may be a problem with reinsurance.

20          Senator Cornyn.   And the concern--

21          Senator Hatch.    And risk adjustment payments.

22          Senator Cornyn.   Is the concern that the Senator  
23 has that money is fungible and that what prevents an  
24 insurer under this bill from using a dollar for general  
25 health benefits and using it to pay for abortion

1 services? There is no guarantee that they will not use  
2 money under this general--from a general health benefit  
3 to pay for abortion services. Is that the concern that  
4 you have?

5 Senator Hatch. That is the concern that I have,  
6 and that is what the Hyde amendment is supposed to do.  
7 We have to go through an appropriations process every  
8 year, and, frankly, this would solve that problem without  
9 really changing--and it certainly would rectify this  
10 language that is currently in the bill.

11 Senator Cornyn. And, finally, isn't the problem of  
12 fungibility the very reason that the Federal Employee  
13 Health Benefit Plan, Medicaid, and TRICARE all prohibit  
14 coverage of abortion with Federal dollars? Isn't that  
15 fungibility problem the reason why there is an express  
16 prohibition?

17 Senator Hatch. Sure. Even President Obama and  
18 Secretary Sebelius have promised repeatedly that Federal  
19 funds would not be used for abortion. I do not see the  
20 problem, to be honest with you.

21 Now, for those who want abortion to be paid for with  
22 Federal funds, naturally they would be against this  
23 amendment. But they would be against what we have done  
24 for years and years and years and years. And, frankly,  
25 this just resolves the problem, it seems to me, in a way

1 that is reasonable without--this one little amendment is  
2 certainly not going to make this an abortion--

3 The Chairman. Let me see if I can clear this up.

4 First of all, FEHBP is distinguishable because there  
5 is one employer, and that is Uncle Sam, and that one  
6 employer has decided that no funds would be used for  
7 abortions.

8 We are talking here about women applying for private  
9 plans, not Uncle Sam plans but private plans.

10 Senator Hatch. Right.

11 The Chairman. The mark makes it clear that no  
12 Federal funds will be spent for abortion. None. Very  
13 clear. Very clear. The only difference between what  
14 Senator Hatch suggests and the mark is that Senator Hatch  
15 requires women to ask for a special rider for unintended  
16 abortion--or consequences, and that is just not fair to  
17 treat women that way. And as has been explained by the  
18 staff, a private insurance company is going to have to  
19 segregate the funds anyway. When a woman asks for a  
20 rider, it is still going to have to segregate it. But it  
21 is discriminating against women to have a woman get a  
22 rider in a private plan for the reasons explained.

23 So in both cases, Senator Hatch's case or the mark,  
24 no Federal funds for abortion, period. The difference is  
25 that Senator Hatch requires a special rider for a woman

1 who has to apply for this rider in the case that she may  
2 have to have an abortion. And I do not think that is  
3 fair. Right now, when she applies to a private company--  
4 and many private companies provide for abortions,  
5 irrespective of the exchange. Many private companies  
6 provide for abortion irrespective of any exchange. We  
7 are just saying here an exchange, because some Federal  
8 dollars are being used, there is a total segregation so  
9 no Federal funds will be used for abortion.

10 Let us make it clear again. No Federal funds will  
11 be used for abortion in the modified mark, period.

12 Senator Hatch. Mr. Chairman, counsel indicated  
13 there is as problem with reinsurance and risk adjustment  
14 payments. Fungibility--

15 The Chairman. I did not hear that, Senator.

16 Senator Hatch. Well, I did.

17 The Chairman. I did not hear--

18 Senator Hatch. Well, read the language in the  
19 bill.

20 The Chairman. I did not hear counsel say that is a  
21 problem.

22 Senator Hatch. Well, maybe I have misconstrued--

23 The Chairman. Let us just ask the counsel: Is  
24 that a problem?

25 Ms. Henry-Spires. No, sir. I am sorry if my

1 response was confusing.

2 Senator Hatch. I will accept that. What I am  
3 complaining about is the language of the bill that is not  
4 clear. Fungibility is why we require complete  
5 segregation into a separate policy for non-Hyde  
6 abortions. That is why it is required. Otherwise,  
7 Federal funds would undeniably end up being used for non-  
8 Hyde abortions.

9 Now, I know there are those who would prefer that  
10 Federal funds be used. Well, that is why we have the  
11 Hyde amendment, because taxpayers just do not want their  
12 funds, their taxes, being used for that purpose.

13 My amendment simply applies what all Federal health  
14 programs have appropriated through Labor-HHS  
15 appropriations to the programs that are created in this  
16 bill. If anybody can show me where my language does more  
17 than that, I would like to know what it is. What is  
18 wrong with that?

19 I feel that the intent of my amendment is not only  
20 being mischaracterized, but there is some fear of having  
21 the Hyde language that would be codified so we would not  
22 have to bring it up every year in a bill that is very  
23 far-reaching in a way that would resolve this in the  
24 minds, I think, of most people in this country.

25 Now, I am prepared to vote on it, but I do not see

1 the arguments on the other side. You can accomplish  
2 complete segregation of the funds, you know, requiring a  
3 completely separate policy. This is a plan--you know, as  
4 far as I am concerned, this is plain to see. A  
5 completely separate policy is the only way to achieve  
6 complete segregation of Federal funds, and that is all we  
7 are trying to do here.

8 The Chairman. Okay. I think we have aired this  
9 out. Let us vote. The clerk will call the roll.

10 The Clerk. Mr. Rockefeller?

11 Senator Rockefeller. No.

12 The Clerk. Mr. Conrad?

13 The Chairman. Aye by proxy.

14 The Clerk. Mr. Bingaman?

15 Senator Bingaman. No.

16 The Clerk. Mr. Kerry?

17 The Chairman. No by proxy.

18 The Clerk. Mrs. Lincoln?

19 The Chairman. No by proxy.

20 The Clerk. Mr. Wyden?

21 Senator Wyden. No.

22 The Clerk. Mr. Schumer?

23 Senator Schumer. No.

24 The Clerk. Ms. Stabenow?

25 Senator Stabenow. No.

1           The Clerk.    Ms. Cantwell?  
2           Senator Cantwell.   No.  
3           The Clerk.    Mr. Nelson?  
4           Senator Nelson.    No.  
5           The Clerk.    Mr. Menendez?  
6           The Chairman.   No by proxy.  
7           The Clerk.    Mr. Carper?  
8           Senator Carper.    No.  
9           The Clerk.    Mr. Grassley?  
10          Senator Grassley.   Aye.  
11          The Clerk.    Mr. Hatch?  
12          Senator Hatch.    Aye.  
13          The Clerk.    Ms. Snowe?  
14          Senator Snowe.    No.  
15          The Clerk.    Mr. Kyl?  
16          Senator Kyl.    Aye.  
17          The Clerk.    Mr. Bunning?  
18          Senator Bunning.   Aye.  
19          The Clerk.    Mr. Crapo?  
20          Senator Crapo.    Aye.  
21          The Clerk.    Mr. Roberts?  
22          Senator Roberts.   Aye.  
23          The Clerk.    Mr. Ensign?  
24          Senator Ensign.   Aye.  
25          The Clerk.    Mr. Enzi?

1           Senator Enzi.    Aye.

2           The Clerk.    Mr. Cornyn?

3           Senator Cornyn.   Aye.

4           The Clerk.    Mr. Chairman?

5           The Chairman.   No.   The clerk will tally the vote.

6           The Clerk.    Mr. Chairman, the final tally is 10  
7 ayes and 13 nays.

8           The Chairman.   The amendment is not carried.

9           I would like to offer an amendment on this side now.

10          Good.   Senator Nelson, I think we have to wait on your  
11 amendment.   We are not ready.   Is there any other over  
12 here?   Senator Bingaman.

13          Senator Bingaman.   Mr. Chairman, I have an  
14 amendment which is a modified version of C-1, which I  
15 offered before, or which was filed.   Should I go ahead  
16 with describing it?

17          The Chairman.    Yes.   Why do you not go ahead?   Yes.  
18 Thank you.

19          Senator Bingaman.   Mr. Chairman, this amendment  
20 does two important things.   First of all, it establishes  
21 a coordinated system of eligibility determination for  
22 Medicaid, for tax credits, and for CHIP.   The idea here  
23 is to prevent multiple subsidy programs from creating  
24 pointless red tape for families, and high administrative  
25 costs for government, and erroneous eligibility decisions

1 being made, and reduced program participation.

2 In fact, the Congressional Budget Office estimates  
3 that this will increase program participation. They say  
4 that that is why they will score this amendment, this  
5 first part of the amendment that I have referred to, at  
6 \$4.4 billion. That is because more people will become  
7 covered or obtain coverage if this amendment is adopted.

8 The amendment directs the Secretary of Health and  
9 Human Services to work with the Secretary of Treasury to  
10 establish a system of application, enrollment, and  
11 retention for Medicaid, for CHIP, and for tax credits  
12 that meets several requirements. We have that laid out.  
13 The main thrust of it is to establish a single,  
14 streamlined form that can be used to apply for all three  
15 of these programs, Medicaid, CHIP, and tax credits. The  
16 form could be filed online, in person, by mail, or by  
17 telephone. The form could be filed with the exchange,  
18 with Medicaid, or with CHIP.

19 As I say, CBO concludes that this kind of  
20 coordinated, streamlined process would result in more  
21 people getting coverage, which is a major purpose of the  
22 whole exercise we are going through here. This does not  
23 change in any way the eligibility requirements for any of  
24 these programs. The amendment does not. It simply says,  
25 let us try to simplify the process that people would have

1 to go through to apply for each of the programs. The  
2 Secretary would promulgate model agreements, enter into  
3 interagency agreements concerning data sharing, and they  
4 would have to be consistent with safeguards of privacy,  
5 data integrity, and that sort of thing.

6 Now, the second big thing that this amendment does  
7 relates to the offset. The Chairman's mark currently  
8 includes a list of benefit categories that must be  
9 included in insurance plans that are offered in the  
10 exchange, for example, preventative and primary care,  
11 outpatient services, emergency services.

12 In addition, the modifications to the mark require  
13 that the Secretary provide, through regulation, further  
14 definition of the benefit categories, but the benefit  
15 package ultimately described by the Secretary may not be  
16 more extensive than the typical employer plan as  
17 certified by the Office of the Actuary of the Centers for  
18 Medicare and Medicaid Services.

19 Finally, State-mandated benefits that fall outside  
20 the scope of the benefit package would be required to be  
21 covered by insurance plans licensed in State exchanges  
22 and the premium and cost-sharing cost attributed to these  
23 extra benefits would be eligible for Federal subsidy.  
24 That is all in the mark as it now exists. This amendment  
25 would prohibit Federal subsidization of premium and cost-

1 sharing costs attributable to extra benefits and would  
2 require States to subsidize the cost of those extra  
3 benefits.

4 So the effect of this is to say that if  
5 the State has a series of additional mandates that they  
6 would like to see covered, they would first go to the  
7 Secretary and say, we want these additional mandates  
8 covered, we believe that they fall within the definition  
9 of outpatient services, or emergency services, or  
10 preventive or primary care, the categories that we are  
11 setting out in this legislation for coverage. If they  
12 are successful, then the Secretary goes ahead and  
13 concludes that those are part of the benefit package.

14 If they are not successful and the Secretary is not  
15 persuaded that those can be included and still keep the  
16 cost of the benefit package comparable to that of a  
17 typical employer plan as certified by the actuary--and  
18 that is in the mark today--then the subsidization would  
19 have to come from the State into the exchange to cover  
20 the cost of those additional benefits.

21 So, this offset that I just described is a provision  
22 we included in the Help Committee bill. It was part of  
23 our mark there, and as far as I know enjoyed the support  
24 of all members who voted for that legislation. I cannot  
25 speak for those who opposed the legislation, but I think

1 it was good policy there and I think it is good policy  
2 here.

3 The offset, I am advised by CBO, generates about \$5  
4 billion in revenue, which is adequate to cover the \$4.4  
5 billion required for the streamlining of this application  
6 process, which is the first part of the amendment. There  
7 is about \$600 million left over, so any of you folks that  
8 have a purpose you want to use that for, have at it. I  
9 hope all members will support the amendment. I think it  
10 is good policy.

11 The Chairman. Senator, this is a modification.  
12 Frankly, we have just seen it. I think a lot of members  
13 on the committee would like a little time to digest it.

14 Senator Bingaman. Well, that is fine. I am glad  
15 to withhold it until you think people have had plenty of  
16 time.

17 The Chairman. If I understand it, essentially, you  
18 have expedited procedures which are going to cost you,  
19 what, about 5 --

20 Senator Bingaman. The expedited procedures part of  
21 it is expected to cost \$4.4 billion.

22 The Chairman. 4.4.

23 Senator Bingaman. And that is because so many more  
24 people will actually get covered.

25 The Chairman. Correct. Right. That is right.

1 But the saver is on the mandate of benefits side.

2 Senator Bingaman. Yes. On the individual State  
3 mandate side. If the Secretary is not persuaded that the  
4 services being mandated by a State are a part of the  
5 benefit package that we are defining here, or legislating  
6 here, then the State would have to put additional funds  
7 into the exchange to cover those if it wanted to continue  
8 that mandate, in effect, for policies sold on the  
9 exchange.

10 The Chairman. All right. Fine.

11 Senator Ensign. Mr. Chairman?

12 The Chairman. That is a thumbnail description, but  
13 I think we probably should set it aside until we have  
14 further --

15 Senator Ensign. Mr. Chairman, could we have one  
16 question just so we will be able to mull over?

17 The Chairman. Sure.

18 Senator Ensign. If this form can be filed online,  
19 in person, by mail, or telephone, the Chairman has  
20 certain provisions in the mark to prevent people who are  
21 in the country illegally from getting public benefits.  
22 How would, based on the amendment, then, this streamlined  
23 procedure -- how would the Chairman's provisions in the  
24 mark prevent somebody who is here illegally from actually  
25 getting the benefits if it does not have to be done in

1 person and the documentation? If they are presenting  
2 identification or whatever, how do you know that that is  
3 the person if it is done by telephone or online?

4 Ms. Baker. Senator, you are correct that in the  
5 mark there are robust provisions to ensure that illegal  
6 individuals do not benefit from the tax credits or are  
7 not able to receive personal coverage through the  
8 exchange. I think, as the Chairman has indicated, this  
9 is a new amendment. We have not had time to digest  
10 everything that is in it, so I think it is premature to  
11 comment on that.

12 Senator Ensign. All right. If you could get that  
13 for us, please.

14 Senator Bingaman. Let me just clarify my intent.  
15 My intent would be that all of those provisions in the  
16 Chairman's mark that are designed to prevent undocumented  
17 immigrants from obtaining benefits would continue in full  
18 force and effect.

19 The Chairman. All right.

20 Senator Bingaman. That is my purpose.

21 The Chairman. Let us set this aside so we can  
22 think this through a little bit more.

23 Senator Cornyn. Mr. Chairman, may I ask one short  
24 question in that regard?

25 The Chairman. Sure. Senator Cornyn?

1           Senator Cornyn.    As we are thinking about this, I  
2    have heard estimates that as many as \$10 million of the  
3    uninsured are people who are eligible, currently  
4    eligible, for government benefits.

5           Senator Bingaman.   Right.

6           Senator Cornyn.    And I think your amendment would  
7    help make sure that people who are eligible actually can  
8    get signed up.  My concern is a little bit along the  
9    lines of Senator Ensign's.  We know that Medicare and  
10   Medicaid, unfortunately, are riddled with fraud.  I  
11   wonder if the Senator has had the opportunity--I am  
12   looking on page 2 under number VIII, under the  
13   description--to get technical feedback from the Internal  
14   Revenue Service, the Social Security Administration, and  
15   the National Directorate of New Hires, that this would  
16   actually be feasible and would have systems in place  
17   designed to prevent fraud.  I do not guess we need to  
18   hash this out now too much, but I just --

19          Senator Bingaman.   Yes.  I am glad to get into  
20   detail.  We tried to work with experts on this subject  
21   about how to safeguard the program's integrity.  I think  
22   the fraud that you are concerned about is primarily  
23   provider billing fraud.  That is really not part of this  
24   amendment in any way.

25          Senator Cornyn.    Well, I know individuals,

1 particularly in Medicaid, go in and out of the program.  
2 In other words, people get another job, they are  
3 employed, they no longer qualify for Medicaid, and the  
4 like. But I am sympathetic to part of the concerns you  
5 are raising. I just have some more questions, because in  
6 Texas we have 800,000, maybe 900,000 children who are  
7 eligible for Medicaid and SCHIP, but they are not signed  
8 up.

9 Senator Bingaman. And I think this amendment would  
10 help solve that problem, so I am glad to try to respond  
11 on any detail about it.

12 Thank you, Mr. Chairman.

13 Senator Hatch. Mr. Chairman?

14 The Chairman. All right. Senator Hatch?

15 Senator Hatch. Mr. Chairman, I will call up  
16 Amendment Number C-13.

17 The Chairman. All right.

18 Senator Hatch. This is called the Conscience  
19 Protection Act. Mr. Chairman--and this would be the last  
20 amendment I am going to offer in this area. Mr.  
21 Chairman, my amendment is identical to one offered and  
22 accepted by Congressmen Stupak, Pitts, and Terry to the  
23 Health Reform Bill considered by the Energy and Commerce  
24 Committee in the House. The amendment includes the Hyde-  
25 Weldon conscience protection language approved by

1 Congress every year since 2004 as part of the Labor-HHS  
2 appropriations bill to the Finance Committee Health  
3 Reform bill.

4 Now, the amendment was accepted by the House Energy  
5 and Commerce Committee members by voice vote, and I hope  
6 that will be the case here. To be clear, the Hyde-  
7 Weldon Labor-HHS appropriations language states that  
8 "none of the funds made available in this Act may be made  
9 to a Federal agency or program or to a State or local  
10 program if such agency program or government subjects any  
11 institutional or individual entity to discrimination on  
12 the basis that the health care entity does not provide,  
13 pay for, provide coverage of, or refer for abortions."

14 My amendment clearly states that the Federal  
15 Government, a State government, or a local government may  
16 not force health care providers, such as hospitals and  
17 physicians, to provide abortions. The Hyde-Weldon  
18 appropriations language prohibits Federal agencies or  
19 State and local governments from receiving any Federal  
20 funds if they take action against any health care  
21 provider because the provider does not cover, provide, or  
22 make references for abortion.

23 In other words, my amendment only prohibits  
24 governmental bodies receiving Federal dollars from  
25 discriminating against those who do not want to perform,

1 cover, or make references for abortion. Naturally, we  
2 are trying to take care of those nurses and doctors who  
3 have deeply-felt feelings about this issue. My amendment  
4 is different from the Hyde-Weldon language in one very  
5 important way.

6 Instead of Federal agencies or State and local  
7 governments being prohibited from receiving Federal  
8 funds, which would occur under their amendment, it would  
9 designate the Office for Civil Rights in the Department  
10 of Health and Human Services to receive complaints of  
11 discrimination and coordinate the investigation of such  
12 complaints.

13 Now, let me be clear about what my amendment does  
14 not do. It does not restrict the activities of any  
15 provider willing to do abortions. It protects providers  
16 that object to abortions. It does not prohibit anyone  
17 from talking about abortion. Information and counseling  
18 related to abortion are not addressed in the amendment.  
19 It does not affect *Rowe v. Wade* or subsequently abortion  
20 decisions. Under these decisions, the government is  
21 obliged not to interfere in an abortion decision, but it  
22 is not required to facilitate abortion or fund it.

23 Now, my amendment is exactly the policy already  
24 covering all funds under the Labor-HHS Appropriations Act  
25 for the last five years and has long been in effect with

1 absolutely no problems. It does not call for any  
2 discriminating entity to lose its Federal funds.  
3 Instead, the HHS Office of Civil Rights will address the  
4 complaints.

5 President Obama has repeatedly pledged his support  
6 for the statutes themselves and consistently called for  
7 "robust" protection of conscience rights. In his recent  
8 speech to the joint session of Congress, President Obama  
9 reaffirmed that health care reform should maintain  
10 conscience protections. The same amendment was accepted  
11 by voice vote by Representative Henry Waxman's Energy and  
12 Commerce Committee as part of the House bill.

13 Now, without this amendment I believe that providers  
14 who object to abortion could face discrimination,  
15 therefore, I strongly urge that members of this committee  
16 vote in favor of this amendment. I personally believe  
17 that no one should be subjected to being called a person  
18 committing discrimination just because they hold views  
19 different from some others on this particular issue. I  
20 think it is basically a clean, clear-cut amendment. I  
21 hope that the committee will accept it.

22 Senator Grassley. Mr. Chairman?

23 The Chairman. Senator Grassley?

24 Senator Grassley. Yes. I would have to repeat all  
25 the things that Senator Hatch said, so I am not going to

1 do that. But he did refer to what President Obama has  
2 said on this issue, and I want to bring emphasis to it by  
3 one more quote from the President that Senator Hatch did  
4 not give. But in his address before Congress the  
5 President said, "Under our plan, no Federal dollars will  
6 be used to fund abortions and Federal conscience laws  
7 will remain in place." So the Hatch amendment is about  
8 making sure that that does happen, and I hope we can  
9 address his amendment, accept it, and do it without  
10 controversy.

11 The Chairman. Ms. Henry-Spires, could you explain  
12 the conscience protections that are in the modified mark?

13 Ms. Henry-Spires. Specific to Weldon --

14 The Chairman. And do we have the basic Weldon  
15 conscience protections provided for? If so, please  
16 outline them.

17 Ms. Henry-Spires. We do. The Chairman's mark not  
18 only keeps existing conscience protection laws like the  
19 Weldon conscience law intact, but it extends it. Where  
20 Weldon says that no Federal, State, or local government  
21 or agency can discriminate against a provider or facility  
22 for its unwillingness to provide abortion, the Chairman's  
23 mark adds to that, no private health insurance can  
24 discriminate against a provider for their willingness or  
25 unwillingness to provide abortion. So we maintain Weldon

1 and extend it to private health insurers, and also make  
2 it neutral by saying for willingness or unwillingness.  
3 That is in the underlying bill.

4 Senator Hatch. So do you codify the Hyde-Weldon  
5 language in the mark?

6 Ms. Henry-Spires. The mark does not codify any  
7 language, it references all conscience protection  
8 languages.

9 Senator Hatch. Well, as I see it, the Baucus mark  
10 does cover providers and facilities but does not, as you  
11 have stated--clearly stated--include conscience  
12 protections for health plans that do not want to cover  
13 elective abortion and could undermine pro-life health  
14 plans by making them keep pro-abortion providers or  
15 health facilities in their network. Further, if you want  
16 to maintain current conscience laws, then you should  
17 codify this amendment. I do not see anything wrong with  
18 that because it would clarify this and solve the problem  
19 for us.

20 Ms. Henry-Spires. I am sorry, Senator. Perhaps I  
21 misspoke. If I did not say, then I meant to say, that  
22 the Chairman's mark extends Weldon to include private  
23 insurers, that private insurers cannot discriminate  
24 against persons, providers, or facilities for their  
25 willingness or unwillingness to provide abortion

1 coverage.

2 The Chairman. All right. Senator Stabenow? We  
3 are ready to vote.

4 Senator Stabenow. Thank you, Mr. Chairman.

5 The Chairman. Senator Stabenow? Are you finished,  
6 Senator?

7 Senator Hatch. If I could just --

8 The Chairman. Why do I not go to Senator Stabenow  
9 first, and then you can --

10 Senator Hatch. That would be fine.

11 The Chairman. All right.

12 Senator Stabenow?

13 Senator Stabenow. Thank you, Mr. Chairman. I  
14 just, once again, Mr. Chairman, want to thank you for  
15 really providing a balanced compromise in this mark. In  
16 fact, you have gone farther, as staff has indicated, in  
17 covering the facilities, like Catholic hospitals, making  
18 it very clear that conscience clauses are clear and  
19 available for everyone.

20 My concern is this, that if the amendment were to be  
21 adopted we would offer no patient protections. In my  
22 estimation, from what we have been able to determine, it  
23 would actually undermine women's access to health care,  
24 it would codify what I believe is a bad policy,  
25 permitting insurance companies to refuse to cover

1 abortions even in cases of rape or incest, or even in the  
2 case of the woman's life being in danger.

3 It does not even require that the insurance  
4 companies tell patients if their health plan will not  
5 cover the care medical professionals say that they need.

6 So to do this without offering any protections for  
7 patients, I believe represents an unbalanced and  
8 discriminatory approach to what is a very complicated  
9 issue.

10 The Chairman. All right.

11 Senator Hatch, you can close.

12 Senator Hatch. There is a real question whether  
13 full health care plans are covered. The language is,  
14 "health benefits plans participating in State exchanges  
15 would be prohibited from discriminating against any  
16 individual health care provider or health care facility  
17 because of its willingness or unwillingness to provide,  
18 pay for, provide coverage of, or refer for abortions."

19 Admittedly, there is no conscience clause in here.  
20 I put a conscience clause into the bill that would solve  
21 that problem and not have to worry about the ambiguities  
22 in that particular sentence. The mark states, "plans  
23 would be prohibited from discriminating." But Weldon,  
24 under current law, prohibits discrimination against the  
25 plans themselves.

1           The mark contains no such prohibition. This  
2 amendment would do that. I think it is a defect that we  
3 need to correct, because I do not think anybody in their  
4 right mind would want to take away the right of a person  
5 who has deeply-held religious, philosophical, or other  
6 beliefs and force them to do something, to participate  
7 in, or do abortions. I do not know why anybody on this  
8 committee would feel that way. This amendment clarifies  
9 that and I think resolves that problem that I do not  
10 think the conceptual language of the bill does.

11           The Chairman. All right.

12           The Clerk will call the roll.

13           The Clerk. Mr. Rockefeller?

14           The Chairman. No by proxy.

15           The Clerk. Mr. Conrad?

16           Senator Conrad. Aye.

17           The Clerk. Mr. Bingaman?

18           The Chairman. No by proxy.

19           The Clerk. Mr. Kerry?

20           The Chairman. No by proxy.

21           The Clerk. Mrs. Lincoln?

22           The Chairman. No by proxy.

23           The Clerk. Mr. Wyden?

24           Senator Wyden. No.

25           The Clerk. Mr. Schumer?

1           The Chairman.    No by proxy.  
2           The Clerk.     Ms. Stabenow?  
3           Senator Stabenow.   No.  
4           The Clerk.     Ms. Cantwell?  
5           The Chairman.    Pass.  
6           The Clerk.     Mr. Nelson?  
7           Senator Nelson.    No.  
8           The Clerk.     Mr. Menendez?  
9           The Chairman.    No by proxy.  
10          The Clerk.     Mr. Carper?  
11          The Chairman.    No by proxy.  
12          The Clerk.     Mr. Grassley?  
13          Senator Grassley.   Aye.  
14          The Clerk.     Mr. Hatch?  
15          Senator Hatch.    Aye.  
16          The Clerk.     Ms. Snowe?  
17          Senator Snowe.    No.  
18          The Clerk.     Mr. Kyl?  
19          Senator Kyl.     Aye.  
20          The Clerk.     Mr. Bunning?  
21          Senator Bunning.   Aye.  
22          The Clerk.     Mr. Crapo?  
23          Senator Crapo.    Aye.  
24          The Clerk.     Mr. Roberts?  
25          Senator Roberts.   Aye.

1           The Clerk.    Mr. Ensign?  
2           Senator Grassley.   Pass for now.  
3           The Clerk.    Mr. Enzi?  
4           Senator Enzi.    Aye.  
5           The Clerk.    Mr. Cornyn?  
6           Senator Cornyn.   Aye.  
7           The Clerk.    Mr. Chairman?  
8           The Chairman.   No.  
9           Senator Cantwell?  
10          The Clerk.    Ms. Cantwell?  
11          Senator Cantwell.   No.  
12          The Clerk.    Mr. Ensign?  
13          Senator Ensign.   Aye.  
14          The Clerk.    Mr. Chairman, the final tally is 10  
15          ayes and 13 nays.  
16          The Chairman.   The amendment does not carry.  
17          Are there other Senators who wish to offer  
18          amendments, especially on the Democratic side since the  
19          last amendment was a Republican amendment? Any Senators  
20          wish to offer any amendments?  
21          [No response].  
22          The Chairman.   All right. Let us come back to the  
23          Republican side. Anyone on this side wish to offer an  
24          amendment?  
25          Senator Enzi.   Mr. Chairman?

1           The Chairman.    Senator Enzi?

2           Senator Enzi.    I would have an amendment.  I would  
3 call up Enzi Amendment Number C-1.

4           The Chairman.    Senator Enzi is recognized,  
5 Amendment C-1.

6           Senator Enzi.    This is an amendment that will lower  
7 the cost of health care by increasing benefit  
8 flexibility, something I mentioned in our group of six  
9 quite a bit.  We have the four plans and the lowest  
10 actuarial value that we presently allow is 65 percent.  
11 This would drop that down to 60 percent.  One of my  
12 concern is, we are about to tell the Nation, everybody in  
13 the Nation, every person in the Nation, what the minimum  
14 insurance is that they can have, then we are going to  
15 institute a penalty if they do not buy the minimum  
16 insurance that we say they ought to have.

17           I want to see if there is any flexibility at all of  
18 going from 65 percent as the lowest down to 60 percent as  
19 the lowest.  I talked to a lot of people during the  
20 August break and everybody asked me what I was doing to  
21 bring health care costs down.  This would bring it down.  
22 Other provisions in the bill make the price go up,  
23 particularly if we go to 65 percent, particularly in my  
24 State, but I am sure I am not the only State that is in  
25 that situation.

1           This amendment would change that. We provide more  
2 flexibility with this. If folks want to buy coverage  
3 they can, but there are three other plans with higher  
4 premiums. So if they want more they can buy more, but if  
5 they want less we are saying, no, the Federal Government  
6 said you cannot buy less. So I think what we are doing  
7 is too proscriptive.

8           I would like to go lower than that. I think that we  
9 ought to go lower than that. But I am checking to see if  
10 we can even get down to 60 percent. When we create a  
11 floor of 65 percent as this bill does, it means that  
12 people will see higher prices in the marketplace as a  
13 result of this reform and they will consider it to be  
14 because of this reform, and it will reflect on the whole  
15 reform.

16           The average cost for a family policy in the group  
17 market is already \$12,000. Do we want it to cost more by  
18 adding mandates and setting a very high floor? I think  
19 60 percent is a more reasonable floor. It is still  
20 richer than many products in certain markets, but it  
21 would result in much more affordable options if this bill  
22 became law.

23           As I mentioned, if individuals want a richer plan,  
24 that is available. There just is not anything below the  
25 65 percent mark that we are allowing, or even allowing to

1 appear on the exchanges. That is another consideration  
2 we probably ought to give, is to let everybody be on the  
3 exchange; a lot of transparency, people could see what  
4 the prices were.

5 It could mark whether they meet the 60 percent, or  
6 65 percent, or 70 percent, or whatever actuarial value  
7 they do and people would be aware of what they were  
8 buying. But we are only going to allow people that meet  
9 the minimum requirement, which means 65 and above, at the  
10 present time. I think that people will notice it,  
11 particularly if they are sending a kid to college or  
12 paying higher electrical bills now, or saving for  
13 retirement.

14 Some people, of course, will say that that will mean  
15 that Americans will not be protected from high health  
16 care costs. The primary one that we have got to protect  
17 people on is catastrophic. Catastrophic, you are going  
18 to be covered at virtually any level and could go even  
19 further down than that and still be covered.

20 So I did notice that an overwhelming majority of  
21 enrollees in Massachusetts are enrolled in their bronze  
22 plan, and I would mention that their bronze plan is 60  
23 percent. I would challenge people to take a look at  
24 their State and see what the average-person actuarial  
25 value is that they are enrolled at. It is a little hard

1 to get, but it is possible to get it.

2 I would contend that most of you are below the 60  
3 percent mark, which means that if you pass 65 percent you  
4 are raising the amount that people in your State are  
5 going to have to pay, and I suspect that they are going  
6 to notice that. So, like I say, this is not where I  
7 would like to have it. I would like that exchange to  
8 cover all plans and just mark what the actuarial value is  
9 and provide the transparency so they know what they are  
10 buying.

11 I suspect that some companies would be innovative  
12 enough that they would even list on there some mandates  
13 at a specific cost that you could pick up in addition, if  
14 you wanted those. But instead, we are going to be very  
15 proscriptive, and so I hope the committee would adopt  
16 this amendment.

17 Senator Conrad. Mr. Chairman?

18 Senator Grassley. Mr. Chairman?

19 The Chairman. Senator Conrad?

20 Senator Conrad. Mr. Chairman, I think Senator Enzi  
21 -- and if I could get Senator Enzi's attention. I think  
22 Senator Enzi has a worthy amendment here. This is kind  
23 of a follow-on to some of the discussion we had last  
24 night. I asked for plans, for Blue Cross Blue Shield,  
25 across the country. They sent us an analysis of 36

1 plans, half of them in the individual market,  
2 representing the Northeast, the Midwest, the South, and  
3 the West, and in the small group market, 18 plans,  
4 Northeast, Midwest, South, and West.

5 What jumps out at you -- let me just give some  
6 examples. In the Midwest, in one State, one of the major  
7 plans, 55 percent are below 60 percent. Now, that is an  
8 outlier. Most of them are not that way. But in the  
9 South, there are three States that have plans, one at 66  
10 percent or below 60 percent; one, 35 percent are below 60  
11 percent; one, 79 percent below 60 percent.

12 The same is true in the small group market, although  
13 those, admittedly, are outliers because most of them are  
14 higher, have higher actuarial values. Nonetheless, this  
15 tells me that at the bottom rung--not quite the bottom  
16 rung because we also have the plan for the young  
17 invincibles--that Senator Enzi is correct and that we  
18 need to adjust, on the lowest level, downward to 60  
19 percent. I think that would then have a smoother spread  
20 so you would have a 60 percent plan, 70 percent, 80  
21 percent, 90 percent, coupled with a young invincible plan  
22 for those who are under 25. I think we need to probably  
23 think some more about that as well. But I think Senator  
24 Enzi has an amendment that deserves support.

25 Senator Grassley. Mr. Chairman?

1           The Chairman.    Senator Grassley?

2           Senator Grassley.   This is a subject that we  
3   discussed quite a little bit during the group of six, and  
4   I agree with Senator Enzi.  It is true that higher  
5   actuarial value will expose consumers to less out-of-  
6   pocket spending, but consumers pay for that in lower  
7   cost-sharing with higher premiums.  I have already shared  
8   with the committee that in a lot of States--and Senator  
9   Conrad just went over that material with you--the average  
10   actuarial value is way below the 65 percent proposed in  
11   our mark.

12           This means that if health reform passes and our  
13   constituents are expecting lower prices when they go to  
14   buy new coverage, many will end up seeing higher prices  
15   than they would have under current law.  So if you are  
16   really concerned about affordability and if you are  
17   worried about, people are going to be facing stiff  
18   penalties or other things for not purchasing coverage,  
19   then lowering the required actuarial value is very much a  
20   common-sense way to provide consumers with lower-cost  
21   options.  That still protects them from catastrophic  
22   health care spending.

23           The Chairman.    Senator Stabenow?

24           Senator Stabenow.   Thank you, Mr. Chairman.

25           I appreciate what is being offered here and what my

1 friend from North Dakota said. I guess I come at this  
2 from a different perspective. My hope is that we are  
3 going to actually improve affordability for people in  
4 terms of plans. When we say 60 percent value, that means  
5 40 percent is being paid by the family or the individual  
6 rather than 35 percent. When we look at a typical  
7 employer-sponsored HSA right now, minus the employer's  
8 contribution, that is at 76 percent and that is not full  
9 coverage.

10 So I was assuming that we were trying to move that  
11 up and offer people more comprehensive insurance. I  
12 understand that across the country it is very different  
13 in different places. We are offering options to States,  
14 we are offering the catastrophic option with prevention  
15 that has been expanded upon from the young invincibles  
16 now to, more broadly, the individuals that cannot afford  
17 it that need an affordability waiver.

18 But I guess from my perspective I just come at this  
19 differently. The more we lower that actuarial value, the  
20 more the individual or the family will have to shoulder  
21 the cost of their plan. Personally, I would like to go  
22 in the other direction. Thank you.

23 Senator Bingaman. Mr. Chairman?

24 The Chairman. Senator Bingaman?

25 Senator Bingaman. Mr. Chairman, let me just ask

1 staff to respond, if Ms. Fontenot could clarify a few  
2 things for me here on this. My understanding is similar  
3 to Senator Stabenow's in this in that the subsidy or the  
4 tax credits that we are providing here, those will be  
5 reduced to the extent that we reduce the actuarial value  
6 of the plan being purchased. Is that right or not?

7 Ms. Fontenot. The tax credits are actually tied to  
8 the level of the silver plans, so the second-lowest cost  
9 silver plan in a person's area. So if we reduce the  
10 level of minimum credible coverage, it should not affect  
11 the tax credits and, therefore, the score at all.

12 Senator Bingaman. So if the tax credits are tied  
13 to the silver and we change the actuarial value of the  
14 bronze and a person says, I want the bronze plan --

15 Ms. Fontenot. Right.

16 Senator Bingaman. How does that work out? They  
17 still get the same subsidy regardless of what actuarial  
18 value we apply to the bronze?

19 Ms. Fontenot. If they buy down to the bronze plan,  
20 then to the individual it becomes a zero premium plan.  
21 Then the tax credit only covers the amount of the  
22 premium. So in other words if the tax credit then  
23 exceeds the amount of the premium they do not get to keep  
24 that money, it is just a reduction in the amount of the  
25 tax credit.

1           Senator Bingaman.    So is it fair to say, as Senator  
2           Stabenow did there, as I understood her comments, that  
3           the amount that would be left over for the individual or  
4           the family to pay in the way of deductible, or co-pay, or  
5           whatever would increase if we reduce the actuarial value  
6           of the plan that they are purchasing?

7           Ms. Fontenot.    Yes.   That is exactly right, because  
8           the actuarial value speaks to the cost-sharing level.   So  
9           a 60 percent value indicates that the plan has to cover  
10          60 percent of the costs for an average individual, and  
11          the individual pays the rest of that cost.

12          Senator Bingaman.    So the individual is on the hook  
13          for the other 40 percent.

14          Ms. Fontenot.    Correct.

15          Senator Bingaman.    And there is no subsidy for  
16          that, or tax credit available for that?

17          Ms. Fontenot.    There is a cost-sharing subsidy,  
18          depending on your poverty level.   But for those over 200  
19          percent of poverty, there is no subsidy for that.

20          Senator Bingaman.    All right.

21          Well, am I also right that all of the various plans  
22          that Senator Enzi, Senator Conrad, and all were referring  
23          to that are currently in place that have a lower  
24          actuarial value than the 65 percent, those would all be  
25          grandfathered?   Anyone who had one of those could keep

1 that?

2 Ms. Fontenot. That is correct.

3 Senator Bingaman. So it is just people who obtain  
4 a new policy in the future that would have to meet the 65  
5 percent minimum, unless they qualified for the young  
6 invincible plan.

7 Now, Senator Snowe proposed an amendment that I  
8 believe was agreed to as part of the modified mark?

9 Ms. Fontenot. Yes. That is right.

10 Senator Bingaman. Which said that the young  
11 invincible option would be available to anyone,  
12 regardless of age, if they did not meet a certain  
13 affordability level. How did that work? Could you  
14 explain that to us?

15 Ms. Fontenot. That is right. So if you were  
16 eligible for the affordability waiver which says that the  
17 lowest-cost option available to you would have exceeded  
18 10 percent of your income, then you can enroll in the  
19 young invincible plan regardless of your age. So if the  
20 plan that is available is still not affordable to you,  
21 then you can buy a cheaper plan regardless of how old you  
22 are.

23 Senator Bingaman. So under the mark as modified,  
24 the way it currently exists, a person who could not buy a  
25 bronze plan at 65 percent of actuarial value, for 10

1 percent of their adjusted gross income or less, could  
2 instead buy the young invincible plan, regardless of  
3 their age.

4 Ms. Fontenot. Yes.

5 Senator Bingaman. Could buy the young invincible  
6 plan. And what actuarial value would that have?

7 Ms. Fontenot. The young invincible plan is  
8 probably around 50 percent actuarial value.

9 Senator Bingaman. So that option is available to  
10 anybody who meets that affordability test?

11 Ms. Fontenot. That is right.

12 Senator Bingaman. Thank you, Mr. Chairman.

13 Senator Snowe. Mr. Chairman?

14 The Chairman. Senator Snowe?

15 Senator Snowe. Thank you, Mr. Chairman.

16 I would like to pose a question to staff as well  
17 regarding this issue, because obviously it consumed a  
18 considerable amount of our discussions, as you well know,  
19 Ms. Fontenot, about this because we want to, at the end  
20 of the day, create affordable plans at a better standard.  
21 I know the State of Maine has been mentioned with respect  
22 to -- I think yesterday Senator Grassley mentioned that  
23 87 percent of the plans in Maine come under the bronze  
24 value, and that is because we have a distorted market  
25 basically, with few insurance companies that have a

1 market concentration that leads to very little  
2 competition.

3 We have family policies for four at \$24,000. In  
4 fact, I met a woman just very recently who told me, for  
5 her family of four, she pays \$24,000, and in addition,  
6 another \$11,000 in medical expenses for her sick  
7 daughter. So there you go: in one year, \$35,000 for an  
8 average wage earner. I mean, that is what we are talking  
9 about, and that is what is happening in Maine because  
10 there is very little competition. Obviously we want to  
11 elevate that standard. How can we do that, keeping the  
12 standards, improving those standards in the exchange with  
13 these plans, and at the same time not add to the cost?

14 So now we are talking about reducing the actuarial  
15 value to 60 percent. What would that mean in terms of a  
16 premium for a bronze plan? Do we know? What would that  
17 mean? What would the premium be in a bronze plan at 60  
18 percent?

19 Ms. Fontenot. Senator, I am not entirely sure. It  
20 is not quite a linear function, which is why we always  
21 check back with the actuaries on these questions. I  
22 think CBO is currently estimating that for an individual  
23 in a bronze plan, the premium would be probably around  
24 \$3,500 annually. It would be, depending on that person's  
25 age, lower than that. It is not exactly 5 percent lower,

1 but somewhere around there.

2 Senator Snowe. So you would have to be pretty  
3 healthy. For example, if you are getting a bronze plan,  
4 you have to be pretty healthy because otherwise you might  
5 have a lot of cost-sharing involved here, where the cost-  
6 sharing would be, obviously, much higher in a bronze  
7 plan.

8 Ms. Fontenot. Right. Well, the premium would not  
9 vary based on health status under these new rules.

10 Senator Snowe. Right. Right. But the cost-  
11 sharing would.

12 Ms. Fontenot. The cost-sharing would.

13 Senator Snowe. So you could get consumed by cost-  
14 sharing unless you are almost 100 percent healthy in any  
15 respect.

16 Ms. Fontenot. Absolutely.

17 Senator Snowe. Second, on the use of the subsidies  
18 tied to the silver plan, so in some instances at certain  
19 income levels that subsidy could be used to buy a bronze  
20 plan in its entirety?

21 Ms. Fontenot. Right. There could be a situation  
22 where the second lowest-cost silver plan in your area,  
23 the premium from that actually exceeds the amount that if  
24 you bought a bronze plan you would get a tax credit that  
25 would cover the whole amount.

1           Senator Snowe.     Thank you.

2           Senator Wyden.     Mr. Chairman?

3           The Chairman.     Senator Wyden?

4           Senator Wyden.     Mr. Chairman, I think this is an  
5 extremely important issue. I find myself attracted to  
6 the arguments of Senator Stabenow and Senator Bingaman,  
7 and at the same time sympathetic to what Senator Enzi  
8 wants to do in terms of choice. So I would like to ask  
9 counsel a question with respect to the waiver provision,  
10 and specifically whether it would be possible for a  
11 State, again, to meet the minimum coverage requirements  
12 and be able, for example, to look at what Senator Enzi is  
13 interested in doing.

14           As I look at the second-to-last sentence in the  
15 waiver provision that I authored, it says that if a State  
16 can provide affordable choices for its citizens, in  
17 effect the State has a lot of flexibility to go take its  
18 own initiative, and presumably pursue what Senator Enzi  
19 is talking about.

20           So my question is, under that part of the waiver  
21 provision, if the State said that it wanted to go to the  
22 Enzi standard as a way to get to affordable choices for  
23 all of its citizens, could it do so?

24           Ms. Fontenot.     Similar to the conversation I think  
25 we had about the personal responsibility requirement, the

1 way I read this is that a State could do that as long as  
2 it can show that it is still providing affordable choices  
3 for its citizens and expanding protections against  
4 excessive out-of-pocket costs. So if the State can  
5 better strike this balance, then they could do so in a  
6 waiver.

7 Senator Wyden. All right.

8 Mr. Chairman, thank you for the chance to clarify  
9 that. I want the Senator from Wyoming to know that I  
10 intend to work with him throughout this mark-up,  
11 throughout all the time that we consider this on the  
12 floor, because what he wants to do is provide choices. I  
13 think that is something that is clearly going to help  
14 hold down health care bills in this country, it is going  
15 to create competition. We all know that there is a  
16 dysfunctional marketplace. We have just got to find a  
17 way to do it without causing problems in terms of  
18 affordability.

19 Counsel, thank you for that answer. Thank you, Mr.  
20 Chairman.

21 Senator Cornyn. Mr. Chairman?

22 The Chairman. Senator Cornyn?

23 Senator Cornyn. Mr. Chairman, I want to tell  
24 Senator Enzi, I appreciate the intent of his amendment  
25 and I, like he, wish he could go further and provide more

1 flexibility and more choice, and thus lower costs for  
2 consumers of health care. Because the Chairman's mark,  
3 respectfully, mandates higher coverage than many people  
4 have now, which they like, they will not be able to keep  
5 what they like at the price that they are currently  
6 paying. They will all pay more money for what they have  
7 now.

8 In Texas, for example, the individual market benefit  
9 levels, 91 percent of people in the individual market do  
10 not have plans that are rated at 65 percent of actuarial  
11 value; 79 percent of those 91 percent have plans that are  
12 51 to 60 percent of actuarial value. Many individuals  
13 who have health savings plans that they like a lot now--  
14 for example, the employees at Whole Foods in Austin,  
15 Texas, who vote on their plan every year, overwhelmingly  
16 vote for a health savings plan with wellness accounts.  
17 They will not be able to keep that, certainly at the same  
18 levels that they have now, because of the mandates  
19 contained here.

20 I just think it demonstrates how the President's  
21 promise that "if you like what you have you can keep it"  
22 is demonstrably untrue, because you cannot force an  
23 insurance company to sell the policy next year. All of  
24 us know that, even under the Federal Employees Health  
25 Benefit plan we have now, that we have basically a one-

1 year contract for health care at the price that they sell  
2 it.

3 Each year we re-negotiate and make another decision:  
4 are we going to stay with that plan or someone else? But  
5 the fallacy, I think, in the proscriptive approach is  
6 that the government can force people to have minimally  
7 credible plans, but ultimately will increase their costs.  
8 So instead of bending the cost curve and making health  
9 insurance more affordable, this will make it more  
10 expensive and it will not allow people to keep what they  
11 have. So I agree with the amendment. I just wish that  
12 we could provide even more flexibility, and I hope that  
13 there will be other amendments that will provide that.

14 Senator Kyl. Mr. Chairman?

15 The Chairman. Senator Kyl?

16 Senator Kyl. Thank you, Mr. Chairman.

17 I would like to amplify a little bit the point that  
18 Senator Cornyn just made, and go back to the original  
19 point that Senator Enzi raised here. We, in our wisdom,  
20 are deciding that the average of what people do today is  
21 not good enough. So we are deciding that the very least  
22 that they can purchase in this plan is 65 percent  
23 actuarial value insurance, but we are forgetting that  
24 this is just a choice.

25 There are four specific choices. From our side, we

1 would not limit it to four specific choices, but there  
2 are four choices offered here, only one of which is the  
3 bronze. The subsidy is tied to the silver. So let  
4 people make the choice. Under the statistics that I read  
5 yesterday, according to the Congressional Budget Office,  
6 the actuarial values of individual insurance today ranged  
7 from 40 percent to 80 percent, with an average value that  
8 is between 55 and 60 percent.

9 So, Senator Enzi is setting the value at the top end  
10 of that average, according to CBO. It is right on the  
11 button in my State. As he pointed out, most of us will  
12 be slightly under 60. My State is right on the button at  
13 61 percent. Milliman, the independent actuarial firm,  
14 found that the average actuarial value of a high-  
15 deductible plan is 48 percent. So even at 60 percent,  
16 Senator Enzi's amendment, we are still making a  
17 determination to go above the averages.

18 To Senator Cornyn's point, Milliman also found that  
19 with the provisions of the mark at 65 percent, you are  
20 going to have an increase in health insurance premiums by  
21 35 percent for those with high deductible plans. I  
22 thought we were not going to increase people's insurance.  
23 Well, according to the mark, with 65 percent, we are.  
24 Senator Enzi is trying to do something about that.  
25 Finally, Milliman says individuals enrolled in individual

1 health plans with a lower actual value than 65 percent  
2 will see their premiums increase by 18 percent.

3 So, Mr. Chairman, Senator Enzi's amendment is wise  
4 in that it gets us closer to the average, and in any  
5 event the objections that people have that maybe they  
6 would not do it that way do not take into account that  
7 everybody has a choice here, that this is simply the  
8 minimum choice. We would rather leave it up to people to  
9 decide what is best for them than to tell them that they  
10 have to buy a plan that is going to be rated at an  
11 actuarial value of a specific amount, namely 65 percent,  
12 which is above the average today.

13 Senator Snowe. Mr. Chairman?

14 The Chairman. Senator Snowe?

15 Senator Snowe. Yes. Thank you, Mr. Chairman.

16 Just to follow up, because it is a crucial  
17 discussion in terms of affordability and elevating those  
18 standards to meet the public's expectation. So many  
19 people today, individuals or small business owners, what  
20 they are facing, at best, is catastrophic coverage in  
21 terms of being able to purchase a health insurance plan.  
22 Can we do better? I think that is what we were striving  
23 for in developing this approach within the group of six,  
24 is to provide affordable options with reasonable  
25 coverage.

1           As I was discussing with one small business owner  
2           recently, five years ago his premium was \$250; today it  
3           is \$5,000. So that kind of appreciation in cost has been  
4           devastating to small business owners and to individuals.  
5           So the point is, we can we provide affordable options  
6           with reasonable coverage? Now, some people might want  
7           that choice. We want to create the choices here. I also  
8           want to make sure that if people expect to get a good  
9           plan at an affordable price, that we can do it to the  
10          best of our ability.

11          I think, Mr. Chairman, it would be important to get  
12          a CBO analysis on the bronze plans. We did get an  
13          excellent analysis from CBO on the silver plan because  
14          the subsidies are tied to the silver plan, but now I do  
15          think it is important. I am sympathetic to Senator  
16          Enzi's amendment. I think it is important. We need to  
17          provide choices to people at the best cost and the best  
18          price. Yet at the same time, we want to make sure people  
19          are not just finding the status quo in terms of, all they  
20          are able to buy is catastrophic coverage.

21          So I hope that we could get an analysis in the  
22          meantime. This is important. You have the lowest price  
23          plan that is a good plan for people, it meets their  
24          goals, but at the same time we do not want them to feel  
25          compelled to buy that plan because that is all they can

1       afford and it does not provide the kind of coverage they  
2       need for that moment in time in their lives. So I would  
3       hope we could get that analysis, Mr. Chairman. I hope we  
4       can request it, because it will be important and central  
5       to this debate. Thank you.

6               The Chairman. I appreciate that, Senator. We will  
7       ask CBO for that. I think I will let Senator Enzi close  
8       on his amendment, unless others want to speak.

9               Senator Enzi. I was hoping that I could be a part  
10       of some of the discussion a little bit earlier too, but I  
11       think I am sitting in a little invisible place here,  
12       because I have had problems throughout this whole thing  
13       of being recognized.

14              The Chairman. Senator Enzi, you are recognized.  
15       Senator Enzi?

16              Senator Enzi. Senator Stabenow has left now. I  
17       could have cleared up what she had to say, and I am glad  
18       Senator Snowe is still here, and Senator Wyden. We are  
19       confusing taking care of the low-income people with what  
20       we are going to require of all people. The low income  
21       are going to be taken care of. They are going to get a  
22       subsidy. They are going to get the silver plan and they  
23       are going to take their subsidy. They are not going to  
24       back off to the bronze plan and give up their subsidy.  
25       So they are going to be taken care of.

1           But the average person--we are talking about the  
2 average person in America, that we are going to tell them  
3 what their minimum credible coverage is going to be,  
4 because that is all that is going to be allowed to be on  
5 the exchange. First of all, it sounds better if you have  
6 got 60, 70, 80, and 90 percent levels instead of 65, 70,  
7 80, 90 percent levels. But if those people with the  
8 silver plan -- if we are still talking low income, if  
9 they were at a silver plan they go down to bronze, that  
10 is going to save us money, so CBO is going to say, yes,  
11 that would save money.

12           Of course, nobody is going to do it because they can  
13 get a better plan with less to pay in. But the argument  
14 was that this was going to cost them 40 percent. If it  
15 is only 60 percent coverage, it is going to be 40  
16 percent. Yes, that is true. That is a choice that they  
17 can make. They get lower premiums, and then if something  
18 happens they will have more to pay in, except--except--  
19 under the amendment, the pocket costs are capped at  
20 \$6,000 for individuals and \$12,000 for families, and  
21 there are no annual or lifetime limits.

22           They are going to buy a catastrophic policy no  
23 matter what. If it is catastrophic, you have got to  
24 remember that under what we are setting up here not only  
25 are these things portable, but they get to make the

1 decision every year. So if I pick one of these 60  
2 percent policies and then I find that I have got a  
3 problem, what do I do next year? I switch to a 90  
4 percent one and then I only have to pick up 10 percent of  
5 the costs.

6 See, we are forgetting that we are setting up  
7 something here where people not only have it portable,  
8 but they get to pick annually. That is what we had under  
9 Medicare Part D, too. They get to pick every year. So  
10 if they find out they have got a lot more drug costs and  
11 some other company is going to provide it cheaper, they  
12 switch. So I really think we ought to go down to at  
13 least the 60 percent level.

14 I did some checking in my State. For a 35-year-old  
15 person in Wyoming--and some of these get paid quite a  
16 bit. I know the kind of work they are doing. Some of it  
17 is pretty risky, but they are getting a lot of money.  
18 But they figure that anything that is going to happen to  
19 them, they get covered under Worker's Comp, so they are  
20 not buying the insurance. They would have to buy the  
21 insurance under this. Those that are buying the  
22 insurance that are in that category are paying \$63 a  
23 month.

24 Now, the actuary estimates for that bronze plan  
25 would be \$323 a month. If I tell people that I am going

1 to make their insurance more affordable and I raise their  
2 rate from \$63 to \$323, I think they are going to notice.  
3 I think they are going to say, what kind of a job did you  
4 do? Why did you make me go that high? Now, it is still  
5 going to drive up the cost of their insurance, but I am  
6 trying to get it down just a little bit more reasonable.  
7 It is a choice that they make.

8 People still have the choice to buy richer coverage  
9 if they want it, but we need to give them a choice of  
10 picking the lower premiums. The argument that this "up  
11 to age 25" that we have increased now so that if it  
12 exceeds 10 percent of their income, they can buy this  
13 other policy. By the time it exceeds 10 percent of their  
14 income, they are going to switch to a higher actuarial  
15 value the next time that their plan comes up. So that 10  
16 percent is not going to affect them. That is not going  
17 to be the plan they are going to pick. So this amendment  
18 brings it down a little bit.

19 I do not think it gives the kind of choice that we  
20 would like people to have. We are talking about adults  
21 who can make decisions on their own and make this  
22 decision every year, so if they do not have anything the  
23 matter, they can pick a lower one. If they have  
24 something happen, they can pick a higher actuarial value.  
25 But what we are setting here--and we have got to keep

1 that in mind--is the minimum credible coverage that they  
2 can buy. If they do not, we are going to penalize them.

3 The Chairman. All right.

4 Senator Ensign? We have aired this out. This is  
5 virtually a repeat of an amendment yesterday, too. We  
6 have all had this discussion, and various variations too,  
7 I might add.

8 Senator Enzi. And there probably ought to be a lot  
9 more variations because this is really a key to the whole  
10 bill.

11 The Chairman. All right.

12 Senator Ensign?

13 Senator Ensign. It is, Mr. Chairman. I want to  
14 associate myself with the remarks of a few of my  
15 colleagues. Basically, what we have here is a situation  
16 where the mark is saying that Washington knows best.  
17 What we are saying is, we would like to provide  
18 transparency and then allow people to choose, take their  
19 own responsibility and be able to choose the kind of plan  
20 that fits best for them and their family.

21 What this mark is saying is that Washington knows  
22 best. Because Washington is not trusting the people to  
23 make their own decisions; well, I have a little alert to  
24 tell Washington: the people do not trust us. They do not  
25 trust us to make these decisions. I mean, that is what

1 we are hearing all across the country, that we may not be  
2 trusting them in this bill, but certainly they are not  
3 trusting us.

4 I actually would put more faith in the people than I  
5 would put in Washington, DC. That is the reason that we  
6 should give people the ability to make good choices and  
7 then live with those choices. That is about freedom.  
8 That is about the freedom that we talk about. Senator  
9 Enzi has talked about here that he caps out-of-pocket  
10 expenses.

11 We learned last night--and I think it is important  
12 to repeat some of these things--is that they do not know  
13 the studies. I asked, where did the 65 percent number  
14 come from? Well, it was kind of a judgment call, but it  
15 was not based on bankruptcies in certain parts of the  
16 country. I even asked if we knew whether certain parts  
17 of the country that had higher bankruptcy rates due to  
18 health care problems, and was that associated with the  
19 lower-cost plans, the lower-cost actuarial plans.

20 Nobody has that information. They did not do that  
21 study to find out, to see whether this correlates or not.  
22 Why do we set a 65 and not a 60? The bottom line is, I  
23 think what Senator Enzi is trying to do is at least a  
24 step in the right direction. We would like to just allow  
25 the plans to be set up so the people would have

1 transparency, and then they determine the cost and the  
2 actuarial value of what they want to buy.

3 The other point that needs to be made today is what  
4 we learned last night, is this whole idea of keeping the  
5 plan that you want. For small employers, if they have a  
6 plan and the plan goes out of business, the insurance  
7 company goes out of business and they have a plan that is  
8 under the 65 percent value today, then the next year when  
9 they change their plan, they cannot buy the same plan,  
10 the same kind of a plan that they had last year with a  
11 different company. They will be required to buy a more  
12 expensive plan. The same thing with individuals in the  
13 individual market. They will be required to buy the more  
14 expensive plan.

15 Now, what we learned from the Joint Committee on  
16 Taxation was, if people do not buy the more expensive  
17 plan, they will be subject to up to one year in jail and  
18 a \$25,000 fine for not paying, for not buying their plan.

19 They get hit with a tax. If they do not want to pay the  
20 tax, then they are hit with this potential \$25,000 fine  
21 and one year in jail. So, Mr. Chairman, I think what  
22 Senator Enzi is trying to do is at least a step in the  
23 right direction. It makes it more affordable for those  
24 people. It trusts the American people more to make the  
25 kind of decisions that they need to make.

1           The Chairman.   All right.  We have already had this  
2   debate.

3           Senator Ensign.   And so that we are not --

4           The Chairman.   We have had this debate many times.  
5   I am ready for a vote.

6           Senator Ensign.   We are not, Mr. Chairman.

7           The Chairman.   The Clerk will call the roll.

8           Senator Ensign.   Mr. Chairman?

9           The Chairman.   We have had this debate many times,  
10   Senator.

11          Senator Ensign.   Mr. Chairman, you did not cut  
12   anybody else off today.

13          The Chairman.   Well, this is so redundant.  This is  
14   a filibuster you are doing here today.

15          Senator Ensign.   Mr. Chairman, you have said so  
16   many things in this debate that are redundant, it is  
17   ridiculous.  And for you to say that about somebody else  
18   is really, really with an unfair --

19          The Chairman.   You have been speaking at great  
20   length and a lot is repetitious.  Why do you not go ahead  
21   and make your point, then we are going to vote on this.

22          Senator Ensign.   Thank you, Mr. Chairman.

23          My final point is really about trusting people.  
24   That is, are we going to trust people to have more  
25   personal responsibility?  There was a Gallup poll that

1 was out this morning that basically said that the  
2 American people think it is more their responsibility for  
3 their health care decisions than the government's  
4 responsibility, and that is what this amendment and this  
5 whole debate is about -- trusting people more than you  
6 trust the government.

7 Thank you, Mr. Chairman.

8 The Chairman. The Clerk will call the roll.

9 The Clerk. Mr. Rockefeller?

10 The Chairman. No by proxy.

11 The Clerk. Mr. Conrad?

12 The Chairman. Aye by proxy.

13 The Clerk. Mr. Bingaman?

14 Senator Bingaman. No.

15 The Clerk. Mr. Kerry?

16 The Chairman. No by proxy.

17 The Clerk. Mrs. Lincoln?

18 The Chairman. No by proxy.

19 The Clerk. Mr. Wyden?

20 Senator Wyden. No.

21 The Clerk. Mr. Schumer?

22 The Chairman. No by proxy.

23 The Clerk. Ms. Stabenow?

24 Senator Stabenow. No.

25 The Clerk. Ms. Cantwell?

1           The Chairman.    Pass.  
2           The Clerk.     Mr. Nelson?  
3           The Chairman.   No by proxy.  
4           The Clerk.     Mr. Menendez?  
5           Senator Menendez.   No.  
6           The Clerk.     Mr. Carper?  
7           The Chairman.   No by proxy.  
8           The Clerk.     Mr. Grassley?  
9           Senator Grassley.   Aye.  
10          The Clerk.     Mr. Hatch?  
11          Senator Grassley.   Aye by proxy.  
12          The Clerk.     Ms. Snowe?  
13          Senator Snowe.    Aye.  
14          The Clerk.     Mr. Kyl?  
15          Senator Kyl.     Aye.  
16          The Clerk.     Mr. Bunning?  
17          Senator Bunning.   Aye.  
18          The Clerk.     Mr. Crapo?  
19          Senator Grassley.   Aye by proxy.  
20          The Clerk.     Mr. Roberts?  
21          Senator Grassley.   Aye by proxy.  
22          The Clerk.     Mr. Ensign?  
23          Senator Ensign.   Aye.  
24          The Clerk.     Mr. Enzi?  
25          Senator Enzi.    Aye.

1           The Clerk.    Mr. Cornyn?

2           Senator Cornyn.    Aye.

3           The Clerk.    Mr. Chairman?

4           The Chairman.    No.

5           Senator Cantwell?

6           The Clerk.    Ms. Cantwell?

7           Senator Cantwell.    No.

8           The Clerk.    Mr. Chairman, the final tally is 11  
9 ayes, 12 nays.

10          The Chairman.    The amendment does not pass.

11          Senator Grassley?

12          Senator Grassley.    My amendment is C-8.  I am  
13 revisiting a provision in the Children's Health Insurance  
14 bill from earlier this year that Congress got wrong.  In  
15 the Deficit Reduction Act of 2005, Congress passed a law  
16 requiring States to do a better job of confirming  
17 citizenship of people applying for Medicaid.  The  
18 Inspector General at the Department of Health and Human  
19 Services found that most States were not really checking,  
20 most relied simply on self-attestation.

21          In the Children's Health Insurance Program bill,  
22 Congress tried to improve upon the Deficit Reduction Act  
23 provision of 2005.  The provision on citizenship  
24 documentation in the Children's Health bill works so long  
25 as a person making application for benefits is, as you

1 would guess, actually the person making application for  
2 benefits. The citizenship documentation provision that  
3 was amended in the Children's Health bill remains dearly  
4 lacking when it comes to identification.

5 My amendment requires that a valid, government-  
6 issued photo ID be submitted with an application for  
7 benefits. So it is quite obvious it does no good to  
8 require somebody to submit a valid name, Social Security  
9 number and place of birth match if there is no proof that  
10 the person is actually that person that is submitting the  
11 information.

12 I know I do not have to explain the concept of  
13 identity theft to anybody in this committee meeting. A  
14 stolen credit report has more than enough information to  
15 allow someone to skirt the citizenship documentation  
16 provisions in the mark. Frankly, I am very perplexed as  
17 to why anyone would object to the amendment. Think about  
18 all the restrictions in modern life that require a valid  
19 photo ID.

20 For instance, try getting on an airplane without an  
21 ID matching you to your ticket. Think about all the  
22 times that you are asked for a photo ID before you can  
23 walk into a building, or use your credit card, or write a  
24 check. Think about coming into this building every  
25 morning. Now, most of the time Senators are easily

1 identified, but every once in a while a policeman asks me  
2 for my ID and I am very glad to get it out of my billfold  
3 and show them that I am actually Chuck Grassley.

4 Just think of the mundane life tasks that require  
5 photo ID. I am sure that the Chairman understands that  
6 Montana requires a valid driver's license or a valid  
7 photo ID that is required for just purchasing a fishing  
8 license. But it is not just Montana that requires a  
9 driver's license or valid photo ID before you can buy a  
10 fishing license. After a quick check of other States'  
11 web sites, I also note that Arkansas, Florida, Michigan,  
12 New Jersey, New York, Oregon, and West Virginia require a  
13 valid photo ID for a resident to get a fishing license.  
14 These are the ones that my staff could find just around  
15 the Internet.

16 So is there any question that when you are getting  
17 the benefit of a Children's Health Insurance Program or  
18 Medicare, Medicaid, that there is really nothing wrong  
19 with requiring a photo ID? Should States really require  
20 more to prove the identification of people buying a \$10  
21 fishing license in order to be eligible for that than  
22 people getting Medicaid? Should we not also care about  
23 people assessing thousands of dollars of government  
24 benefits through identity theft?

25 So I think the amendment is not only legitimate,

1       there ought to be the same requirement for accessing  
2       these very expensive Federal programs just like it is  
3       getting a fishing license in several of our States. I  
4       urge the adoption of the amendment.

5             Senator Kyl.     Mr. Chairman?

6             The Chairman.    Senator Kyl?

7             Senator Kyl.     Thank you, Mr. Chairman.

8             Mr. Chairman, this is a really important point in  
9       the debate because a lot of the numbers do not add up if  
10      Congress does not do what we say we are going to do in  
11      the legislation, some of which is not easy politically to  
12      accomplish. For example, the President, in his big  
13      speech, talked about how we are going to take out waste,  
14      fraud and abuse. A lot of skeptics said, never happen.  
15      You have got to watch Congress around here. They do not  
16      have the courage to do that.

17            Little things like eligibility requirements, that  
18      you actually are eligible for the government benefit that  
19      you are applying for. Congress said, surely we will have  
20      requirements in the statute so that people do not defraud  
21      the government. Skeptics say, you watch: it will not  
22      happen. Well, here is Exhibit A.

23            This is the test, and I will have a follow-on test  
24      after this one. Are the skeptics right, that Congress  
25      does not have the courage to ensure that taxpayers are

1 not ripped off by ensuring that people demonstrate their  
2 eligibility for Federal benefits? Is that not the least  
3 that people who are asking their fellow taxpayers to give  
4 them some of their money could be asked to do, to verify  
5 that they are eligible for the program?

6 That is all that Senator Grassley is asking us to do  
7 here. If we do not adopt his amendment, we will be  
8 saying--here is the first exhibit to demonstrate--that  
9 the numbers that CBO assumed would balance this out so  
10 that it would be deficit neutral are not really going to  
11 be true. We will, in fact, have a deficit because  
12 Congress will not do the minimal steps to make sure that  
13 the taxpayers are not ripped off. The Grassley amendment  
14 is a bare minimum of what Congress needs to do.

15 Senator Menendez. Mr. Chairman?

16 The Chairman. Senator Menendez?

17 Senator Menendez. Mr. Chairman, there is a  
18 difference between a fishing license and what we are  
19 doing in this bill, which is mandating, as a matter of  
20 law, that individuals get coverage. If they do not,  
21 unless they are exempted, they have a penalty.  
22 Fundamental difference.

23 Now, about verification, already current law gives  
24 the States the option to satisfy the citizenship  
25 documentation requirement in Medicaid and CHIP by

1 checking people's Social Security numbers through the  
2 data exchanges with SSA, and if there is not a match,  
3 therefore they are denied. There is also the opportunity  
4 for someone to bring a birth certificate, which now a  
5 birth certificate is not the basis of citizenship in this  
6 country, but a photo ID is the basis of citizenship in  
7 this country. We have come a long way, the wrong way.  
8 The last time I checked, citizenship is by birth or  
9 naturalization.

10 Now, the other thing is that this amendment would  
11 bar, I view, legal children from coverage. This  
12 amendment requires a child's parents to present photo ID  
13 when applying for insurance for the child. Now, if you  
14 read the amendment, children usually do not have a photo  
15 ID at the end of the day, and in many cases even the  
16 parents of those children do not have photo IDs.

17 When you look at the universe we are talking about,  
18 people on Medicaid, for example, the average photo ID, to  
19 the extent that an American has one, is a driver's  
20 license. In this universe of Medicaid, clearly that is  
21 many people who do not possess a driver's license because  
22 they do not possess a car. They take multiple means of  
23 public transportation to simply try to get the work and  
24 sustain their family every day. So parents should be  
25 able to produce documentation, like their child's birth

1 certificate, in order to have the validation that we  
2 want.

3 This creates a new barrier to coverage for everyone.

4 It requires applicants to present the government-issued  
5 photo ID in a way that is a significant barrier, even for  
6 citizens. Right now, in States across the country, you  
7 either mail in your application or you, in fact, can go  
8 online. Well, obviously, you are not going to put, to  
9 the extent that you have a photo ID, it in the mail and  
10 send it to them because you are not going to take a  
11 photocopy as proof of ID.

12 So now you are going to have to take your driver's  
13 license and send it to the location of your Medicaid  
14 office to get verified, or you have to take off from  
15 work, which people in this category already are suffering  
16 pretty badly in terms of those who qualify for Medicaid  
17 but are still struggling in some type of work for their  
18 children, or in the CHIP program.

19 So now, since our offices are only open Mondays  
20 through Fridays, I have got to take off from work so I  
21 can show the photo ID of myself, not my child, by the  
22 way, who does not have a photo ID. This impact is on the  
23 most vulnerable groups in our society, the most  
24 vulnerable groups in our society: people living in rural  
25 areas, people who are homeless, people who may have been

1 the subject of foreclosure, now changed, and their ID is  
2 not even valid at the moment. Even the Real ID  
3 regulations allow States to provide for exceptions to  
4 photo identification requirements because it understands  
5 that those vulnerable groups exist.

6 Finally, Mr. Chairman, there have been some studies  
7 about this. What it says is pretty alarming. The  
8 Wisconsin Department of Health and Family Services  
9 reported that, between August of 2006 and January of  
10 2008, nearly 33,000 individuals had their Medicaid denied  
11 or terminated because of the documentation requirement.  
12 In 62 percent of those cases, the sole reason for denial  
13 and loss of coverage was lack of identification. All of  
14 these individuals--all of these individuals--had provided  
15 documents showing that they were citizens. So because  
16 they did not have a photo ID, they became second-class  
17 citizens. There are studies that have a number as high  
18 as 21 million American citizens who have no photo ID.

19 So I think this puts children at risk. That is what  
20 the amendment does, it puts some of the most vulnerable  
21 at risk. I think there should be documentation, and  
22 certainly Social Security, birth certificates are the  
23 standard. But if not, we have changed the whole paradigm  
24 in this country about how you become a citizen. It is  
25 not by a certificate of birth or naturalization, it is by

1 some photo ID, and that is fundamentally, fundamentally  
2 wrong.

3 Senator Kyl. Mr. Chairman, might I ask Senator  
4 Menendez a question?

5 The Chairman. Who seeks recognition?

6 Senator Kyl. Would the Senator yield?

7 The Chairman. Senator Kyl?

8 Senator Kyl. Yes. The last comment, Senator  
9 Menendez, that you just made was that this photo ID  
10 requirement is not a good substitute for Social Security  
11 numbers and a birth certificate, which after all is the  
12 ultimate confirmation of citizenship, and I agree with  
13 you about that.

14 What would be your view about adding the birth  
15 certificate requirement, or even substituting it for the  
16 photo ID?

17 Senator Menendez. I understand it is already  
18 required. Mr. Schwartz, would you answer that for us?

19 Mr. Schwartz. I would be happy to. The list of  
20 documents that Senator Grassley referenced that were  
21 included in the Deficit Reduction Act include a birth  
22 certificate. That list was originally created for the  
23 Medicaid program, and the CHIP Reauthorization Act signed  
24 earlier this year extended that to the CHIP program. So  
25 the birth certificate, as I understand it, applies in

1 both programs.

2 Senator Kyl. It is a permissible document. It is  
3 not required.

4 Mr. Schwartz. That is correct. There is a list of  
5 several permissible documents.

6 Senator Grassley. Could I interrupt here, Senator  
7 Kyl? The issue is not citizenship. The issue is, is the  
8 person that is applying for it the person who says they  
9 are, and only photo ID is going to show that.

10 Senator Bingaman. Mr. Chairman?

11 The Chairman. Senator Bingaman?

12 Senator Bingaman. Mr. Chairman, let me speak in  
13 opposition to the amendment. As I see the amendment, it  
14 is a solution looking for a problem. The idea that we  
15 have got a lot of fraud in Medicaid because people are  
16 showing up and misrepresenting who they are in order to  
17 get medical treatment, it just is not reality. The fraud  
18 in Medicaid is provider fraud.

19 It is providers who are charging for services they  
20 are not providing. When I was Attorney General in my  
21 State many, many years ago, we used to prosecute people  
22 for committing fraud against the Medicaid system. We did  
23 not prosecute anybody I can recall who tried to  
24 misrepresent who they were in order to get the health  
25 care that the person that they were claiming to be would

1 have been entitled to get. That is just not a real  
2 problem that this amendment is trying to solve, in my  
3 view.

4 In New Mexico, when the Deficit Reduction Act was  
5 adopted, I believe it was 2005, and the various  
6 citizenship documentation requirements were put in place,  
7 the estimate is that 10,000 children in my State lost  
8 coverage under Medicaid because of those new  
9 identification requirements. There was no evidence that  
10 undocumented children had been receiving coverage.  
11 Instead, those were citizen children who lost coverage,  
12 many on the Indian reservations in my State.

13 So I think it would be a mistake to add one more  
14 requirement and say not only must you show a Social  
15 Security number or birth certificate or some document to  
16 prove who you are, you have got to show this additional  
17 requirement as well. I think it is just one more  
18 barrier. It will result in that many fewer individuals,  
19 and particularly children, obtaining the Medicaid  
20 coverage that they are otherwise eligible for, and for  
21 that reason I would oppose the amendment.

22 Senator Grassley. Mr. Chairman?

23 The Chairman. Senator Grassley?

24 Senator Grassley. In response to Senator Bingaman,  
25 but anybody else that has got any doubt about whether or

1 not there is fraud from applicants, as well as from  
2 providers, and I do not disagree with what Senator  
3 Bingaman said about, probably the major source of fraud  
4 does come from the providers. But just today there was a  
5 GAO report out that said, for instance, Medicaid is  
6 paying claims for people who are dead. So photo ID, and  
7 are you alive, and all that is pretty darn important, it  
8 seems to me. So I do not disagree that there is a lot of  
9 fraud by providers, and maybe vast majority of the fraud  
10 by providers, but there is also fraud by applicants as  
11 well.

12 Senator Bingaman. Mr. Chairman, I would just point  
13 out --

14 The Chairman. Senator Bingaman?

15 Senator Bingaman. To the extent Medicaid is paying  
16 for people who are dead to get health care services, it  
17 is not because those people are applying for those  
18 services, it is because providers are billing for  
19 services for people who are dead. That is the problem we  
20 ought to stop.

21 The Chairman. All right.

22 Senator Stabenow?

23 Senator Stabenow. Thank you, Mr. Chairman.

24 I think we may want to just amend this to say that  
25 we will not allow Medicaid to pay for anyone that is no

1 longer living. There is no question that there is  
2 Medicaid fraud, but I think this does not tackle it in  
3 the right way.

4 I guess I have a question for staff, to make sure I  
5 understand this right. Under Medicaid right now--and you  
6 may have already said this, I apologize if you did--  
7 citizenship documentation requires a passport or a birth  
8 certificate and photo ID, except when we passed  
9 Children's Health Insurance we said if you are in the  
10 Social Security database, that could be used instead. Is  
11 that correct?

12 Mr. Schwartz. That is correct, Senator.

13 Senator Stabenow. All right.

14 Given that, I guess, Mr. Chairman, I appreciate what  
15 the focus of this is. I think there is no question about  
16 it, that none of us want someone who is here illegally or  
17 someone who is defrauding the public or the government to  
18 be getting Medicaid, or any other public service, period.

19 My question would be, going beyond what is the current  
20 citizenship documentation, a passport, birth certificate,  
21 a photo ID, or Social Security number, when we look at  
22 who is on Medicaid and we look at the fact that we have  
23 eight million low-income seniors, the bulk of Medicaid is  
24 really costs for seniors in nursing homes.

25 You have someone that has, possibly, the beginning

1 of Alzheimer's. They may or may not have a family, may  
2 have not worked for years, may have not driven for years.

3 The idea that we would somehow put a barrier to a senior  
4 citizen being able to get care in a nursing home because  
5 they did not have a photo ID is really concerning to me,  
6 very, very concerning to me.

7 We spent a lot of time talking about Medicare and  
8 Medicare Advantage and making sure seniors do not lose  
9 what they have. It seems to me that this amendment, in  
10 fact, could cause however many -- if there are roughly  
11 eight million seniors right now, low-income seniors, most  
12 of whom are in nursing homes, it seems like we are  
13 putting a tremendous barrier up to low-income seniors  
14 being able to get the care that they need, which I know  
15 we all want to make sure that they have. So given the  
16 strong provisions already in the law, I certainly do not  
17 want to take that a step further and have low-income  
18 seniors being blocked from being able to get the care  
19 that they need.

20 The Chairman. I think we can vote on this.

21 Senator Ensign. Mr. Chairman, can I ask a  
22 question?

23 The Chairman. We have aired this out pretty fully.

24 Senator Ensign. Can I ask some questions? In this  
25 bill we expand Medicaid coverage to adults.

1 Mr. Schwartz. That is correct.

2 Senator Ensign. Without children.

3 Mr. Schwartz. That is correct.

4 Senator Ensign. The Chairman has some provisions  
5 in there about verifying citizenship for the exchanges.  
6 Do those apply to the Medicaid population?

7 Mr. Schwartz. No. The current-law Medicaid  
8 requirement in Title 19 would apply, so the provision  
9 Senator Grassley referenced earlier.

10 Senator Ensign. Which are stronger, the Medicaid  
11 provisions or the provisions in the mark, as far as  
12 verifying that somebody who is applying is here legally  
13 in this country?

14 Mr. Schwartz. I think they are similar and I think  
15 I have to try to get a colleague of mine to help answer.

16 Senator Ensign. That is fine.

17 Ms. Baker. The requirements for determining  
18 eligibility in the exchange are to supply a Social  
19 Security number -- name, date of birth, Social Security  
20 number, citizenship status. If you are a legal resident  
21 but do not have a Social Security number you could supply  
22 an alien number and a Form I-94 number. It does not  
23 require specifically a birth certificate or other sorts  
24 of documentation unless the initial verification check  
25 comes back negative.

1           Senator Ensign.    How do they verify it?

2           Ms. Baker.    With the initial information?

3           Senator Ensign.    Yes.

4           Ms. Baker.    The exchange would receive the  
5 information from the applicant and then would--technical  
6 term--ping the information off from the Social Security  
7 Administration's databases and Department of Homeland  
8 Security databases, whatever would be applicable to  
9 determine if the numbers checked out with the other  
10 information.

11           Senator Ensign.    So to verify, in other words, they  
12 may have a valid Social Security number, but it may be  
13 somebody else's Social Security number.  What Senator  
14 Grassley is trying to get at, in other words, trying to  
15 prove that this is the person.  There is no point at  
16 which you are verifying that this is the person, is that  
17 correct?

18           Ms. Baker.    The other information, the name, and  
19 the date of birth.  It is not just a Social Security  
20 number, the applicant also supplies income information to  
21 the exchange, so there is a compilation of the  
22 information that is received from the feedback from  
23 Social Security and DHS, if applicable, and also  
24 confirmation from IRS that the income data matches.

25           Senator Ensign.    So that gets back to my first

1 question: is that stronger than what is required under  
2 Medicaid? I mean, it sounds stronger than what is  
3 required under Medicaid.

4 Ms. Baker. I am not familiar enough with Medicaid.

5 Mr. Schwartz. I think it is actually very similar,  
6 Senator. We have the Social Security option, you will  
7 remember, that we added as part of the Children's Health  
8 reauthorization earlier this year, and that works  
9 basically the same way.

10 Senator Ensign. But does it go to Department of  
11 Homeland Security and all that kind of a thing?

12 Mr. Schwartz. If I understand it correctly, the  
13 people that are pinged to the Department of Homeland  
14 Security are people who are not claiming citizenship  
15 status, but they are claiming to be in the country  
16 legally. Is that right? So we do not typically have  
17 that population present in Medicaid because there was the  
18 five-year bar for legal permanent residents and other  
19 categories until earlier this year when we gave States  
20 the option to start covering segments of that population,  
21 at least the pregnant women and the children, in Medicare  
22 and CHIP. So that is a newer group for us, but that is  
23 clearly a larger group in the exchange.

24 Senator Ensign. Under the expansion, would we not  
25 pick up some of those people?

1           Mr. Schwartz.    The Chairman's mark does not make  
2 any changes to the five-year bar in Medicaid or CHIP for  
3 legal immigrants to this country.  So I do not anticipate  
4 that that is a larger group that we are going to deal  
5 with.

6           Senator Ensign.    But you said last year we made the  
7 changes so that States could allow that?

8           Mr. Schwartz.    It is a State option for children  
9 and pregnant women, so it would not --

10          Senator Ensign.    Not the adults coming in?

11          Mr. Schwartz.    Correct.

12          Senator Ensign.    All right.  Thank you.

13          The Chairman.    All right.

14          Senator Grassley.   I am ready to vote.

15          The Chairman.    Senator Grassley says he is ready to  
16 vote.

17          The Clerk will call the roll.

18          The Clerk.    Mr. Rockefeller?

19          The Chairman.    No by proxy.

20          The Clerk.    Mr. Conrad?

21          Senator Conrad.    No.

22          The Clerk.    Mr. Bingaman?

23          Senator Bingaman.   No.

24          The Clerk.    Mr. Kerry?

25          The Chairman.    No by proxy.

1           The Clerk.    Mrs. Lincoln?  
2           Senator Lincoln.   No.  
3           The Clerk.    Mr. Wyden?  
4           The Chairman.   No by proxy.  
5           The Clerk.    Mr. Schumer?  
6           The Chairman.   No by proxy.  
7           The Clerk.    Ms. Stabenow?  
8           Senator Stabenow.   No.  
9           The Clerk.    Ms. Cantwell?  
10          The Chairman.   Pass.  
11          The Clerk.    Mr. Nelson?  
12          The Chairman.   No by proxy.  
13          The Clerk.    Mr. Menendez?  
14          Senator Menendez.   No.  
15          The Clerk.    Mr. Carper?  
16          The Chairman.   No by proxy.  
17          The Clerk.    Mr. Grassley?  
18          Senator Grassley.   Aye.  
19          The Clerk.    Mr. Hatch?  
20          Senator Hatch.   Aye.  
21          The Clerk.    Ms. Snowe?  
22          Senator Snowe.   Aye.  
23          The Clerk.    Mr. Kyl?  
24          Senator Kyl.    Aye.  
25          The Clerk.    Mr. Bunning?

1 Senator Bunning. Aye.

2 The Clerk. Mr. Crapo?

3 Senator Grassley. Aye by proxy.

4 The Clerk. Mr. Roberts?

5 Senator Grassley. Aye by proxy.

6 The Clerk. Mr. Ensign?

7 Senator Ensign. Aye.

8 The Clerk. Mr. Enzi?

9 Senator Enzi. Aye.

10 The Clerk. Mr. Cornyn?

11 Senator Grassley. Aye by proxy.

12 The Clerk. Mr. Chairman?

13 The Chairman. No.

14 The Clerk. Ms. Cantwell?

15 Senator Cantwell. No.

16 The Chairman. The Clerk will tally the vote.

17 The Clerk. Mr. Chairman, the final tally is 10

18 ayes and 13 nays.

19 The Chairman. The amendment does not pass.

20 Senator Kyl, I see, has an amendment. It is

21 virtually identical to the last. I mean, I might ask the

22 Senator, do you want to debate it or we can vote on it

23 right now.

24 Senator Kyl. Well, the word "virtually", I would

25 not use to describe it. It is similar, but it is not

1 virtually identical. If you like, I can go ahead with  
2 it.

3 The Chairman. How much time do you think you want  
4 to take on this amendment?

5 Senator Kyl. I would assume that in 10 or 15  
6 minutes we can be done with it.

7 The Chairman. All right. I am going to hold it  
8 over until after the break.

9 I want to end on a very high note here. We have  
10 another actuarial event today, as it is Senator Lincoln's  
11 birthday today.

12 [Applause].

13 [Whereupon, "Happy Birthday" was sung.]

14 [Applause].

15 The Chairman. The committee stands in recess until  
16 2:15.

17 [Whereupon, at 12:47 p.m. the meeting was recessed.]

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AFTER RECESS

[2:47 p.m.]

The Chairman. The committee will come to order.  
We now have a quorum.

Senator Kyl, you are recognized to offer your amendment.

Senator Kyl. We have a quorum?

The Chairman. I am told we have a quorum. Go ahead.

Senator Kyl. I thought a quorum was eight, and I only counted seven.

The Chairman. It is eight. We had eight. We had eight. Why do you not start and we will make sure we have eight when it comes time to vote.

Senator Kyl. Thanks, Mr. Chairman.

Just before the break, we had concluded work on the Grassley amendment, which would have added a photo ID to the requirement for verification for Medicaid benefits. I indicated I had a similar amendment, but it was not the same. There are two key differences between the situation Senator Grassley was dealing with and the situation I am dealing with in my modified amendment, Number C-15.

C-15 adds a photo requirement to receive the tax

1 subsidy benefits, as well as the Medicaid benefits. In  
2 that regard, the amendments are similar. But here are  
3 the two differences. Medicaid already has the  
4 requirements for verification that staff had discussed in  
5 answer to questions, even though most of them are  
6 optional, they are not mandatory. Nonetheless, they  
7 exist in the CHIPRA 2009, which by the way cut back from  
8 the requirements that existed three years before then.

9 In the case of the tax subsidy, that is not the  
10 case. Also in the case of the tax subsidy there is a  
11 presumption -- and I will simply read it to you, because  
12 this is the only thing that is included in the Chairman's  
13 mark relative to eligibility verification. It is simply  
14 one paragraph that starts on page 21, and the relevant  
15 part reads as follows. Here is what you have to supply  
16 in order to be eligible for the tax subsidy: your name,  
17 Social Security number, and date of birth. That is it.

18 They will be verified with the Social Security  
19 Administration data. Then it says, "For individuals  
20 claiming to be U.S. citizens, if the claim of citizenship  
21 is consistent with the Social Security data, then the  
22 claim will be considered substantiated", period, end of  
23 discussion.

24 So I guess it is even more than a presumption, it is  
25 the determination if the information is consistent with

1 Social Security data. The problem is, Social Security  
2 only can verify one thing, namely that that particular  
3 number was issued on a particular date to a particular  
4 person. That is it. They may have the birth date of the  
5 individual to whom it was issued. What they cannot do is  
6 verify that the person applying for the benefit is that  
7 person.

8 I know that when we worked three years ago on the  
9 comprehensive immigration reform and had numerous  
10 meetings with the Chief Counsel of Department of Homeland  
11 Security, he made the point over and over again that, for  
12 a valid verification system, you needed a minimum of two  
13 key things. You needed the Social Security data to  
14 actually be run through the system, and it had to be tied  
15 to a photo ID that was a valid photo ID. A Real ID  
16 driver's license would work, for example. There were  
17 other things that could work as well. But without the  
18 photo ID, there was no way to connect up the applicant to  
19 the person whose number you had.

20 Now, we are all aware of the fact that for about 35  
21 bucks you can get a Social Security card and it can have  
22 a number on there. The number can be run through the  
23 system and validated, but it is not the number belonging  
24 to the person who has stolen it. So, fraud is still  
25 possible under this. My only point in supporting Senator

1 Grassley was, why would we have a lesser standard to  
2 protect taxpayer dollars than we would to ensure that a  
3 person applying for a fishing license in Montana, for  
4 example, would have to demonstrate?

5 Employers are required to file I-9s, and we put the  
6 burden on the employer to verify the information on there  
7 and we hold them accountable if the information is wrong.

8 They can actually be prosecuted under certain  
9 circumstances. And yet, government bureaucrats are not  
10 going to be subject to that same requirement. It seems  
11 to me that when we are dealing with taxpayer dollars, our  
12 obligation should be greater, not less than we impose on  
13 others when dealing with their own money.

14 And certainly I know Senator Menendez said, well, a  
15 driver's license is different than the benefits under  
16 this legislation. To be sure, that is true, very true.  
17 I would argue that the difference argues that there  
18 should be at least a stronger standard for taxpayer  
19 benefits here than there should be for a fishing license,  
20 even though I am sure Montanans take their fishing very,  
21 very seriously.

22 But when you are talking about, potentially,  
23 billions of dollars of taxpayers money, I guess I would  
24 say, would we not want to have a standard at least as  
25 strong as the system that most States have to issue a

1 fishing license, or anything else? So that is the reason  
2 why I think this amendment is necessary, both because of  
3 what we talked about with regard to Senator Grassley's  
4 amendment, and because the language in the mark makes it  
5 very clear that there are not any other optional  
6 documents as there are with Medicaid. This is it. When  
7 the information is consistent with Social Security data,  
8 the claim will be considered substantiated, period. So I  
9 think based upon that, it is important for us to add this  
10 photo requirement, Mr. Chairman.

11 The Chairman. Thank you, Senator. Before I turn  
12 to, I think Senator Rockefeller wants to speak, we in  
13 Montana want a Montana driver's license to get a fishing  
14 license because we want to charge you more. That is the  
15 whole point of the requirement of the showing of a  
16 driver's license in Montana, is to make sure that I, and  
17 everyone else in Montana, is really from Montana, because  
18 Montana charges out-of-Staters who want to fish in  
19 Montana much more than they charge folks in our State.  
20 We make sure that we are legit so we do not have quite  
21 the same --

22 Senator Kyl. And you have got a beautiful State.

23 The Chairman. Senator Rockefeller?

24 Senator Kyl. And I did not mean to demean what the  
25 State would need.

1           The Chairman.    Senator Rockefeller?  Thank you.  
2   Thank you.

3           Senator Kyl.     But surely this is at least as  
4   important.

5           The Chairman.    I just wanted to point out the  
6   reason for the photo ID.  All right.

7           Senator Rockefeller?

8           Senator Rockefeller.    I think this is really, with  
9   all due respect, Senator Kyl, a rather dreadful  
10   amendment.  I say that for the following reasons: we  
11   already have requirements for people, undocumented  
12   immigrants, et cetera, taking advantage of Medicaid and  
13   CHIP who want to do that.  The whole idea of having a  
14   driver's license, or a photo identification, the reason  
15   that does not work is there is something about saying if  
16   the parent does not have photo ID, that the kid cannot  
17   get into CHIP, which goes against my grain very strongly,  
18   and I would hope that we would defeat this amendment.

19          The Chairman.    I think this is the same discussion  
20   we had on the last amendment.  We probably should vote  
21   it.

22          Senator Kyl.     Yes.  That is fine.  But I am not  
23   sure Senator Rockefeller was here.  This is not the  
24   Grassley amendment that deals with Medicaid and kids,  
25   Senator Rockefeller.

1           Senator Rockefeller.   No.   This is Kyl C-15.

2           Senator Kyl.   That is right, as modified.

3           Senator Rockefeller.   As modified.

4           Senator Kyl.   And this amendment deals with the  
5   benefit that one receives, the tax credit, the subsidy to  
6   obtain insurance.   That is one of the two differences.  
7   The Grassley amendment only dealt with Medicaid.   That is  
8   what you were speaking to.

9           The Chairman.   Senator Bingaman?

10          Senator Bingaman.   Mr. Chairman, for the reasons I  
11   stated in connection with the Grassley amendment, I think  
12   this is a bad policy for us to adopt.   It is my view that  
13   this is a solution looking for a problem.   There is no  
14   serious issue here.   I cannot believe somebody would go  
15   into an exchange and claim a tax credit, which the IRS is  
16   only going to provide to the name of the person who they  
17   are claiming to be.   I do not see that that benefits the  
18   person who is making the claim.

19          The mark that you have presented to us, Mr.  
20   Chairman, says "appropriate penalties will apply to the  
21   use of fraudulent information or stolen identity  
22   information in the State exchange".   I think that is  
23   adequate to the purpose.   Clearly, if we had a serious  
24   problem here I would feel differently about it, but I do  
25   not think we do.   I recommend we oppose the amendment.

1 The Chairman. The Clerk will call the roll.  
2 The Clerk. Mr. Rockefeller?  
3 Senator Rockefeller. No.  
4 The Clerk. Mr. Conrad?  
5 The Chairman. No by proxy.  
6 The Clerk. Mr. Bingaman?  
7 Senator Bingaman. No.  
8 The Clerk. Mr. Kerry?  
9 The Chairman. No by proxy.  
10 The Clerk. Mrs. Lincoln?  
11 The Chairman. No by proxy.  
12 The Clerk. Mr. Wyden?  
13 The Chairman. No by proxy.  
14 The Clerk. Mr. Schumer?  
15 The Chairman. No by proxy.  
16 The Clerk. Ms. Stabenow?  
17 The Chairman. No by proxy.  
18 The Clerk. Ms. Cantwell?  
19 The Chairman. Pass.  
20 The Clerk. Mr. Nelson?  
21 Senator Nelson. No.  
22 The Clerk. Mr. Menendez?  
23 Senator Menendez. No.  
24 The Clerk. Mr. Carper?  
25 Senator Carper. No.

1           The Clerk.    Mr. Grassley?  
2           Senator Grassley.    Aye.  
3           The Clerk.    Mr. Hatch?  
4           Senator Grassley.    Aye by proxy.  
5           The Clerk.    Ms. Snowe?  
6           Senator Grassley.    Pass for now.  
7           The Clerk.    Mr. Kyl?  
8           Senator Kyl.    Aye.  
9           The Clerk.    Mr. Bunning?  
10          Senator Bunning.    Aye.  
11          The Clerk.    Mr. Crapo?  
12          Senator Crapo.    Aye.  
13          The Clerk.    Mr. Roberts?  
14          Senator Grassley.    Aye by proxy.  
15          The Clerk.    Mr. Ensign?  
16          Senator Ensign.    Aye.  
17          The Clerk.    Mr. Enzi?  
18          Senator Enzi.    Aye.  
19          The Clerk.    Mr. Cornyn?  
20          Senator Cornyn.    Aye.  
21          The Clerk.    Mr. Chairman?  
22          The Chairman.    No.  
23          Senator Grassley.    We can now cast the vote for  
24    Senator Snowe.    It would be aye by proxy.  
25          The Clerk.    Mr. Chairman, the final tally is 10

1 ayes, 12 nays, and 1 pass.

2 The Chairman. The amendment fails.

3 Senator Nelson, are you ready? Good. You are  
4 recognized.

5 Senator Nelson. Mr. Chairman, it is the  
6 modification to F-1, Nelson F-1.

7 Senior citizens--that is, 65 and older--and their  
8 spouses would be eligible to claim the Section 213  
9 deduction if their medical expenses exceed 7.5 percent of  
10 adjusted gross income. This amendment would apply in the  
11 years beginning 2012 and would end before January of  
12 2017. Now, it has been a joint effort in putting this  
13 together, and I want to thank the Chairman and the staff.  
14 We made several changes, and one of those changes in the  
15 underlying bill was a new provision to raise the income  
16 floor for the medical expense deduction.

17 The medical expense deduction provides relief for  
18 taxpayers that experience extraordinary out-of-pocket  
19 medical costs during the year. It has been at 7.5  
20 percent of adjusted gross income, and taxpayers may  
21 deduct their medical expenses, but to the extent that  
22 they exceed 7.5 percent of their adjusted gross income in  
23 current law.

24 But what we find is that more than 80 percent of the  
25 taxpayers claiming the medical expense deduction also

1 have fairly low incomes, incomes under \$75,000. This  
2 deduction was designed in the Tax Code to exclude  
3 predictable, recurring expenses, as well as the surprise,  
4 the extreme medical hardship beyond an individual's  
5 control, such as major surgery, severe chronic disease,  
6 catastrophic illness.

7 And so from the 1950s until 1982, the income floor  
8 on this medical expense deduction was 3 percent, and then  
9 it was increased to 5 percent in 1983, and to the present  
10 7.5 percent in 1987. Now under the Chairman's mark the  
11 income floor would rise to 10 percent, and because that  
12 is that much less deductible from taxable income, it is  
13 going to raise \$22 billion in the Chairman's mark.

14 Well, you peel back the pages and you find that more  
15 than half of this benefit goes to senior citizens. Those  
16 same senior citizens tend to live on fixed incomes and  
17 they are the ones that are more likely to experience the  
18 extraordinary medical cost. As a result, their medical  
19 expenses exceed the income floor of 7.5 percent more  
20 often than others.

21 Now, there was a period when seniors were fully  
22 exempt from the income floor, and that was back in 1951,  
23 until 1966. Well, the purpose of this amendment, which  
24 has been jointly worked out with the Chairman, is that we  
25 should not raise taxes on the seniors to pay for health

1 reform, particularly in this case seniors suffering  
2 extreme medical hardships.

3 So the new out-of-pocket limits will apply in other  
4 parts of the bill to private insurance offered in the  
5 exchange, however, these same out-of-pocket limits --  
6 remember, this is the limits that went from 2 percent to  
7 12 percent, that premiums cannot be 2 to 12 percent of  
8 income. We put limits on that. But that does not apply  
9 to any out-of-pocket limits on Medicare beneficiaries.  
10 Now we are back to the seniors. So as a result, many  
11 seniors will continue to rely on this medical expense  
12 deduction to offset the high impact of high medical  
13 costs, that they get a surprise in a particular year, or  
14 a recurring.

15 So in working with the Chairman's staff, what this  
16 amendment does, it would carve out seniors from the 10  
17 percent income floor. Individuals aged 65 and older  
18 would continue to deduct their medical expenses, but  
19 deduct them as they do under current law, those in excess  
20 of 7.5 percent of adjusted gross income. What that means  
21 in dollar terms in the pockets of senior citizens is \$7  
22 billion.

23 We have a revenue offset. The revenue offset would  
24 make payments under the Employer Fair Share provision,  
25 non-deductible as a business expense. Now, what do I

1 mean by that? In the underlying Chairman's mark, for  
2 example, there is a complicated formula that an employer  
3 is going to have to make if his employee goes into the  
4 exchange, but there is an overall cap, for example. You  
5 remember, \$400 per employee times the number of employees  
6 is the cap that the employer would ever make in his fair  
7 share contribution.

8 Well, the offset here is, instead of that being a  
9 deductible expense, that it would be a non-deductible  
10 expense. This tracks so many other things that are  
11 expenses that are also non-deductible, such as taxes on  
12 mutual funds are non-deductible, real estate investment  
13 trusts, certain of their expenses are non-deductible, and  
14 likewise, taxes on tax-exempt foundations are non-  
15 deductible. So in order to meet the requirement of the  
16 revenue neutrality, the amendment is going to sunset in  
17 2017.

18 Now, of course what I would like is, as we get on  
19 closer to the floor is to continue to work with you so  
20 that that carve-out for the seniors would be extended to  
21 cover the last three years of the budget window, but for  
22 purposes of this amendment, it goes just until 2017.

23 That is the amendment, Mr. Chairman.

24 Senator Bunning. Mr. Chairman?

25 The Chairman. Go ahead.

1 Senator Bunning. All right. Thank you.

2 I have a couple of questions I would like to ask  
3 about this amendment from the Chairman's staff at the  
4 table and from Mr. Barthold from the Joint Tax Committee.

5 For the Chairman's staff, let me say, someone in the  
6 exchange becomes severely disabled and has long-term care  
7 expenses from being in a nursing home. Would these  
8 people with disabilities be protected from a tax increase  
9 under the Nelson amendment for their catastrophic long-  
10 term care expenses?

11 Mr. Barthold. Catastrophic long-term care expenses  
12 would be qualifying medical expenses.

13 Senator Bunning. I am having --

14 Mr. Barthold. Sorry, Senator. Catastrophic care  
15 expenses would be qualifying medical expenses, which any  
16 taxpayer could deduct. So the extent to which the  
17 Chairman's mark, as modified by Senator Nelson's  
18 amendment, would depend upon their age. Senator Nelson's  
19 amendment has one threshold if you are 65 or older and  
20 the higher threshold of the Chairman's mark, as modified,  
21 if you are under age 65.

22 Senator Bunning. Also under the Chairman's mark,  
23 25 million people will be still uninsured. Let us say a  
24 child in one of those uninsured families is stricken with  
25 cancer. Will this family be protected from a tax

1 increase on catastrophic expenses under the Nelson  
2 amendment?

3 Mr. Barthold. Again, Senator Bunning, Senator  
4 Nelson's amendment keys off the age of the taxpayer or  
5 the taxpayer's spouse.

6 Senator Bunning. Are you saying they will be  
7 covered?

8 Mr. Barthold. In your case, I am presuming that  
9 the child's parents are probably under age 65. If that  
10 were the case, then they would test for the itemized  
11 deduction relative to the higher 10 percent adjusted  
12 gross income floor.

13 Senator Bunning. Ten percent? In fact, that  
14 uninsured family with a child with cancer may also have  
15 to pay a penalty tax for being uninsured. Mr. Barthold,  
16 would that penalty tax be considered a medical expense  
17 for the purposes of the medical expense deduction that  
18 the Chairman is limiting? In other words, is it possible  
19 this uninsured family will be paying higher taxes because  
20 the Chairman is raising the threshold for the  
21 catastrophic medical expense deduction, and on top of  
22 this they would have to pay a penalty tax that would not  
23 count as one of the catastrophic medical expenses?

24 Mr. Barthold. The deduction under present law is  
25 for medical care, and remember, the only thing that is

1 being amended is the threshold under present law.

2 Senator Bunning. Yes, sir.

3 Mr. Barthold. The deduction under present law is  
4 for medical care received, health insurance, prescription  
5 drugs, and the like. The penalty tax that you discussed  
6 would not fall into any of those categories.

7 Senator Bunning. It would not be covered?

8 Mr. Barthold. It would not be covered, sir.

9 Senator Bunning. Last question. Mr. Barthold, is  
10 it fair to say that people who take this medical expense  
11 deduction, especially those who are not seniors, tend to  
12 be sicker than the rest of the population?

13 Mr. Barthold. Do you mean on a year-to-year basis?

14 Senator Bunning. Yes.

15 Mr. Barthold. I could not actually say on a year-  
16 to-year basis, so I am sure that there would be some  
17 people claiming that would have chronic disease. I do  
18 not know whether the people with chronic diseases are  
19 more highly represented in those who claim the itemized  
20 deduction, but it is certainly true, as Senator Nelson  
21 had explained, in any one year if someone has unusually  
22 high medical expenses which relates to some sort of  
23 health problem, that that increases the probability with  
24 which one is able to claim the itemized deduction.

25 Senator Bunning. Is that a yes?

1 Mr. Barthold. Well, it was a sort of yes.

2 Senator Bunning. Sort of?

3 Mr. Barthold. Because I do not know if people with  
4 chronic --

5 Senator Bunning. Do we have that?

6 Mr. Barthold. I do not have it with me. I can  
7 check with my colleagues to see if we have any data that  
8 would be on point and I can follow up with you later,  
9 sir.

10 Senator Bunning. Thank you very much.

11 Senator Nelson. Would the Senator yield for a  
12 question?

13 Senator Bunning. Certainly.

14 Senator Nelson. If I followed the line of your  
15 questioning, what you are arguing for is not increasing  
16 the deduction limit from 7.5 percent to 10 percent on --

17 Senator Bunning. I am not arguing that. I want to  
18 know about, who is covered?

19 Senator Nelson. I see. What I am trying to do is  
20 just carve out the seniors from that increase from 7.5  
21 percent to 10 percent.

22 Senator Bunning. I am trying to point out the  
23 fact that some people are not covered and some people are  
24 covered, and I was trying to extrapolate from our staff  
25 out there and from Mr. Barthold who is and who is not

1 covered. Thank you.

2 Senator Kyl. Mr. Chairman? Did Senator Grassley  
3 wish to speak? If not, I would like to speak.

4 Senator Grassley. Yes, if I could speak. Well,  
5 no.

6 Senator Stabenow. Thank you. Thank you very much.

7 First of all, I want to thank Senator Nelson for  
8 this excellent amendment. I would like very much to be  
9 added as a co-sponsor. I think this is exactly right.  
10 When we are talking about seniors on Medicare, the goal  
11 of this bill is to be adding to quality care, prevention,  
12 making sure we are making prescription drugs more  
13 affordable, and so on. We certainly do not want this  
14 provision that will particularly hit seniors that are  
15 sick more frequently, have more severe health problems,  
16 we certainly do not want them to be penalized by this  
17 cap. So, I think it is the right amendment and I  
18 strongly support it.

19 I would go, though, and ask Mr. Barthold, in  
20 response to Senator Bunning's question that goes further  
21 about others, would it not be fair to say that right now  
22 those that do not have insurance, the only thing that  
23 they have is the medical deduction? I should not say the  
24 only thing, but those who do not have insurance are the  
25 ones right now that we are trying to help in the

1 exchange, so they right now have a medical deduction.

2 But under the bill, they will have limits on out-of-  
3 pocket costs. They will have limits on premiums, which I  
4 am going to continue to push to get down as far as we  
5 can. But is it not true that, for many people who now  
6 currently only have the medical deduction, they will  
7 instead have limits on out-of-pocket expenses and  
8 premiums and access to more affordable health care?

9 Mr. Barthold. Senator, it would certainly be the  
10 case that if someone would have been claiming the  
11 itemized deduction by reason of a catastrophic medical  
12 expense for which they had no insurance and so were  
13 drawing down their savings or funding from whatever  
14 source, if they now had insurance which covered that  
15 catastrophic illness they would not be making those  
16 payments, so they may not qualify for the itemized  
17 deduction.

18 Senator Stabenow. So the hope -- and I would just  
19 say to my colleagues, the goal of this legislation is to  
20 make sure that we have fewer people using that deduction  
21 because they, in fact, have insurance that is affordable  
22 to them and their families. For many, many people, the  
23 majority of people who do not have insurance now, they  
24 would be limited in how much they would have to pay,  
25 cutting down on those catastrophic experiences that are

1 terrible for families right now and often lead to  
2 bankruptcies and so on. So the goal is to make sure that  
3 we do not put families in that particular situation.

4 Senator Bunning. Will you yield?

5 Senator Stabenow. I would be happy to.

6 Senator Bunning. Even under the Chairman's mark  
7 and, God willing it passes, there will still be 25  
8 million uninsured people. My question was to directly  
9 find out if they were going to be covered or not. That  
10 is the question I asked, even knowing that there was  
11 going to be covered for other people.

12 Senator Stabenow. I see.

13 Senator Bunning. Thank you.

14 Senator Stabenow. Yes. Thank you.

15 The Chairman. Further debate?

16 Senator Grassley. Yes. Could I have the floor?

17 The Chairman. Sure. Senator Grassley?

18 Senator Grassley. Yes. Yesterday we heard a lot  
19 of talk about preventing medical bankruptcies. For  
20 examples, members on my side of the aisle were told that,  
21 in order to prevent medical bankruptcies, the actuarial  
22 value of insurance plans cannot be less than 65 percent.  
23 This was the reason given for voting against my amendment  
24 to allow HSAs, high-deductible health plans, to meet the  
25 personal responsibility requirement.

1           We were also told how important it is to have out-  
2 of-pocket maximums in health insurance plans. Senator  
3 Ensign introduced an amendment that was clearly germane  
4 because it amended the Internal Revenue Code to protect  
5 health savings accounts in bankruptcy. So with all the  
6 talk about preventing medical bankruptcies, which, make  
7 no mistake about it, we all ought to want to prevent--and  
8 I do--I was surprised to see a proposal in the Chairman's  
9 mark that would raise the 7.5 percent AGI floor for  
10 itemized medical expense deductions to that 10 percent.

11           And so the medical expense deduction was put into  
12 the Tax Code to provide protection from catastrophic  
13 medical expenses. We all agree that catastrophic medical  
14 expenses lead to medical bankruptcies. Last Tuesday, I  
15 asked staff, CBO, and Joint Tax what taxpayers would be  
16 affected under the proposal to increase the 7.5 percent  
17 AGI floor. Staff informed me that most taxpayers would  
18 not be affected by this proposal. I was told that the  
19 new out-of-pocket maximums in the exchange plans would  
20 eliminate, or at least mitigate, any adverse effects on  
21 individuals or small business.

22           Staff also stated that most employer plans have out-  
23 of-pocket maximums, so those with employer coverage would  
24 not be affected either. I agree with staff that these  
25 protections will help individuals, but individuals below

1 age 65. But what about individuals 65 and older? It  
2 seems that the Chairman's mark forgets about them. It  
3 forgets that there is no out-of-pocket protection for  
4 Medicare cost-sharing expenses. It also forgets that  
5 Medicare does not pay some long-term care expenses. So  
6 what does this mean? It means that the tax increase  
7 falls most heavily on seniors.

8 The proposal raises \$21 billion. Guess where that  
9 half of the revenue is coming from? Well, it is coming  
10 from seniors 65 or older. I hope you will not take my  
11 word for it, because Joint Tax told us that about one-  
12 half of the revenue comes from seniors in 2013. This  
13 would increase to 53 percent by 2019, and the largest  
14 concentration of seniors affected are middle income  
15 seniors earning between \$50,000 and \$75,000. Seniors  
16 then are clearly exposed, yet the Chairman's mark would  
17 take a tax benefit intended to provide catastrophic  
18 protection away from seniors.

19 Now, Senator Nelson has offered an amendment to  
20 exempt individuals 65 and older from the proposed  
21 increase. His amendment would allow seniors to continue  
22 using the 7.5 percent floor. I agree with the Senator  
23 that seniors must be protected, and I thank the Senator  
24 for his amendment. But what is troubling is how my  
25 friend from Florida proposes to pay for his amendment.

1 When my Republican colleagues offered their amendments,  
2 they were not accepted because the proposed offset was  
3 unacceptable to the other side. For example, one offset  
4 called for reducing the richness of the tax credit for  
5 individuals between 300 percent and 400 percent of  
6 Federal poverty. This offset was denounced as paying for  
7 the amendment on the backs of the middle class.

8 Let me point out to my colleagues then that the  
9 Chairman's mark pays for new government spending on the  
10 backs of all taxpayers, or maybe you could say all  
11 Americans. That is because the fees proposed under the  
12 Chairman's mark raise revenue to pay for spending under  
13 the mark. CBO and Joint Tax have told us that these fees  
14 will increase premiums for all Americans. I will also  
15 note that this new government spending will be "paid for"  
16 on the backs of business.

17 Senator Nelson's amendment would be paid for on the  
18 backs of business. How? Because Senator Nelson's  
19 amendment would make the free rider penalties for  
20 employers non-deductible. This is just a tax increase on  
21 business. It is merely a move to raise revenue. It is  
22 not good tax policy, it is not fair, and I urge my  
23 colleagues to oppose the amendment. I urge my colleagues  
24 to vote for the Kyl amendment to strike this proposal.

25 Senator Kyl. Mr. Chairman?

1           The Chairman.    Senator Kyl?

2           Senator Kyl.    I appreciate the chance to finally  
3 talk here, because I think Senator Nelson's amendment was  
4 intended to be a side-by-side with my amendment.  I  
5 gather my amendment, then, I can make as a side-by-side  
6 to his.  The difference between the two, in addition to  
7 the offset, is that my amendment would simply restore  
8 current law.  It would protect not only seniors who need  
9 to be protected, as everybody here has pointed out, but  
10 it would also protect young families who are no less  
11 deserving of protection than seniors.  They are affected  
12 actually a little bit more even than seniors as a result  
13 of this.

14           The score is \$21 billion.  Now, supposedly the  
15 numbers are about half and half.  That is to say, about  
16 half of the benefit of the current law goes to seniors,  
17 about half goes to people who are less than 65 years of  
18 age.  The cost of that to the Treasury is \$22 billion.  
19 The savings under the Nelson amendment are supposedly --  
20 or not savings, but the savings to seniors put to the  
21 cost to the Treasury at \$7 billion.  So you are still  
22 talking about \$15 billion.

23           I assume that part of that is attributable to the  
24 fact that, under the Nelson amendment, seniors would be  
25 protected for only four years, but the offset is

1 permanent. Under my proposal, seniors and non-seniors  
2 would be protected forever, they are not just protected  
3 for four years. The way it is accomplished is to just  
4 simply leave the law the way it is. We all appreciate  
5 the fact that if your expenses are above 7.5 percent of  
6 your income you can have a deduction off of your adjusted  
7 gross income.

8 What the mark does is to take that up to 10 percent,  
9 so you would have to have a lot higher medical expense in  
10 order to take any kind of a deduction. Now, recognizing  
11 that that is not good policy, it hurts people and we  
12 ought not do it, Senator Nelson's amendment says, for  
13 seniors, we will not do it. My argument is, why should  
14 we not do it for everybody? If it is bad policy for  
15 seniors, it is bad policy for everybody.

16 Now, it is true that you have got different  
17 categories of people. It is true that seniors are  
18 generally more sick than people who are not seniors. But  
19 that is simply a reflection of general policy. If half  
20 of the benefits of the law go to people who are not  
21 seniors, what that means is that you have enough people  
22 claiming the deduction currently under law that you have  
23 half of the benefits of that go to people who are under  
24 65 years of age. You also have a lot larger cohort  
25 there.

1           Above 65, you have fewer people than below 65. So  
2 the reality is here, we are talking about a lot of  
3 Americans who are going to suffer if that limit goes up  
4 to 10 percent rather than leaving it where it is at 7.5  
5 percent. Are these wealthy Americans? No. According to  
6 the statistics, in the year 2013, about a quarter of the  
7 people are less than 200 percent of poverty. In other  
8 words, they make less than \$40,000 a year, about 1.5  
9 million people, approximately. Between \$40,000 and  
10 \$50,000, there is about another million people. In fact,  
11 87 percent of the people who are not seniors earn less  
12 than \$100,000.

13           So we are not talking about wealthy families. While  
14 seniors are mostly concerned about their medical  
15 expenses, as we all appreciate, younger families have a  
16 lot of other expenses to worry about, too, the expenses  
17 of their kids, the expenses of sending their kids to  
18 college, having a larger family and larger home  
19 generally, and all of those factors.

20           So we ought not to be discriminating against people  
21 below 65. Why not set this at 55? We have a lot of  
22 folks in Arizona that come to our great State, and I am  
23 sure is true in Florida, too. They are 55 years of age,  
24 or 60 years of age. What is fair about drawing the line  
25 at 65? It is an arbitrary line. It is not fair for

1       them. So I agree with my colleague Senator Grassley that  
2       instead of having half of a good policy to protect  
3       seniors for four years, we should protect everybody  
4       forever.

5             Let me just close with this point. I want to quote  
6       something CRS says. This is an important point of income  
7       tax law that we will occasionally run across here in this  
8       committee. It represents the difference between tax  
9       treatment of people who have made a particular financial  
10      decision, and therefore we tax based upon that decision.

11      If you invest and you lose money, there is a tax  
12      consequence. If you invest and you make money, there is  
13      a tax consequence.

14             People know what those consequences are, but there  
15      is a small category of losses that are unpredictable and  
16      have nothing to do with your decision-making process.  
17      Those are your catastrophic losses, a hurricane blows  
18      your house down, somebody steals all of your property, or  
19      you get sick and have this kind of catastrophic expense.

20             According to CRS, and I am talking now about the 7.5  
21      percent, the income tax deduction for catastrophic  
22      expenses under current law, "the deduction can ease the  
23      financial burden imposed by costly medical expenses. For  
24      the most part, the Federal Tax Code regards these  
25      expenses as involuntary expenses that reduce a taxpayer's

1 ability to pay taxes by absorbing a substantial part of  
2 income, and so we have generally treated these  
3 involuntary expenses differently than losses from other  
4 kinds of decisions that taxpayers make, in most cases  
5 providing a generous credit or deduction."

6 I would argue--in fact, I had had an amendment  
7 prepared that would have actually reduced the threshold  
8 from 7.5 to 5 percent, but that is obviously a bridge too  
9 far. I think what we should do, at least, is retain  
10 current law, 7a.5 percent, not just for seniors for four  
11 years, but for everybody forever.

12 Mr. Chairman, I would like to make one other point,  
13 but I know others would like to talk as well.

14 The Chairman. I am sorry, Senator. I did not hear  
15 what you said. Is there further debate on the Nelson  
16 amendment? The Nelson amendment is now pending.

17 [No response].

18 The Chairman. Any further debate on the Nelson  
19 amendment?

20 [No response].

21 The Chairman. I might just say a couple of points.  
22 I think it is clear that the current itemized medical  
23 deductions are less necessary under this bill for several  
24 reasons. One, under the bill, many more people will have  
25 health insurance. The current provision in the law is in

1 the nature of a catastrophic, that is, it helps people  
2 who have very high medical expenses. But the legislation  
3 provides for health insurance market reform, to get rid  
4 of preexisting condition denials. That is one reason  
5 people have high health care bills and maybe have to use  
6 the current 7.5 percent.

7 The current bill also prevents companies from  
8 denying coverage based on health status generally. I  
9 suppose that is another reason people currently have to  
10 utilize that 7.5 percent provision in the law. In  
11 addition, this legislation provides coverage so people  
12 will have good health insurance. There has been earlier  
13 debate about actuarial value. If a person's actuarial  
14 value is, say, at 65 percent rather than zero, I think  
15 there is much less of a chance that a person will have to  
16 think about potentially using the current 7.5 percent  
17 provision. So, there is much less need.

18 The issue here is, what about seniors, because  
19 Medicare does not have a limit on out-of-pocket loss?  
20 This legislation provides a limit on out-of-pocket loss  
21 for non-seniors. It is about \$6,000 for an individual,  
22 and that should go a long, long way to prevent  
23 catastrophic payments and help prevent people from going  
24 into bankruptcy, going to the ER, which all the rest of  
25 Americans are paying for. But because this does not

1 apply to Medicare, that is, the out-of-pocket loss does  
2 not apply to Medicare, this Nelson amendment makes good  
3 sense. It exempts seniors from raising the limitation  
4 from 7.5 percent to 10 percent.

5 We are trying to find balance here. It is balance  
6 all the way around. I think about a quarter--maybe less,  
7 maybe a third--of the funds to help provide coverage are  
8 on the revenue side, and even there, most of the  
9 insurance industry gets huge benefits from this  
10 legislation, especially universal coverage. The other is  
11 on fees on providers that, by and large and for the most  
12 part, all agree to. It has all been agreed to. This  
13 provision with respect to raising the itemized medical  
14 deduction to 10 percent is meant to be part of that  
15 balance.

16 The current 7.5 percent is much less needed for the  
17 reasons I indicated and it will help put this bill  
18 together. I frankly believe that, altogether, if the  
19 provisions in this bill which do not require 7.5 percent,  
20 nearly as much along with the Nelson provision with  
21 respect to seniors, is a good balance and I urge its  
22 adoption.

23 Senator Kyl. Excuse me, Mr. Chairman?

24 Senator Hatch. Mr. Chairman?

25 The Chairman. Senator Hatch?

1           Senator Hatch.    Mr. Chairman, I want to express my  
2 hearty support for the Kyl amendment to strike --

3           The Chairman.    We are talking about the Nelson  
4 amendment right now.

5           Senator Hatch.    Yes.    But do you not have your  
6 amendment up?

7           The Chairman.    The Nelson amendment is pending.

8           Senator Kyl.     Mr. Chairman, just to clarify, would  
9 it be appropriate to have the two amendments pending  
10 together or do you want to dispose of them separately?

11          The Chairman.    I would ask the Senator from  
12 Florida, see what his views are on that subject.  I do  
13 not want to disadvantage the Senator from Florida, so  
14 pretty much I want to consult with him.

15          Senator Hatch.    Well, let me talk about the Kyl  
16 amendment, first.  I would prefer them to be side-by-  
17 side, but if not --

18          The Chairman.    Does the Senator from Florida want  
19 it side-by-side?  Does the Senator want to vote on his  
20 amendment?  What does he prefer?

21          Senator Nelson.    I would never want to deny the  
22 esteemed Senator from Utah, for him to share his wisdom  
23 with us.

24          Senator Hatch.    Now, that is a nice statement, I  
25 think.  I like that.

1 [Laughter].

2 The Chairman. I might say, before I recognize you,  
3 Senator, another point here.

4 Senator Hatch. All right.

5 The Chairman. There is some concern whether this  
6 provision would be permanent or just for four years. I  
7 have committed to interested Senators that, by the time  
8 we get to the floor, this is going to be permanent, this  
9 seniors provision. It is not just going to be four years  
10 as provided for in the bill, but when we get to the floor  
11 we will find ways to make this permanent. I know that  
12 is important to certain Senators.

13 Senator Hatch. Well, let me at least express my  
14 support for the approach Senator Kyl is taking. His  
15 amendment would strike this \$22 billion tax increase,  
16 which will fall primarily on lower and middle income  
17 taxpayers, and especially on senior citizens. Now, with  
18 all respect for our Chairman, who knows that I admire him  
19 for his perseverance and diligence in putting together  
20 this mark, I think this is the worst idea in an ocean of  
21 bad ideas.

22 I cannot for the life of me understand why we would  
23 want to raise the cost of health care for some of the  
24 most vulnerable in our society. Look, the itemized  
25 deduction for medical expenses is already configured in

1 such a way that it benefits only those who have  
2 catastrophic or near-catastrophic medical expenses during  
3 the year. The current-law threshold of 7.5 percent of  
4 adjusted gross income is a very high bar already. Moving  
5 this bar even higher to 10 percent would badly hurt  
6 millions of Americans who are struggling with medical  
7 expenses.

8 For those with such high medical expenses in  
9 relation to their income, the deduction serves as an  
10 ultimate backstop. For those who are elderly or who work  
11 for employers that do not offer health insurance or a  
12 health insurance plan, the medical expense deduction  
13 represents the only tax benefit for health care expenses  
14 that these taxpayers receive. The vast majority of the  
15 costs of this proposal would fall on those who the  
16 President promised would not face tax increases, those  
17 making less than \$200,000 per year as singles, or  
18 \$250,000 per year as couples.

19 In fact, in 2017 alone this provision would raise  
20 almost \$4 billion from 13.8 million tax returns. Of  
21 these 13.8 million tax returns, only 86,000 will have  
22 income above \$200,000. This means that 99.6 percent have  
23 incomes below \$200,000. In other words, these are people  
24 who absolutely need this type of benefit. I admit, there  
25 is an insatiable desire to try to find ways of paying for

1 this very expensive bill. You do not like to lose \$22  
2 billion, but when you consider that you are putting \$22  
3 billion on the backs of some of the most vulnerable  
4 people in our society, it just does not seem like a wise  
5 thing to do. Yet, this bill, along with a whole bunch of  
6 other provisions, does exactly that. So I support  
7 Senator Kyl, and I think he is right on this. I hope we  
8 listen to him.

9 Senator Kyl. Mr. Chairman, might I ask a question  
10 of Mr. Barthold?

11 The Chairman. Senator Kyl?

12 Senator Kyl. Thank you.

13 Mr. Barthold, my information is that, under the  
14 Chairman's mark, with all of the various provisions that  
15 he indicated would in one way or another attempt to  
16 provide protection for lower income people as a result of  
17 his mark, the effect of the raising of the bar for  
18 claiming the deduction from 7.5 to 10 percent would have  
19 scored at just a little under \$22 billion. Is that  
20 correct?

21 Mr. Barthold. The estimate that we reported to the  
22 committee in our document, JCX-36, is \$21.7 billion for  
23 the Chairman's mark, as modified.

24 Senator Kyl. It is \$21.7 billion. Did you  
25 determine or verify the number? Senator Nelson indicated

1 that under his proposal there would be a \$7 billion  
2 reduction in that, as I recall?

3 Mr. Barthold. Our estimate for Senator Nelson's  
4 amendment is that it loses \$6.4 billion relative to the  
5 Chairman's mark and his offset raises approximately \$7.1  
6 billion relative to the Chairman's mark.

7 Senator Kyl. All right.

8 So, Mr. Chairman, I think that makes the point that  
9 responds to your question. It is true that the mark has  
10 a variety of things in there designed to try to provide  
11 insurance to people, lower income people so that they do  
12 not have as much out-of-pocket expense, and so on. But  
13 the net result is in the numbers. That is that the  
14 people under 65 are still paying \$15 billion if you raise  
15 the deduction amount, as you do in your mark, from 7.5 to  
16 10. As a result, I think it is hard to argue that the  
17 cumulative effect of all of the things that you are  
18 trying to accomplish in the mark are going to provide  
19 that much help.

20 The reality is that only about 25 million of the 280  
21 million with insurance are estimated to go through the  
22 exchange. Some number of the 15 million grandfathered  
23 people are still going to purchase non-group insurance  
24 according to CBO. You still have 17 million people who  
25 will remain uninsured, and that does not count the 8

1 million in legal residence.

2           So while it is true that there are attempts in the  
3 mark to provide protection for people against the kind of  
4 catastrophic expenses that this income tax provision is  
5 designed to ameliorate, the fact remains that if for  
6 people under 65 you raise it from 7.5 to 10, you are  
7 still causing enormous pain to those people, many of  
8 whom, as Senator Hatch just pointed out, over 98 percent  
9 of whom make less than \$200,000, and a large percentage  
10 of which make under \$50,000. In fact, the number is  
11 about \$15 billion if you take the help for the seniors  
12 out of there.

13           So it may only be \$15 billion, but \$15 billion is a  
14 lot of money to the people who are under 65 who would  
15 have to pay that money because we have increased from,  
16 7.5 to 10 percent, the limit for them to claim the  
17 deduction. So I support what Senator Nelson is trying to  
18 do for seniors, but if it is good for the goose, it is  
19 good for the gander, and there are a lot more ganders in  
20 this case, namely people under 65, who are going to be  
21 hurt as a result of raising the bar under the Chairman's  
22 mark.

23           Senator Bunning.   Mr. Chairman?

24           Senator Stabenow.   Mr. Chairman?

25           The Chairman.   Senator Stabenow?

1 Senator Stabenow. Thank you, Mr. Chairman.

2 First, a question for Mr. Barthold. Would it be  
3 accurate to say this provision would benefit families who  
4 itemize all of their taxes? That is correct? You have  
5 to itemize your taxes?

6 Mr. Barthold. It is an itemized deduction.

7 Senator Stabenow. It is an itemized deduction.

8 Mr. Barthold. Yes, Senator.

9 Senator Stabenow. Is it also fair to say that  
10 those who itemize all their deductions will be  
11 predominantly upper income individuals and families?

12 Mr. Barthold. Among taxpayers, this will be, at  
13 least 60 percent claim the standard deduction, so it is  
14 only a little over a third itemized. Of those who  
15 itemize, middle income and above is more heavily  
16 represented.

17 Senator Stabenow. So 60 percent of the people take  
18 the standard deduction.

19 Mr. Barthold. That is correct.

20 Senator Stabenow. I think it is probably fair to  
21 assume that those would be individuals at \$50,000 or  
22 less, or \$60,000 or less. We were talking about low-  
23 income --

24 Mr. Barthold. That is generally correct, Senator.

25 Senator Stabenow. Correct. So given that, the

1 reality is that what we are talking about is a tax policy  
2 that would affect predominantly upper income families.  
3 At the same time, we have had amendment after amendment  
4 trying to cut the tax credits, the refundable tax credits  
5 in this bill, from middle income families. Mr. Chairman,  
6 I find that interesting, that over and over again we have  
7 seen amendments with a pay-for that would cut the very  
8 people we are hearing now there is concern about, people  
9 who make \$50,000 a year, a family of four, or \$60,000 a  
10 year.

11 I would welcome, working with colleagues on the  
12 other side of the aisle, to actually focus on those, most  
13 of whom do not have itemized deductions, most of whom are  
14 not affected by this provision but are affected by the  
15 tax credits in the bill where we are trying to focus on  
16 helping those very families.

17 Senator Bunning. Mr. Chairman? Mr. Chairman?

18 The Chairman. Sorry. Senator Bunning?

19 Senator Bunning. Thank you.

20 This is for the staff. A claim has been made that  
21 people in the exchange will have catastrophic expenses.  
22 This may be true for regular health care expenses but it  
23 is not true for long-term care expenses. If someone in  
24 the exchange becomes so disabled that they must live in a  
25 nursing home, they will not be protected under the Nelson

1 amendment. They will be protected by the Kyl amendment.  
2 Can someone verify that or discredit it? Some staff  
3 member?

4 Mr. Barthold. Senator Bunning, I am not quite  
5 clear what your question is.

6 Senator Bunning. The question is, does the Nelson  
7 amendment cover someone that has become so disabled that  
8 they live in a nursing home and will not be protected  
9 under the Nelson amendment, or will they? Or will they  
10 be protected under the Kyl amendment?

11 Mr. Barthold. Well, as I think has been noted, the  
12 difference between the Kyl amendment and the Nelson  
13 amendment is that the Kyl amendment would maintain  
14 present law.

15 Senator Bunning. Correct.

16 Mr. Barthold. Which is --

17 Senator Bunning. 7.5.

18 Mr. Barthold. Would claim an itemized deduction  
19 for expenses in excess of 7.5 percent of your adjusted  
20 gross income. The Nelson amendment, which modifies the  
21 Chairman's mark, would have an age break for taxpayers 65  
22 and above such that those for the taxpayer and the  
23 taxpayer's spouse who is age 65 or above, they would  
24 continue under present law with a 7.5 percent floor --

25 Senator Bunning. But my question was --

1           Mr. Barthold.    A taxpayer under would have a 10  
2 percent --

3           Senator Bunning.   My question was this.  Someone  
4 made the claim that people in the exchange will be  
5 protected from catastrophic expenses.  That may be true  
6 for the regular health care, but it is not true for those  
7 that are in a long-term care facility.  They will not be  
8 able to take what it costs to go into the long-term care  
9 facility and/or above their medical expenses.

10          Mr. Barthold.    I believe that is correct.

11          Senator Bunning.   Thank you.

12          Mr. Barthold.    I mean, the exchange is not  
13 providing long-term care insurance.  It is providing  
14 health insurance.

15          Senator Bunning.   I appreciate that.  Thank you.

16          Senator Nelson.    Mr. Chairman, may I just say a  
17 comment before we vote, please?

18          The Chairman.    Senator Nelson?  Yes.  Go ahead,  
19 Senator Nelson.

20          Senator Nelson.    I just wanted to point out that  
21 Joint Tax has come up with an estimate, and this is going  
22 to involve 8.7 million senior citizens.  I think all the  
23 gentlemen on the left side of the Chairman over there who  
24 have made cogent arguments of how you want to protect the  
25 seniors.  From your standpoint, I do not know why you

1 would note vote to support the Nelson amendment. Then we  
2 are going to go to the Kyl amendment and you can vote how  
3 you want on that.

4 Thank you, Mr. Chairman.

5 The Chairman. All right. The Clerk will call the  
6 roll on the Nelson amendment.

7 The Clerk. Mr. Rockefeller?

8 Senator Rockefeller. Aye.

9 The Clerk. Mr. Conrad?

10 The Chairman. Aye by proxy.

11 The Clerk. Mr. Bingaman?

12 Senator Bingaman. Aye.

13 The Clerk. Mr. Kerry?

14 The Chairman. Aye by proxy.

15 The Clerk. Mrs. Lincoln?

16 The Chairman. Aye by proxy.

17 The Clerk. Mr. Wyden?

18 Senator Wyden. Aye.

19 The Clerk. Mr. Schumer?

20 Senator Schumer. Aye.

21 The Clerk. Ms. Stabenow?

22 Senator Stabenow. Aye.

23 The Clerk. Ms. Cantwell?

24 The Chairman. Pass.

25 The Clerk. Mr. Nelson?

1 Senator Nelson. Aye.  
2 The Clerk. Mr. Menendez?  
3 The Chairman. Aye by proxy.  
4 The Clerk. Mr. Carper?  
5 The Chairman. Aye by proxy.  
6 The Clerk. Mr. Grassley?  
7 Senator Grassley. No.  
8 The Clerk. Mr. Hatch?  
9 Senator Hatch. No.  
10 The Clerk. Ms. Snowe?  
11 Senator Snowe. Aye.  
12 The Clerk. Mr. Kyl?  
13 Senator Kyl. No.  
14 The Clerk. Mr. Bunning?  
15 Senator Bunning. No.  
16 The Clerk. Mr. Crapo?  
17 Senator Grassley. No by proxy.  
18 The Clerk. Mr. Roberts?  
19 Senator Grassley. No by proxy.  
20 The Clerk. Mr. Ensign?  
21 Senator Grassley. No by proxy.  
22 The Clerk. Mr. Enzi?  
23 Senator Enzi. No.  
24 The Clerk. Mr. Cornyn?  
25 Senator Cornyn. No.

1           The Clerk.    Mr. Chairman?

2           The Chairman.    Aye.

3           The Clerk.    Mrs. Lincoln?

4           Senator Lincoln.    Aye.

5           The Chairman.    Senator Cantwell.

6           The Clerk.    Ms. Cantwell?

7           Senator Cantwell.    Aye.

8           The Clerk.    Mr. Chairman, the final tally is 14  
9 ayes, 9 nays.

10          The Chairman.    The amendment does not pass.

11          It would probably be good now, if you wanted,  
12 Senator Kyl, to vote on yours.

13          Senator Kyl.    Yes. I think the amendment is --

14          The Chairman.    I think we know what it is.  
15 Basically it is to strike that --

16          Senator Kyl.    I believe it is Amendment Number F-8,  
17 as modified. I just had a couple of other comments to  
18 make about it.

19          The Chairman.    Can you describe it, please, so we  
20 know what it is?

21          Senator Kyl.    Yes. This simply returns the  
22 Internal Revenue Code to existing law, or retains  
23 existing law. The mark changes the existing law, raising  
24 the bar from 7.5 percent of adjusted gross income to 10  
25 percent before you can claim a deduction for catastrophic

1 medical expenses. The amendment would simply leave the  
2 law where it is for everybody, seniors and non-seniors  
3 alike, at 7.5 percent.

4 The Chairman. And how is it offset?

5 Senator Kyl. The offset is the provision of the  
6 original mark. We simply reinstate the original mark  
7 with respect to the penalty on the income cap. The cap,  
8 you will recall, ranged from 3 percent to 13 percent.  
9 The modified mark took that down to 2 percent and 12  
10 percent. We would simply return to the numbers of the  
11 original mark.

12 The Chairman. And what is the total amount of that  
13 income shift, that dollar shift? How much?

14 Senator Kyl. Let me see.

15 The Chairman. Is it 20 something?

16 Senator Kyl. It is \$45 billion, I am told. I do  
17 not know. Forty-five billion dollars, according to  
18 staff.

19 The Chairman. Forty-five?

20 Senator Kyl. I am sorry?

21 The Chairman. Forty-five?

22 Senator Kyl. That is what I am told by staff.

23 The Chairman. All right. Thank you.

24 Senator Kyl. Thanks, Mr. Chairman.

25 Let me just make two points. One, in response to

1 the line of inquiry by Senator Stabenow about who  
2 itemizes. While it is generally true that people with  
3 more income are more likely to itemize, anybody who has  
4 this kind of catastrophic medical expense is going to  
5 want to itemize, and I presume most of them do. That is  
6 why you have so many people who do not make very much  
7 money who nonetheless itemize and take advantage of the  
8 deduction under current law.

9 Let me cite the statistics. Income levels from  
10 \$10,000 to \$20,000 a year--these are people I think we  
11 want to help--133,000 who took advantage of that, this is  
12 just in one year, 2013; between \$20,000 and \$30,000 in  
13 income, 470,000 people, or I should say filers; \$30,000  
14 to \$40,000, 813,000 people. The total there is just  
15 under 1.5 million people. That is the number that I  
16 cited before. These are the number below 200 percent of  
17 poverty, below \$40,000 in income.

18 If you just take the \$10,000 range between \$40,000  
19 and \$50,000, you have another 958,000 people; between  
20 \$50,000 and \$75,000, 2.17 million people; between \$75,000  
21 and \$100,000, 1.246 million people, for a total here of,  
22 about 87 percent of the people who itemize for this  
23 deduction, earn under \$100,000 a year. The point is that  
24 there are a lot of people who do not make very much money  
25 who are, in fact, itemizing regardless of what somebody

1 might theorize about who itemizes and who does not.

2           These are people who really did, and they did not  
3 make very much money. And we are going to hurt them  
4 under this bill. When we talk about not raising taxes  
5 for people under \$200,000, the President made that pledge  
6 over and over and over again, the mark raises taxes  
7 because it increases the amount of the medical expense  
8 that you can claim based upon your adjusted gross income.  
9 It goes from 7.5 percent, and now the catastrophic  
10 expense would have to exceed 10 percent. That represents  
11 a tax increase.

12           Now, the committee has just voted by majority vote  
13 to say that is not fair for seniors. Well, it is not  
14 fair for juniors either. To the argument that, well, we  
15 are doing some things for people to make sure that they  
16 do not have as much in the way of expenses--and several  
17 of those things have been mentioned--while it is true  
18 that some of those things have effect, it is also true  
19 that there are still millions of people who will not have  
20 the benefit of those particular items, whether it be  
21 preexisting condition or the other things that we are  
22 doing here, who nevertheless will still be subject to the  
23 penalty that the mark imposes upon them by raising from  
24 7.5 to 10 percent.

25           The proof of that is the Joint Tax Committee score,

1       verified just a moment ago--or estimate, I should call  
2       it--that you have just about \$22 billion, and you would  
3       still have close to \$15 billion even if you take the  
4       seniors out. That is \$15 billion that is being paid by  
5       these people, 87 percent of whom earn under \$100,000 a  
6       year.

7               How can we not, as Senator Hatch said, take into  
8       consideration the adverse consequences of that policy on  
9       middle income families and low-income families in the  
10      United States? If the whole idea here is to help people  
11      with their health expenses, we go in exactly the opposite  
12      direction when we say, but we are going to raise the  
13      amount that you have to be out of pocket before you can  
14      claim an income tax deduction.

15             We ought to be lowering it, as I said before, not  
16      raising it, because in virtually every one of these cases  
17      you cannot determine whether or not you are going to get  
18      sick or not. It happens to you and you probably did not  
19      do anything to cause it to happen, but it happened. As a  
20      result, the income tax Code in the past has recognized  
21      that there should be a deduction for that. It ought to  
22      be lower than it is.

23             Senator Cornyn. Mr. Chairman?

24             The Chairman. Senator Cornyn, you were first to  
25      seek recognition. Senator Cornyn?

1           Senator Cornyn.    Thank you, Mr. Chairman.

2           Mr. Chairman, this relates generally to what we are  
3 talking about here in terms of carve-outs and cuts.  And  
4 the Chairman made the comment about balance in the bill,  
5 and I appreciate that.  I would just like to point out  
6 that the difficulty--because it is an important part of  
7 the integrity of the process here, that was an issue that  
8 was highlighted in an article that appeared this morning  
9 with regard to Medicare cuts exempting hospitals over and  
10 above a certain level.

11           We know the purpose of the Medicare Commission is  
12 implementing additional Medicare cuts in future years,  
13 and Senator Rockefeller has spoken eloquently about his  
14 views about the importance of the Commission being able  
15 to do its job, and we have discussed that at some length.

16           Naturally, many health care providers are very  
17 concerned about what kind of cuts the Commission might  
18 recommend and implement.  But as we know, during the time  
19 this bill was being negotiated at the White House and  
20 here in Congress, there were a number of deals put  
21 together with industry groups.  The deal with PhRMA is  
22 probably the one most often talked about.  But apparently  
23 now the hospitals also cut a special deal.  They agreed  
24 to \$155 billion in Medicare cuts and no more.  The one  
25 thing they did not want is the Medicare Commission

1 looking at their operations and cutting more than the  
2 agreed-upon amount.

3 Well, the consequence of that--and it does not  
4 appear in the Chairman's mark. You cannot read the  
5 conceptual language there and see what kind of deal or  
6 carve-out was cut.

7 The Chairman. I am sorry, Senator. Are we talking  
8 about the Kyl amendment?

9 Senator Cornyn. I am talking about the debate in--

10 The Chairman. No, we are on the Kyl amendment  
11 right now.

12 Senator Cornyn. --carve-outs and cuts in the bill.

13 The Chairman. No, no. We are talking about the  
14 Kyl amendment which repeals--which changes the 10 percent  
15 in the bill back down to 7.5 percent. That is the  
16 subject of the Kyl amendment.

17 Senator Cornyn. Mr. Chairman, I am talking about--

18 The Chairman. You are talking about a whole  
19 different subject.

20 Senator Cornyn. --an \$11 billion mistake in CBO's  
21 scoring, and as we talk about exceptions for different  
22 groups, many of which we agree are good, as we talk about  
23 that, what I am suggesting is it is impossible for those  
24 of us reading the Chairman's mark to know what kind of  
25 deals were cut with various industry groups that

1       apparently are revealed in things like today's story.

2               And so it just makes the point--and I will close  
3 with this--that it is absolutely imperative that we get  
4 not only concept language, we get legislative language,  
5 we know what kind of deals were cut, and we need CBO to  
6 give us an accurate score, because this is an \$11 billion  
7 mistake.

8               The Chairman.    Is there further discussion on the  
9 Kyl amendment?

10              Senator Snowe.    Mr. Chairman?

11              The Chairman.    Senator Snowe.

12              Senator Snowe.    Thank you, Mr. Chairman.  I would  
13 like to pose a question to staff.  I do not know if it is  
14 Mr. Barthold or others.  Do we have an estimate in terms  
15 of the fact that in the current proposed coverage of  
16 plans in the exchange, there are no--it is going to  
17 prevent insurers from establishing a lifetime cap, so  
18 obviously we are going to be approving the catastrophic  
19 coverage.  Would there be less of a need for Americans to  
20 use the itemization?

21              Mr. Barthold.    Senator Snowe, you actually raise a  
22 very important point.  In most of--a number of the  
23 provisions we may deal with in financing today, when I  
24 report some estimates, they are in the narrow context of  
25 not having been run as part of the totality of the

1 changes that the Committee is contemplating. As we have  
2 talked about over the past couple of days, a change in  
3 one area can affect coverage, take up who gets to claim a  
4 credit, who may be subject to a penalty.

5 That is a long answer to your question, and  
6 intuitively the answer would be if more people are  
7 covered, there would be fewer large out-of-pocket  
8 expenditures, so you might expect that.

9 Now, if you buy insurance coverage on an after-tax  
10 basis, though, you can deduct the insurance coverage  
11 against--under Section 213. So I do not have a clear-cut  
12 answer to your question. But in terms of the large out-  
13 of-pocket expenditures, if one were insured, you would  
14 expect that to reduce the number of taxpayers who would  
15 be able to itemize under Section 213.

16 The Chairman. Senator Kyl--sorry, Senator Snowe.

17 Senator Snowe. Just to follow up on that point, I  
18 think it would be essential to have that analysis. I  
19 mean, obviously the itemized deduction is an insurance of  
20 last resort for many individuals, and I support the  
21 Nelson amendment because it is not critical for seniors.

22 We do not have catastrophic coverage in Medicare, so it  
23 is an essential element for them to have that backdrop.  
24 I represent one of the oldest States in the country. It,  
25 in fact, ranks third behind Florida and West Virginia

1 projected in 2010. So I do think it is important. It  
2 hits middle income. As I have seen the numbers, more  
3 than 40 percent of the people claiming this deduction  
4 have household incomes between \$40,000 and \$100,000.

5 So we are presented with a series of tough choices  
6 here, between those on seniors, on the other hand  
7 everyone else who might depend on this itemization. The  
8 bill before us obviously might mitigate some of those  
9 issues because now we are not going to have lifetime  
10 caps. We are elevating the actuarial value of many of  
11 the plans that are going to be offered in the exchange.  
12 That will be important.

13 But I hope, Mr. Chairman, that somehow we can  
14 resolve these issues between now and at least when this  
15 bill goes to the floor, because, one, the Nelson  
16 amendment is temporary. It expires in 2016. I know you  
17 mentioned that in our discussions. And also to evaluate  
18 the effects it has on everybody else as well.

19 Senator Kyl. Would you yield for one question?

20 Senator Snowe. I would be glad to yield.

21 Senator Kyl. The point that you have raised about  
22 the lifetime cap I think is an important point. I  
23 presume that whatever the effect of that was, or is, was  
24 including in your estimate of the \$21-plus billion loss.

25 So you would still have--

1           Mr. Barthold.   Not completely included, Senator,  
2           again, because there are a number of things in the  
3           proposed mark and the amendments that have been made that  
4           are changing.

5           Senator Kyl.    Well, excuse me.  Let me just ask the  
6           question.  The lifetime cap that Senator Snowe was  
7           talking about was in the mark.  It was in the original  
8           mark.  I do not think that has been changed in the  
9           modified mark, has it?

10          Mr. Barthold.   That is correct.  But when the  
11          amendment was proposed, we did not jointly with the  
12          Congressional Budget Office rework how that would affect  
13          all the taxpayers that we project in our individual  
14          model.

15          Senator Kyl.    So the number--

16          Mr. Barthold.   We do not know the exact number.  
17          The estimate reported is our best estimate given the  
18          current information that we have, but it does not fully  
19          reflect all changes.

20          Senator Kyl.    I understand what you are saying, and  
21          I think this is a great Exhibit B for Senator Snowe's  
22          crusade here to make sure we have the numbers before we  
23          vote.

24          The Chairman.   Okay.  Is there any further debate?  
25          Before that, one point of clarification, for me anyway.

1       As I understand it, Senator Kyl, changing the 10 percent  
2       to 7.5 percent, it scored about \$21 billion, something  
3       like that? But your amendment actually is about--is an  
4       offset of about \$45 billion. Is that correct? I thought  
5       I heard you say that earlier. I am just trying to--

6             Senator Kyl. That is correct.

7             The Chairman. Okay. Well, then, I think it is  
8       important to point out what the effect of this amendment  
9       is, namely, it is taking money away from lower- and  
10       middle-income people and transferring it to higher-income  
11       people. Then it goes a next step further. It takes even  
12       more income away from lower-income people. That is the  
13       net effect of this amendment. And I do not think that is  
14       something we want to do, so for that reason I urge that  
15       we do not adopt this amendment.

16            Senator Kyl. Mr. Chairman, if I--

17            The Chairman. The clerk will call the roll.

18            Senator Kyl. --could just close the argument,  
19       since it is my amendment.

20            The Chairman. Sure.

21            Senator Kyl. I thought that the numbers in your  
22       original mark were not unfair, and so when you talk about  
23       returning to the numbers in your original mark as being  
24       unfair, I think you are taking on a burden or making a  
25       confession that is really not necessary.

1           The Chairman.   That is a little oblique and  
2   abstract for me.  Let us vote.  All those in favor of the  
3   Kyl amendment--okay, the clerk will call the roll on the  
4   Kyl amendment.

5           The Clerk.   Mr. Rockefeller?

6           Senator Rockefeller.   No.

7           The Clerk.   Mr. Conrad?

8           Senator Conrad.   No.

9           The Clerk.   Mr. Bingaman?

10          Senator Bingaman.   No.

11          The Clerk.   Mr. Kerry?

12          The Chairman.  No by proxy.

13          The Clerk.   Mrs. Lincoln?

14          Senator Lincoln.  No.

15          The Clerk.   Mr. Wyden?

16          Senator Wyden.   No.

17          The Clerk.   Mr. Schumer?

18          Senator Schumer.  No.

19          The Clerk.   Ms. Stabenow?

20          Senator Stabenow.  No.

21          The Clerk.   Ms. Cantwell?

22          The Chairman.  Pass.

23          The Clerk.   Mr. Nelson?

24          The Chairman.  No by proxy.

25          The Clerk.   Mr. Menendez?

1           The Chairman.    No by proxy.  
2           The Clerk.     Mr. Carper?  
3           The Chairman.    No by proxy.  
4           The Clerk.     Mr. Grassley?  
5           Senator Grassley.   Aye.  
6           The Clerk.     Mr. Hatch?  
7           Senator Hatch.    Aye.  
8           The Clerk.     Ms. Snowe?  
9           Senator Snowe.    No.  
10          The Clerk.     Mr. Kyl?  
11          Senator Kyl.     Aye.  
12          The Clerk.     Mr. Bunning?  
13          Senator Bunning.   Aye.  
14          The Clerk.     Mr. Crapo?  
15          Senator Crapo.    Aye.  
16          The Clerk.     Mr. Roberts?  
17          Senator Grassley.  Aye by proxy.  
18          The Clerk.     Mr. Ensign?  
19          Senator Ensign.   Pass.  
20          The Clerk.     Mr. Enzi?  
21          Senator Enzi.     Aye.  
22          The Clerk.     Mr. Cornyn?  
23          Senator Cornyn.   Aye.  
24          The Clerk.     Mr. Chairman?  
25          The Chairman.    No.

1 The Clerk. Ms. Cantwell?

2 Senator Cantwell. No.

3 The Clerk. Mr. Ensign?

4 Senator Ensign. Aye.

5 The Clerk. Mr. Chairman, the final tally is 9  
6 ayes, 14 nays.

7 The Chairman. The amendment does not pass.

8 Senator Grassley, I think you have an amendment.

9 Senator Grassley. Yes, it is F-1, modified.

10 The fees imposed on health insurance providers will  
11 definitely be passed on to consumers. It is pretty plain  
12 and simple. For verification, CBO and Joint Tax  
13 confirmed this fact last Tuesday. Dr. Elemendorf said  
14 so. Let me remind my colleagues what was said.

15 It starts with Senator Cornyn asking, "Would these  
16 fees be passed down to health care consumers?"

17 Dr. Elemendorf responded by saying, "Our judgment is  
18 that that piece of the legislation would raise insurance  
19 premiums."

20 In a letter to the Chairman dated September 22nd,  
21 CBO stated that premiums for exchange plans would  
22 increase by roughly 1 percent as a result of the fees.  
23 Informal staff analysis indicates that the original  
24 proposal, the \$6 billion annual fee on health insurers,  
25 would increase premiums by 2 percent.

1           So I was surprised that this proposal was included  
2           in the Chairman's mark. After all, when this proposal  
3           was brought up during the Gang of Six discussions, I  
4           explained why these fees were a bad idea.

5           After discussing this idea, I thought it was  
6           ultimately discarded, only to find life again when the  
7           Chairman was given no choice but to lay down a mark  
8           without bipartisan agreement. Not only was this fee  
9           given life in the Chairman's mark, it was, in fact,  
10          increased in the Chairman's modification.

11          The goal of health care reform is to lower premiums.

12          All of our constituents expect that they will have lower  
13          premiums when you talk about health care reform. Not  
14          tomorrow, not 2013, but I think they get the idea that it  
15          ought to be right now. Premiums will increase  
16          immediately as a result of these fees. That is opposite  
17          what our constituents think will happen, or at least what  
18          they expect to happen.

19          Now the Chairman may tell me that because his mark  
20          increases competition among insurers that the fee will be  
21          less likely to be passed on. He may also tell me that he  
22          has statistics that show the premiums will go down under  
23          the mark. But those statistics would be the net of these  
24          fees and the health insurance reforms.

25          So what the Chairman cites might be accurate, but it

1 is not a sound defense of the fees. The reason, because  
2 a majority of the health reforms in the mark do not go  
3 into effect until 2013. The fees go into effect 2010.  
4 This means premiums will increase for at least 3 years  
5 before the reforms would begin to start helping. This  
6 means premiums will go up before they ever go down.

7 Now, we may be told and argue that some of his  
8 reforms will go into effect before 2013. But even so,  
9 these reforms will change behavior over time, not  
10 overnight. CBO says so. And if the Chairman is relying  
11 upon CBO statistics which enable him to say that premiums  
12 will go down under his mark, these statistics are based  
13 on 2016 assumptions.

14 So what is going to happen then in 2010, 2011, 2012,  
15 and so on? What is going to happen is that premiums are  
16 going to go up. So it may be true that premiums may  
17 ultimately stabilize and then go down. After all, that  
18 is the goal of health reform. But no one can tell me  
19 with a straight face that premiums will not go up in the  
20 years immediately after enactment along the lines that I  
21 have said one of the political problems with dealing with  
22 health care reform and not a justification on my part for  
23 not doing anything about it, but it is that all the hard  
24 decisions that have been to be made are up-front  
25 decisions that are going to be immediately noticed, and

1 the long-term positive effects of health care reform are  
2 going to be down the road several years. And what does  
3 the public look at now? They look at what is happening  
4 now or in the near future. They are not going to be  
5 looking down the road 10 years.

6 So when premiums go up, every members of this  
7 Committee who supported this proposal is going to have to  
8 answer to his constituents. So I urge my colleagues to  
9 vote for my amendment to strike the fees from the mark.

10 I am ready for whatever you want to say.

11 The Chairman. Okay. Is there further discussion?  
12 Senator Rockefeller.

13 Senator Rockefeller. I am a little bit baffled by  
14 this. I think it is a message amendment, but I am not  
15 sure. It certainly takes on legal immigrants and  
16 Medicaid in a very sharp way.

17 Senator Grassley. You do not really believe that  
18 this is a message amendment, do you?

19 Senator Rockefeller. Well, from you I could not  
20 possibly believe that, no. You are right. That was be a  
21 rascally thing to do. But could the honorable Senator  
22 explain to me how you cut Medicaid administrative costs  
23 by 50 percent since it is at 2-percent now? That just  
24 hit me because they exist on nothing.

25 Senator Grassley. Well, we have to raise \$45.3

1 billion.

2 Senator Rockefeller. You have got to raise money.

3 Senator Grassley. The Medicaid offset would raise  
4 \$20 billion. The 5-year waiting period for legal  
5 immigrants would raise \$4.6 billion. Adjusting the tax  
6 credit would raise \$10 billion, and making the effective  
7 date consistent with Medicaid expansion would easily  
8 raise \$10.7 billion. The modification to the Chairman's  
9 mark pushed back the tax credit effective date by 6  
10 months. My amendment would probably involve a less  
11 significant movement on the effective date.

12 So in order to ensure that this amendment is deficit  
13 neutral against the modified Chairman's mark, the  
14 adjustment of the effective date for the tax credits for  
15 health insurance would be proportional to the amount of  
16 savings needed to make the amendment deficit neutral in  
17 addition to the specifics that I just gave you.

18 Senator Rockefeller. And so how would you cut  
19 Medicaid's administrative expenses by 50 percent? How  
20 would you do it?

21 Senator Grassley. We do not do that. Where did  
22 you get that idea that we do?

23 Senator Rockefeller. Reducing the Medicaid  
24 administrative reimbursement rate to 50 percent. That  
25 does not sound friendly to me. Why do you do that?

1           Senator Grassley. To offset this amendment.

2           Senator Rockefeller. I know. I grant you it gets  
3 you the money. But what about the people?

4           Senator Grassley. Well, it is not the people being  
5 served. It is the administrative expenses of the program  
6 that is being cut.

7           Senator Rockefeller. I know that, but that also  
8 interacts with people for things like outreach, for  
9 example. It is a serious question with me. I think it  
10 affects Medicaid people seriously, and I have a problem.

11          Senator Grassley. Okay. Then I guess the answer  
12 to your question is by reducing the matching rate from 75  
13 to 50, you save Federal dollars. And if the State needs  
14 the money, they are going to spend their own money.

15          Senator Rockefeller. Right, and you know very well  
16 that the States will not spend that money.

17          Senator Grassley. Well, all I know is if there is  
18 a match of 75, you know, my State for the whole program  
19 only gets a 62-percent match.

20          Senator Rockefeller. My State gets 78 percent, and  
21 the Governor does not want to spend, you know, the match.

22          We will not get into an argument on this, but it just is  
23 an odd amendment.

24          The Chairman. If no further Senators seek  
25 recognition, let me just--

1 Senator Kyl. Mr. Chairman, I just had a question.

2 The Chairman. Let me just say very basically, I  
3 know this is not to--basically, this amendment is a shift  
4 from lower-income people and States to the insurance  
5 industry. Let me make it clear. That is the effect of  
6 this amendment. The effect of this amendment is to take  
7 money away from lower-income people, take money away from  
8 Medicaid, in effect, and shift that income, give it to  
9 the insurance industry. That is the effect basically of  
10 this amendment.

11 Senator Kyl. Mr. Chairman?

12 The Chairman. Senator Kyl.

13 Senator Kyl. I respectfully disagree with what you  
14 just said.

15 Senator Grassley. Well, I hope you will say that  
16 for me, that it is not affecting people that are getting  
17 the money. It is affecting the administrative costs,  
18 which administrative costs go to bureaucrats. It does  
19 not go to people that are low-income and need the  
20 assistance from the State and Federal Government.

21 Senator Kyl. Amen, Mr. Chairman. And let me also  
22 just quote CBO. I am talking now about the fees that  
23 Senator Grassley is dealing with here, and I am quoting  
24 CBO. Those fees would increase costs for the affected  
25 firms, which would be passed on to purchasers and would

1 ultimately raise insurance premiums by a corresponding  
2 amount.

3 What is really hurting people, what is really adding  
4 to their bills are the fees that Senator Grassley is  
5 dealing with here. As CBO says, the insurance companies  
6 just pass those on to their consumers and premiums go up  
7 a corresponding amount. That is the problem Senator  
8 Grassley is trying to get at here.

9 The Chairman. As I just said, I would observe it  
10 is curious that the insurance industry, it is claimed,  
11 will pass fees on to consumers, whereas it is implied, if  
12 not directly stated, that imposing greater administrative  
13 costs on administrators of Medicaid in States will not  
14 pass those on to Medicaid recipients. I just find that  
15 curious, that inconsistency.

16 Senator Kyl. Well, Mr. Chairman, I am just quoting  
17 CBO.

18 The Chairman. Okay. Let us vote on the amendment.  
19 All in favor of the Grassley amendment--well, the clerk  
20 will call the roll.

21 The Clerk. Mr. Rockefeller?

22 Senator Rockefeller. No.

23 The Clerk. Mr. Conrad?

24 The Chairman. No by proxy.

25 The Clerk. Mr. Bingaman?

1 Senator Bingaman. No.  
2 The Clerk. Mr. Kerry?  
3 The Chairman. No by proxy.  
4 The Clerk. Mrs. Lincoln?  
5 The Chairman. No by proxy.  
6 The Clerk. Mr. Wyden?  
7 Senator Wyden. No.  
8 The Clerk. Mr. Schumer?  
9 The Chairman. No by proxy.  
10 The Clerk. Ms. Stabenow?  
11 The Chairman. I guess we pass.  
12 The Clerk. Ms. Cantwell?  
13 The Chairman. Pass.  
14 The Clerk. Mr. Nelson?  
15 The Chairman. No by proxy.  
16 The Clerk. Mr. Menendez?  
17 The Chairman. No by proxy.  
18 The Clerk. Mr. Carper?  
19 The Chairman. No by proxy.  
20 The Clerk. Mr. Grassley?  
21 Senator Grassley. Aye.  
22 The Clerk. Mr. Hatch?  
23 Senator Hatch. Aye.  
24 The Clerk. Ms. Snowe?  
25 Senator Snowe. Aye.

1           The Clerk.    Mr. Kyl?  
2           Senator Kyl.    Aye.  
3           The Clerk.    Mr. Bunning?  
4           Senator Grassley.  Aye by proxy.  
5           The Clerk.    Mr. Crapo?  
6           Senator Crapo.    Aye.  
7           The Clerk.    Mr. Roberts?  
8           Senator Grassley.  Aye by proxy.  
9           The Clerk.    Mr. Ensign?  
10          Senator Ensign.  Aye.  
11          The Clerk.    Mr. Enzi?  
12          Senator Enzi.    Aye.  
13          The Clerk.    Mr. Cornyn?  
14          Senator Cornyn.  Aye.  
15          The Clerk.    Mr. Chairman?  
16          The Chairman.  No.  And Senator Cantwell.  
17          The Clerk.    Ms. Cantwell?  
18          Senator Cantwell.  No.  
19          The Clerk.    Mr. Schumer?  
20          Senator Schumer.  No.  
21          The Chairman.  And Senator Stabenow is no by proxy.  
22          The clerk will tally the vote.  
23          The Clerk.    Mr. Chairman, the final tally is 10  
24          ayes, 13 nays.  
25          The Chairman.  The amendment does not pass.

1           Senator Grassley.   Mr. Chairman, I would like to  
2 have 15 seconds.

3           The Chairman.   Absolutely.

4           Senator Grassley.   I think that your last statement  
5 was very unfair from the standpoint that what the facts  
6 are is you have got a separate pool of money that is a  
7 separate match coming from the Federal Government to the  
8 States for administrative costs.  And then you have got  
9 another set of money over here going to the State to help  
10 recipients.  So you said that if we take money out of  
11 this pool, it is going to affect this pool over here.  
12 And there is no way that can happen.

13          The Chairman.   I am not going to get into a big  
14 debate here, but also the amendment provides for reducing  
15 the tax credits which go to middle- and low-income  
16 Americans.  You want to take that money away from them  
17 and give it to the insurance industry.  I do not want to  
18 get in any tit for tat, but that is true.  That is what  
19 effect of the amendment is.

20          Senator Enzi.   Mr. Chairman?

21          The Chairman.   Okay.  Further amendments?  Senator  
22 Enzi.

23          Senator Enzi.   I would call up Enzi amendment C-4.  
24 This is one to make sure that Americans are protected  
25 from dramatic cost increases.  That has been one of the

1 primary things that people have talked about at town  
2 meetings and other places, and I wanted to assure that on  
3 a State-by-State basis. You know, we tend to work by the  
4 averages around here, and those are national averages.  
5 But this one goes State by State.

6 The amendment requires that prior to a State  
7 implementing the rating rules in the individual market or  
8 the rating rules in the small-group market specified in  
9 the Chairman's mark, the State insurance commissioner--  
10 logical person--must certify that the health insurance  
11 premiums in the State will not increase for a majority of  
12 the residents. I think this would give people a lot of  
13 assurance of whether the rates are going to be going  
14 down. I noticed that a lot of people during the August  
15 break talked about that.

16 Again, we are talking about middle America. I think  
17 my previous amendment, had it been adopted, would have  
18 taken care of most of this, but since it was not, I think  
19 this is an important amendment. Of course, this one  
20 deals with the rating reforms, and it will give the  
21 seniors a break, but it will increase costs for the  
22 younger healthier people, the ones that this program  
23 could go broke before they ever get a chance to take  
24 advantage of the money that they have already paid into  
25 it.

1           So the mark says that the issuers in the individual  
2 market could vary premiums based only on the  
3 characteristics of tobacco use, age, and family  
4 composition, and those same rules applied to the small-  
5 group market. The modified version also brings that  
6 rating factor down to 4:1. I was concerned that 5:1--the  
7 HELP bill I think has 3:1. There are people pushing for  
8 2:1. But that will make a huge increase in some of the  
9 States. And, again, I think it will be noticed.

10           I have got a lot of other things I could say on it,  
11 but since I know you would want to accept this one, I  
12 will just expedite my remarks.

13           The Chairman. Well, just a couple things, without  
14 a prolonged debate here. I think this is a dangerous  
15 amendment, and the reason is because anybody can do  
16 anything with figures and numbers, as we all know, and  
17 you as well as anybody as a CPA. That is, an unelected  
18 bureaucrat can just make a determination using numbers in  
19 any way whatsoever to conclude whether a majority of  
20 premiums will go up or down. Also, is that net? Is that  
21 gross? What is the offset? What is the definition? And  
22 so on and so forth. We are talking about an elected  
23 bureaucrat essentially taking away benefits from people  
24 provided for in an act of Congress. We are talking about  
25 pre-existing conditions. We are talking about--we are

1 talking about rating reforms, excuse me. You require  
2 that prior to a State implementing the rating rules in  
3 the individual market--that goes back to my same point.  
4 It is wrong, I think, for a single bureaucrat--not even  
5 the legislature--some single bureaucrat, some  
6 commissioner, who can do anything with numbers, to make a  
7 certification which, in effect, would deny people the  
8 reforms that I think they need.

9 For that reason, I think this is--it is more than  
10 dangerous. It is just not good policy.

11 Senator Enzi. Well, Mr. Chairman?

12 The Chairman. Yes, Senator Enzi.

13 Senator Enzi. We do not have confidence in those  
14 insurance commissioners, but they deal with this on a  
15 daily basis, and they have a pretty good idea what will  
16 happen in their market. But yet we turn around and in  
17 numerous instances we expect the Secretary of Health and  
18 Human Services to do the same kind of calculations, even  
19 more so in the Health, Education, Labor, and Pensions  
20 bill. And that is another unelected official that is  
21 making decisions.

22 So I have a lot of confidence in the insurance  
23 commissioners. I have had to work with them over the  
24 years through the HELP Committee, and they have testified  
25 before us, they have given information. It has always

1       been helpful information. It is not always what I wanted  
2       to hear, but it was what I guess I needed to hear. So  
3       that is why I selected them instead of some other group,  
4       like the legislature. But I do know our constituents  
5       were complaining about this every weekend when I am home,  
6       and particularly over the August break, that there are  
7       changes here that are going to increase their rates, and  
8       they are very concerned about that. And this is one way  
9       that if we are not, the State insurance commissioner can  
10      quell that and give them some confidence that it is not.

11             So I think we can--I do agree with the Chairman that  
12      we need to do reform. The group insurance market and the  
13      individual market need to be reformed, and I support the  
14      goals on eliminating pre-existing conditions and making  
15      sure there is catastrophic coverage and making sure  
16      people do not get dropped from their health. And we need  
17      to do that. But those parts they are interested in, but  
18      they also want to know that their costs are not going up.

19             And I do think with these rating bands that we are  
20      probably going to raise the cost for most of the people,  
21      more than a majority of the people. And if that is the  
22      case, again, we are going to have that revolt that I am  
23      worried about. So I would hope everyone would accept  
24      this amendment.

25             The Chairman. Is there any further debate?

1           Senator Grassley.   Mr. Chairman?

2           The Chairman.   Senator Grassley.

3           Senator Grassley.   Mr. Chairman, I will bet you  
4           that Senator Collins and Senator Nelson and Secretary  
5           Sebelius, who have all been former commissioners of  
6           insurance, would probably disagree with you that they are  
7           capable of making these determinations. I just point  
8           that out, but I think that this is a pretty simple  
9           amendment. We have seen lots of modeling and lots of  
10          back-of-the-envelope predictions. But at the end of the  
11          day, we do not know who some of the reforms in the  
12          Chairman's mark will actually affect the cost of health  
13          insurance.

14          This has been something that we have all been  
15          concerned about for months. It is one of the major goals  
16          of the legislation. We are restructuring 16 percent of  
17          the economy and something that personally touches every  
18          American based upon artificial deadlines and political  
19          promises.

20          This is something that with the writing of this  
21          legislation it seems to me ought to be given  
22          consideration because we will not have these answers  
23          before a bill gets to the President. And if the  
24          Democratic leadership and the White House refuse to give  
25          us the time to do it right, then at least we can is put

1 in some safeguards to protect our constituents.

2 This amendment will make sure that if we get it  
3 wrong and more than half the people we are trying to help  
4 here see a premium increase, then we can undo the  
5 mistakes that have been made. I have often heard from  
6 you, Mr. Chairman, and other people--in fact, I have  
7 probably said it myself. You know, this bill does not go  
8 into effect for 4 years. You have got time to correct  
9 things. But this is one of those things that with some  
10 of these premium increases being passed on because of the  
11 tax, we will not know; we will not have 4 years to  
12 correct. Washington cannot be assumed to have all the  
13 answers, and we do not always get it right the first  
14 time.

15 So this is a very straightforward amendment that  
16 will hold us and this proposal accountable. So that is  
17 why I urge support for the amendment.

18 The Chairman. Okay. Well, I agree with the  
19 Senator; Senator Collins, Senator Nelson, and others have  
20 been commissioners. We trust them. I am just not sure  
21 about the others. I suggest we vote. The clerk will  
22 call the roll.

23 The Clerk. Mr. Rockefeller?

24 Senator Rockefeller. No.

25 The Clerk. Mr. Conrad?

1           The Chairman.    Pass.  
2           The Clerk.     Mr. Bingaman?  
3           Senator Bingaman.   No.  
4           The Clerk.     Mr. Kerry?  
5           The Chairman.   No by proxy.  
6           The Clerk.     Mrs. Lincoln?  
7           The Chairman.   No by proxy.  
8           The Clerk.     Mr. Wyden?  
9           Senator Wyden.    No.  
10          The Clerk.     Mr. Schumer?  
11          Senator Schumer.   No.  
12          The Clerk.     Ms. Stabenow?  
13          The Chairman.   No by proxy.  
14          The Clerk.     Ms. Cantwell?  
15          Senator Cantwell.   No.  
16          The Clerk.     Mr. Nelson?  
17          Senator Nelson.    No.  
18          The Clerk.     Mr. Menendez?  
19          The Chairman.   No by proxy.  
20          The Clerk.     Mr. Carper?  
21          The Chairman.   No by proxy.  
22          The Clerk.     Mr. Grassley?  
23          Senator Grassley.   Aye.  
24          The Clerk.     Mr. Hatch?  
25          Senator Hatch.    Aye.

1           The Clerk.    Ms. Snowe?  
2           Senator Snowe.   Aye.  
3           The Clerk.    Mr. Kyl?  
4           Senator Grassley.   Senator Kyl, aye by proxy.  
5           The Clerk.    Mr. Bunning?  
6           Senator Bunning.    Aye.  
7           The Clerk.    Mr. Crapo?  
8           Senator Crapo.    Aye.  
9           The Clerk.    Mr. Roberts?  
10          Senator Grassley.   Aye by proxy.  
11          The Clerk.    Mr. Ensign?  
12          Senator Ensign.    Aye.  
13          The Clerk.    Mr. Enzi?  
14          Senator Enzi.    Aye.  
15          The Clerk.    Mr. Cornyn?  
16          Senator Cornyn.    Aye.  
17          The Clerk.    Mr. Chairman?  
18          The Chairman.    No.    The clerk will tally the vote.  
19          Senator Conrad.   Mr. Chairman?   May I be recorded?  
20          The Clerk.    Mr. Conrad?  
21          Senator Conrad.    No.  
22          The Clerk.    Mr. Chairman, the final tally is 10  
23          ayes, 13 nays.  
24          The Chairman.    The amendment does not pass.  
25          Senator Conrad.    Mr. Chairman?

1           The Chairman.    Senator Conrad.

2           Senator Conrad.    Might I just have a chance to  
3 explain my absence? I want to apologize to colleagues,  
4 but my long-term defense aide was sworn in as the  
5 Assistant Secretary of the Air Force for Finance this  
6 afternoon, and I obviously wanted to be there for that.  
7 So I wanted to explain my absence.

8           The Chairman.    Thank you, Senator. I bet you are  
9 very proud of him.

10          Senator Conrad.    Very proud.

11          Senator Cornyn.    Mr. Chairman?

12          The Chairman.    Senator Cornyn.

13          Senator Cornyn.    Mr. Chairman, I would like to call  
14 up my amendment D-7 as modified.

15          The Chairman.    D-7, modified.

16          Senator Cornyn.    It has been distributed. And I  
17 was wondering where Senator Conrad was, so I am glad he  
18 explained that.

19          Mr. Chairman, the Chairman's mark, as we know, cuts  
20 \$409 billion in Medicare payments, but it does not  
21 permanently ensure that seniors under the program will  
22 have a stable access to a doctor. And, of course, what I  
23 am talking about is the doc fix. The Chairman's mark  
24 provides a 1-year fix to the sustainable growth rate for  
25 2010. But we know that in 2011 physicians will suffer a

1 25-percent cut. And we know from recent history that the  
2 Congress will not let that happen.

3 The problem is that the doctors I talk to in my  
4 State say they do not year for year what Congress is  
5 going to do, and what my amendment would do would be to  
6 provide basically a 2-year solution that would provide at  
7 least three consecutive years of a half-percent increase  
8 in the sustainable growth rate.

9 Well, of course, the reason why we are not doing a  
10 full 10-year fix is because it would add more than \$200  
11 billion to the cost of the bill, even though we know that  
12 we will come back and do that as the cuts take place.  
13 Instead of reducing the deficit by \$23 billion, the real  
14 solution would result in a bill that, of course,  
15 substantially increases the spending and the deficit.

16 We need to be honest, I think, about the real costs  
17 of keeping our promises to seniors. We need to be honest  
18 with the American people about the reality of spending  
19 reduction targets which are plan price controls on the  
20 health care system that, when the rubber meets the road,  
21 Congress steps in and reverses.

22 The sustainable growth rate is essentially a price  
23 control on physician services. We know from experience  
24 that this approach has not worked, and we all know we  
25 need to fix it and fix it permanently.

1           The problem is not only the formula. The problem is  
2 that Washington is setting the price for physician  
3 services instead of physicians competing on price and  
4 quality in a transparent market. Government price  
5 setting is one reason more why I oppose the Government  
6 plan we debated yesterday. Price controlling physicians'  
7 services has not worked in Medicare, and the problem  
8 would only get worse if we create a new Government-run  
9 plan for all Americans.

10           Instead of creating a new Government-run program, we  
11 need to fix the ones that we have now that are broken,  
12 and my amendment seeks to do that by ensuring that  
13 seniors have access to physician services in Medicare, at  
14 least for another year, before we have to come back and  
15 fix it again. I think it is not responsible to create a  
16 new Government program and take money away from Medicare  
17 to pay for it, especially when Medicare is on a fiscally  
18 unsustainable path.

19           So, specifically, my amendment would ensure that  
20 Medicare patients have access to a doctor beyond the 1-  
21 year fix in the Chairman's mark. My amendment would give  
22 physicians serving Medicare patients a half-percent  
23 payment update in 2011 and 2012. And, Mr. Chairman, I  
24 know this is--I am sounding a little bit like a broken  
25 record, but I learned yesterday that once again we are

1 pushing CBO beyond the fast safe speed, because last week  
2 CBO estimated a similar amendment would cost \$38 billion,  
3 but yesterday they came back and told me, told us that my  
4 amendment would cost \$28 billion--\$10 billion less or a  
5 \$10 billion mistake.

6 My amendment is paid for by reducing spending under  
7 the Chairman's mark and by reducing the amount of money  
8 the Federal Government spends on administrative costs for  
9 the Medicare program. I hope my colleagues will join me  
10 in supporting it.

11 The Chairman. Senator, I think I speak for all  
12 members of the Committee in saying I am very sympathetic  
13 with the problem, namely, the SGR formula and how it  
14 works today and how it is important that we provide more  
15 certainty and stability to doctors' reimbursement under  
16 Medicare.

17 It is true that in the mark we provide there be no  
18 cuts in fees. I think it is a 5-percent update for the  
19 first year. But it is also true that the mark is silent  
20 for years thereafter. Really, we have to fix this, and I  
21 intend to work with you and all other Senators to address  
22 this question, this problem.

23 Many doctors say the same thing to me: Gee, we  
24 cannot afford this cut. And I have the same conversation  
25 I am sure you have; namely, well, you are right, and we

1 will figure out a way to make sure that there is no cut.

2 Yes, but the current provision only applies for a year.

3 I know. The Congress' history is on this. We always do  
4 come back. In fact, I think there has only been one--in  
5 the last I do not how many years, one brief period of  
6 time when it lapsed.

7 But in my judgment, this is not a good way to fix  
8 the problem, that is, by essentially taking the money  
9 away from, again, middle- and lower-income people for  
10 doctors, then this 50-percent provision we talked about  
11 earlier, back to Medicaid administrative reimbursements,  
12 and we had another provision here to further reduce the  
13 premium tax credit beginning with the wealthiest  
14 individuals.

15 I just do not think it is right to shift money away  
16 from them to fix the doctors' SGR. But in the meantime,  
17 we have to fix the SGR, and I am quite confident over the  
18 next several stages as this bill progresses we will find  
19 a way to fix it, but I hope in a fairer way.

20 Senator Cornyn. Mr. Chairman, I will not prolong  
21 the debate, but let me just point out that the tax  
22 credits that are a part of the pay-for here do not start  
23 until 2013, and the fix here is for 2011 and 2012.

24 The Chairman. Thank you. Senator Stabenow?

25 Senator Stabenow. Thank you, Mr. Chairman.

1           First of all, I think, as you indicated, share the  
2 concerns raised by the Senator from Texas. Senator Kyl  
3 and I have worked for more than one Congress introducing  
4 legislation that would permanently repeal the current  
5 physician formula and replace it with a more accurate  
6 measure of physicians' true costs. And I strongly  
7 support that.

8           I would ask, though, if we might work together on  
9 the floor to do more than just continue this temporary  
10 fix, but to work together to really make the change that  
11 needs to be made.

12           An important step was taken earlier this year at the  
13 urging of many of us. Secretary Sebelius with HHS did  
14 take prescription drugs out of the physician formula, so  
15 it does now create a more accurate cost in terms of what  
16 we are dealing with. So step one was done, and I know  
17 that the Chairman, because your original white paper and  
18 original efforts were to replace this outdated formula,  
19 the SGR, and that there is still great interest in doing  
20 that, actually permanently fixing this problem for  
21 physicians and for patients.

22           So I would hope, rather than just continuing to put  
23 a Band-aid on, as this amendment does, and, I should also  
24 add, going right back to the same place, paying for it by  
25 taking away tax credits for middle-income families--and

1 we have all been hearing now concerns about--in former  
2 debates about middle-income families. Well, this goes  
3 right back there trying to take away tax credits, tax  
4 cuts from middle-income families. Rather than doing  
5 that, I would urge us to work together on the floor to  
6 find a permanent solution that is not paid for by taking  
7 away tax cuts for middle-income families we are trying to  
8 help in the bill.

9 Senator Bunning. Mr. Chairman?

10 The Chairman. Senator Bunning?

11 Senator Bunning. Mr. Chairman, I took note of what  
12 you said, that we are going to do a fix on this and we  
13 must do a fix on this. And my question is: Who is going  
14 to take care of the Medicaid and Medicare people if we do  
15 not pay the doctors and they refuse to take care of these  
16 people who Senator Stabenow just mentioned as part of the  
17 pay-fors? What doctors will accept patients if we do not  
18 pay them at least 75 to 80 percent of what they are  
19 supposed to be paid for the care they are giving to these  
20 very people that you are suggesting that we not use as a  
21 pay-for?

22 The Chairman. We will make sure the SGR formula--

23 Senator Bunning. But he does not take it until  
24 2013.

25 The Chairman. Well, I still think it makes good

1 sense for us to give some certainty to the medical  
2 profession.

3 Senator Bunning. I agree with you 100 percent.

4 The Chairman. And I pledged to try to find a way  
5 to accomplish that.

6 Senator Bunning. Okay.

7 The Chairman. So there is not a reduction in the  
8 formula--not a reduction in the payments.

9 Senator Bunning. Well, I just think it is very  
10 important that we take care of them.

11 The Chairman. I do, too. I do not think there is  
12 any disagreement here.

13 Senator Cornyn. Mr. Chairman, if I could just  
14 close on my amendment.

15 The Chairman. Yes, Senator Cornyn.

16 Senator Cornyn. If we are not going to do it now,  
17 the history of the Congress has been to kick it down the  
18 road to next year and next year and next year. And there  
19 are two ways to establish budget neutrality: one is to  
20 raise the revenue and the other is to cut spending. So I  
21 think we know what the choices are, and obviously there  
22 are no easy choices. But I would just urge my colleagues  
23 to support a 2-year solution rather than a 1-year  
24 solution. We know we are going to do it anyway. We know  
25 we are going to have to either raise revenue or cut

1 spending. So I think the responsible thing to do would  
2 be to do that today.

3 The Chairman. Senator Rockefeller.

4 Senator Rockefeller. I recognize that this does  
5 not solve the immediate problem. But I want to make a  
6 point, and that is, by a vote of, I think, 15-3, or  
7 something, we passed a modified MedPAC America which is  
8 meant to--in this Committee, and that is meant to take  
9 the problem that you are talking about, Senator Bunning,  
10 and which I am talking about--you and I both know in  
11 eastern Kentucky and southwestern Virginia what happens  
12 to primary care physicians and how much they get paid and  
13 how long they can stay. Actually, a lot of them stay  
14 longer than they can afford to stay because they are  
15 loyal to their geography. But that is the point of  
16 having a neutral group of people who can take primary  
17 care physicians in Harlan County, Kentucky, and increase  
18 what they make so they will stay. That is the point of  
19 MedPAC. Everybody says they are going to cut. In many  
20 cases, they are going to increase, because they have to,  
21 if they are doing their jobs right.

22 I agree it does not solve your problem, but that is--  
23 --when Senator Cornyn said the long-term future, that is  
24 the long-term future, is better decisionmaking.

25 The Chairman. Okay. Let us conduct this vote, and

1 maybe one other right after this, because there is a vote  
2 that just started.

3 The clerk will call the roll on the Cornyn  
4 amendment.

5 The Clerk. Mr. Rockefeller?

6 Senator Rockefeller. No.

7 The Clerk. Mr. Conrad?

8 Senator Conrad. No.

9 The Clerk. Mr. Bingaman?

10 The Chairman. No by proxy.

11 The Clerk. Mr. Kerry?

12 The Chairman. No by proxy.

13 The Clerk. Mrs. Lincoln?

14 The Chairman. No by proxy.

15 The Clerk. Mr. Wyden?

16 Senator Wyden. No.

17 The Clerk. Mr. Schumer?

18 The Chairman. No by proxy.

19 The Clerk. Ms. Stabenow?

20 Senator Stabenow. No.

21 The Clerk. Ms. Cantwell?

22 Senator Cantwell. No.

23 The Clerk. Mr. Nelson?

24 Senator Nelson. No.

25 The Clerk. Mr. Menendez?

1           The Chairman.    No by proxy.  
2           The Clerk.     Mr. Carper?  
3           The Chairman.    No by proxy.  
4           The Clerk.     Mr. Grassley?  
5           Senator Grassley.   Aye.  
6           The Clerk.     Mr. Hatch?  
7           Senator Hatch.    Aye.  
8           The Clerk.     Ms. Snowe?  
9           Senator Snowe.    No.  
10          The Clerk.     Mr. Kyl?  
11          Senator Grassley.   Aye by proxy.  
12          The Clerk.     Mr. Bunning?  
13          Senator Bunning.   Aye.  
14          The Clerk.     Mr. Crapo?  
15          Senator Crapo.    Aye.  
16          The Clerk.     Mr. Roberts?  
17          Senator Grassley.   Aye by proxy.  
18          The Clerk.     Mr. Ensign?  
19          Senator Grassley.   Aye by proxy.  
20          The Clerk.     Mr. Enzi?  
21          Senator Enzi.     Aye.  
22          The Clerk.     Mr. Cornyn?  
23          Senator Cornyn.    Aye.  
24          The Clerk.     Mr. Chairman?  
25          The Chairman.    No.    The clerk will tally the vote.

1 Senator Schumer. Mr. Chairman?

2 The Clerk. Mr. Schumer?

3 Senator Schumer. No.

4 The Clerk. Mr. Chairman, the final tally is 9  
5 ayes, 14 nays.

6 The Chairman. The amendment is not agreed to.

7 We are hoping that maybe Senator Lincoln might be  
8 ready for an amendment. Failing that, Senator Snowe, do  
9 you have an amendment?

10 Senator Snowe. Yes. Senator Lincoln is part of my  
11 amendment.

12 The Chairman. Oh, Senator Lincoln is part of it.  
13 Senator Hatch, do you have an amendment?

14 Senator Hatch. Yes, I do. Do you want me to call  
15 it up?

16 The Chairman. Yes, why don't you?

17 Senator Hatch. Okay, I will call up amendment F-17  
18 to the bill. Now, I have slightly modified this  
19 amendment to match the change the Chairman made in his  
20 modified mark. The modification is a small one. The  
21 modified mark struck one of the health industry segment  
22 fees, the one for clinical laboratories. Likewise, I am  
23 modifying my amendment to also strike the mention of  
24 clinical laboratories.

25 Now, Mr. Chairman, my amendment is simple. It

1 merely provides that the annual fees on the health  
2 industry segments not take effect until the General  
3 Accounting Office has certified that no portion of the  
4 annual fee is likely to be passed on to consumers or the  
5 products manufactured or imported by the companies upon  
6 which the tax is levied.

7           Based on my understanding of the Chairman's  
8 rationale for including these industry fees in the mark,  
9 the idea is that these health industry segments are going  
10 to enjoy a windfall from the provisions of this bill.  
11 This windfall would ostensibly come from having millions  
12 of new customers who presently do not receive health  
13 insurance or adequate health care who would under the  
14 bill be brought into the system. Therefore, my  
15 understanding of the theory goes these industry segments  
16 would contribute to the cost of the bill out of the  
17 largesse that they receive.

18           Now, I am certain that the Chairman does not intend  
19 that the cost of these fees would be passed on to the  
20 consumers of these industry segments. After all, why  
21 would he try to pass a reform bill to lower the cost of  
22 health care by placing higher costs on the components of  
23 health care? This makes no sense, and I know the  
24 Chairman's intentions are good.

25           However, I do not agree that the effect of these

1 fees would fall only upon the companies in the affected  
2 industry segments. Rather, I believe that these fees, at  
3 least in part, would indeed be passed through to the  
4 consumers of the products of the companies so taxed.  
5 Therefore, even though the provision to assess the  
6 industry segment fees is well intentioned, I believe they  
7 will increase the cost of health care to the American  
8 people. And I do not see why this amendment would have a  
9 score. After all, if the costs are not going to be  
10 passed on to consumers as intended, this should have no  
11 effect on expected revenue. However, to the extent that  
12 there is a cost to the amendment, the offset would be to  
13 reduce spending in the bill proportionately as needed to  
14 cover the lost revenue.

15 So this amendment should be an easy for supporters  
16 of the Chairman's mark to support. If Committee members  
17 do not believe that the industry fees will increase the  
18 cost of health care by being passed on to consumers, then  
19 what is the harm in allowing GAO to certify as much?

20 Now, I am sure that none of my colleagues on the  
21 Committee want to see health care costs go up, and they  
22 would not vote for a measure that they believe will cause  
23 them to go up. This amendment would make sure that this  
24 would not happen. So I hope that I can get a vote for  
25 the amendment.

1           The Chairman.   Okay, Senator.   Maybe we can vote on  
2 this.   I hope we can because we just started a vote.

3           First of all, this amendment is unconstitutional for  
4 the same reasons that we discussed earlier; that is, it  
5 is unconstitutional for a congressional body to make  
6 executive findings.   You need an executive branch  
7 official to make executive findings under the Bowsher v.  
8 Synar Supreme Court case as well as the Chadha case.   So  
9 it is clearly unconstitutional.

10           On the merits, I just believe that it--fees are  
11 important.   They basically pay for this bill.   The fees I  
12 mentioned earlier are generally agreed to by the industry  
13 so that the certification that you asked for is really a  
14 poison pill that would effectively block fees to finance  
15 health care reform from being implemented.   And as I said  
16 earlier, this is unconstitutional, anyway, and I just do  
17 not think it is wise to adopt an unconstitutional  
18 amendment.

19           Senator Hatch.   Well, first of all, I do not  
20 believe it is unconstitutional.   We use GAO all the time.

21           But if that is the concern, then I will just modify my  
22 amendment to have Treasury make the analysis.   I think  
23 that would remedy your--

24           The Chairman.   The rest of my argument I stand by.  
25   I just think it is not good to make that--have Treasury

1 certify no portion of the annual fee in each industry is  
2 likely passed on, I mean, that is an impossible  
3 calculation to make because, clearly, it is complex.  
4 There are stockholders, there are consumers, there is  
5 executive compensation, there is sales. It is the  
6 markets, the economy. I mean, it is an impossible  
7 calculation to make. I just think, therefore, this is a  
8 mischievous amendment that should not be adopted. In  
9 fact, I think we could dispose of it right now by voting  
10 on it, although we need a quorum.

11 Okay. We do have a quorum. The clerk will call the  
12 roll.

13 The Clerk. Mr. Rockefeller?

14 Senator Rockefeller. No.

15 The Clerk. Mr. Conrad?

16 The Chairman. No by proxy.

17 The Clerk. Mr. Bingaman?

18 The Chairman. No by proxy.

19 The Clerk. Mr. Kerry?

20 The Chairman. No by proxy.

21 The Clerk. Mrs. Lincoln?

22 Senator Lincoln. No.

23 The Clerk. Mr. Wyden?

24 The Chairman. No by proxy.

25 The Clerk. Mr. Schumer?

1           The Chairman.    No by proxy.  
2           The Clerk.     Ms. Stabenow?  
3           The Chairman.    No by proxy.  
4           The Clerk.     Ms. Cantwell?  
5           Senator Cantwell.  No.  
6           The Clerk.     Mr. Nelson?  
7           The Chairman.    No by proxy.  
8           The Clerk.     Mr. Menendez?  
9           The Chairman.    No by proxy.  
10          The Clerk.     Mr. Carper?  
11          The Chairman.    No by proxy.  
12          The Clerk.     Mr. Grassley?  
13          Senator Grassley.  Aye.  
14          The Clerk.     Mr. Hatch?  
15          Senator Hatch.    Aye.  
16          The Clerk.     Ms. Snowe?  
17          Senator Snowe.    Aye.  
18          The Clerk.     Mr. Kyl?  
19          Senator Grassley.  Aye by proxy.  
20          The Clerk.     Mr. Bunning?  
21          Senator Bunning.   Aye.  
22          The Clerk.     Mr. Crapo?  
23          Senator Grassley.  Aye by proxy.  
24          The Clerk.     Mr. Roberts?  
25          Senator Grassley.  Aye by proxy.

1           The Clerk.    Mr. Ensign?  
2           Senator Grassley.    Aye by proxy.  
3           The Clerk.    Mr. Enzi?  
4           Senator Grassley.    Aye by proxy.  
5           The Clerk.    Mr. Cornyn?  
6           Senator Grassley.    Aye by proxy.  
7           The Clerk.    Mr. Chairman?  
8           The Chairman.    No.    The clerk will tally the vote.  
9           The Clerk.    Mr. Chairman, the final tally is 10  
10          ayes, 13 nays.  
11          The Chairman.    The amendment does not pass.  
12          The Committee will now recess until 6:30.  
13          [Whereupon, at 4:49 p.m., the Committee recessed, to  
14          reconvene at 6:30 p.m. this same day.]  
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AFTER RECESS

[7:03 P.M.]

The Chairman. The committee will come to order. I recognize the Senator from Kansas, Senator Roberts?

Senator Roberts. Well, good evening, Mr. Chairman.

I thank you very much for getting me in the queue. This is the Roberts/Hatch -

The Chairman. You are not in the queue, you are the head of it.

Senator Roberts. Pardon me?

The Chairman. You are not in it, you lead it.

Senator Roberts. Oh, I am leading it. If that is the case, I have got about five more that we could talk about.

Mr. Chairman, I call up Roberts/Hatch Amendment Number F2 as modified. This amendment would exclude flexible spending accounts, health reimbursement accounts, health savings account, dental, vision and other supplemental plans from the threshold amounts established for high cost insurance plans.

Placing these accounts under the threshold amounts effectively limits how families can direct their health care dollars and would effectively raise taxes on middle class families as the value of their contributions to

1       these accounts is reduced, and to avoid exceeding the  
2       threshold amount.

3               These accounts are an important part of many  
4       family's health care. They allow families to direct  
5       health care dollars in a way that is most beneficial to  
6       them. They set the priorities. For example, families  
7       with a member who has a chronic disease can choose to set  
8       aside pre-tax dollars and a flexible spending account to  
9       pay for necessary health expenses. Or families can use  
10      funds from these accounts to pay for important preventive  
11      care, something about which we have had a great deal of  
12      discussion and we recognize as importance.

13              Vision and dental policies are also absolutely vital  
14      to maintaining an individual's overall health and should  
15      not be limited by being placed under the threshold  
16      amount.

17              My amendment preserves the existing treatment of  
18      these important health care accounts for all participants  
19      including middle class families by excluding FSAs, HRAs,  
20      HSAs, dental, vision and other supplemental plans from  
21      the threshold amount for excise tax on high cost  
22      insurance policy.

23              Mr. Chairman, my amendment is not offset for the  
24      simple reason we should not have to raise taxes in order  
25      for families to keep the health care benefits that they

1 currently have. This amendment preserves existing  
2 benefits that allows families to direct their health care  
3 dollars as they see fit rather than subjecting them to a  
4 one size fits all health care benefit.

5 Unlike the Chairman's mark that takes away benefits  
6 from families and gives them less choice about how to  
7 spend their health care dollars, the Roberts/Hatch  
8 amendment preserves consumer choice and ensures that  
9 these important health care benefits remain available and  
10 can be fully used by families to manage their health care  
11 expenses.

12 The Chairman. Senator, as you state -- so this  
13 amendment is not germane.

14 Senator Roberts. I would appeal the ruling to the  
15 Chair and ask for a vote.

16 The Chairman. Call the roll.

17 The Clerk. Mr. Rockefeller?

18 Senator Rockefeller. No.

19 The Clerk. Mr. Conrad?

20 Senator Conrad. No.

21 The Clerk. Mr. Bingaman?

22 Senator Bingaman. No.

23 The Clerk. Mrs. Lincoln?

24 Senator Lincoln. No.

25 The Clerk. Ms. Cantwell?

1           Senator Cantwell.    No.  
2           The Clerk.    Mr. Menendez?  
3           Senator Menendez.    No.  
4           The Clerk.    Mr. Carper?  
5           Senator Carper.    No.  
6           The Clerk.    Ms. Snowe?  
7           Senator Snowe.    Aye.  
8           The Clerk.    Mr. Bunning?  
9           Senator Bunning.    Aye.  
10          The Clerk.    Mr. Roberts?  
11          Senator Roberts.   Aye.  
12          The Clerk.    Mr. Ensign?  
13          Senator Ensign.    Aye.  
14          The Clerk.    Mr. Enzi?  
15          Senator Enzi.    Aye.  
16          The Clerk.    Mr. Chairman?  
17          The Chairman.   No.   The clerk will tally the vote.  
18          The Clerk.    Mr. Chairman, the final tally is five  
19          ayes, eight nays.  
20          The Chairman.   Two-thirds members present not  
21          having voted in the affirmative.   The ruling of the Chair  
22          is sustained.  
23          Senator Carper.    Mr. Chairman?  
24          The Chairman.    Senator Roberts, do you have a  
25          second amendment?

1 I would recognize Senator Roberts for another  
2 amendment, but --

3 Senator Carper. Would you just yield to me for 30  
4 seconds going back to the amendment we just considered?

5 The Chairman. Certainly.

6 Senator Carper. It has been shared with me that as  
7 we work with flexible spending accounts I understand in  
8 current law there is no cap. In the legislation we put  
9 in the cap about \$2,500. We do not index it at all going  
10 forward and as we go forward if not here in mark upwards  
11 we go into emerging the House in two different Senate  
12 bills as we consider what it would do on the floor, what  
13 it would do in conference.

14 I would hope that the issue of flexible spending  
15 accounts, the question of indexing the \$2,500 cap that we  
16 could maybe find a way to --

17 The Chairman. I understand. It is kind of  
18 interesting to me that most people do not spend up to  
19 their limits in the bill as it is already today. So the  
20 thought is that by capping it and then indexing there is  
21 a way to further help the cost, but in a way that does  
22 not bring any undue pressure to people. I think, I might  
23 be wrong, about  $\frac{3}{4}$  of the amount up to \$2,500 is spent on  
24 average. Now of course that is just average.

25 I appreciate what you are saying, Senator. We will

1 work on it. Senator Roberts?

2 Senator Roberts. Since the distinguished Senator  
3 asked me to yield, I would respond.

4 The Chairman. I'm sorry.

5 Senator Roberts. In that I think he raises a good  
6 point. I have a separate amendment on exactly what the  
7 gentleman is talking about, but that is not in order at  
8 the present time.

9 Mr. Chairman, I call up Roberts Amendment Number F4  
10 as modified. Mr. Chairman, this amendment strikes the  
11 provision in the Chairman's mark that prohibits the cost  
12 of over-the-counter medicine from being reimbursed  
13 through a health FSA/HRA/HSA or Archer MSA unless the  
14 patient has a prescription from their doctor for the  
15 over-the-counter medication.

16 Yes, I am talking about over-the-counter medication.  
17 Under the mark, you have got to go to the doc for a  
18 prescription. This provision strikes me as  
19 counterintuitive when we are trying to put downward  
20 pressure on health care costs and make certain that if  
21 folks like the health care benefit options they have,  
22 they can keep them. Rather than maintaining current law  
23 which gives consumers the option to purchase over-the-  
24 counter medications on a tax favored basis through an FSA  
25 or other similar account, the Chairman's mark instead

1 directs them to more costly alternatives and increased  
2 use of the health care system and limits consumers'  
3 ability to fully use their accounts.

4 Further, it injects confusion and complexity into  
5 the existing system that is straightforward and easy for  
6 consumers to utilize. Here is the practical effect of  
7 this provision. It creates a disincentive for consumers  
8 to shop for the cheapest over-the-counter medication and  
9 instead may encourage them to turn to prescription  
10 medications that are covered by insurance.

11 This means that multiple additional layers of health  
12 care costs could be added -- the visit to the doctor, to  
13 obtain a prescription, the trip to the pharmacy to have  
14 the prescription filled and the pharmacists' time to  
15 provide counseling and the cost to the insurance company  
16 to process the claim.

17 Even if the over-the-counter medicine is prescribed  
18 by the doctor and thus eligible under the Chairman's mark  
19 for reimbursement, it would seem that health care costs  
20 would still increase because the patient would likely  
21 need to visit the doctor to obtain the prescription.  
22 This is yet another attempt to further limit consumer's  
23 choice and involvement in their health care by  
24 restricting how contributions to these accounts may be  
25 used.

1           I urge my colleagues to support this amendment to  
2 ensure that participants can continue to fully benefit  
3 from these accounts.

4           Mr. Chairman, my amendment again is not offset for  
5 the simple reason again, we should not have to raise  
6 taxes in order for families to keep the health care  
7 benefits that they currently have. This amendment  
8 preserves existing benefits that the Chairman's mark  
9 significantly reduces by excluding important and  
10 necessary medications from eligibility for reimbursement  
11 under an FSA/HSA or HRA. This provision will do nothing  
12 to drive down the cost of health care. In fact, it very  
13 well may raise costs and it will take away a benefit that  
14 millions of Americans use to manage their health care  
15 costs.

16           The Chairman. Senator, there is no offset here and  
17 consequently it is not germane.

18           Senator Roberts. I appeal the Chairman's ruling  
19 and ask for a role call vote.

20           The Chairman. Clerk will call the role.

21           The Clerk. Mr. Rockefeller?

22           Senator Rockefeller. No.

23           The Clerk. Mr. Bingaman?

24           Senator Bingaman. No.

25           The Clerk. Mrs. Lincoln?

1 Senator Lincoln. No.  
2 The Clerk. Ms. Stabenow?  
3 Senator Stabenow. No.  
4 The Clerk. Ms. Cantwell?  
5 Senator Cantwell. No.  
6 The Clerk. Mr. Carper?  
7 Senator Carper. Pass.  
8 The Clerk. Ms. Snowe?  
9 Senator Snowe. No.  
10 The Clerk. Mr. Bunning?  
11 Senator Bunning. Aye.  
12 The Clerk. Mr. Kyl?  
13 Senator Kyl. Aye.  
14 The Clerk. Mr. Roberts?  
15 Senator Roberts. Aye.  
16 The Clerk. Mr. Ensign?  
17 Senator Ensign. Aye.  
18 The Clerk. Mr. Enzi?  
19 Senator Enzi. Aye.  
20 The Clerk. Mr. Chairman?  
21 The Chairman. No.  
22 The Clerk. Mr. Carper?  
23 Senator Carper. No.  
24 The Clerk. Mr. Conrad?  
25 Senator Conrad. No.

1           The Clerk.    Mr. Chairman, the final tally is five  
2 ayes, nine nays.

3           The Chairman.   Two-thirds of the members present not  
4 having voted in the affirmative, the ruling of the Chair  
5 is sustained.

6           Senator Roberts, do you have a third amendment?  
7 Okay.   Senator Snowe, I understand there is some original  
8 understanding that you might be next?

9           Senator Snowe.    Yes.

10          The Chairman.    Okay.    Senator Snowe?

11          Senator Snowe.    Thank you, Mr. Chairman.    I call up  
12 Amendment F9 as modified.    I also want to thank my  
13 colleagues Senator Bingaman and Senator Lincoln for  
14 joining me as co-sponsors and also for their amendments  
15 that are included, so it is a collective amendment from  
16 the three of us regarding three separate initiatives that  
17 are all about making sure that people keep the benefits  
18 that they have today.

19          The initial component of this amendment would  
20 exclude from the excise tax on high cost health insurance  
21 indemnity insurance policies that are paid for by  
22 employees with after tax income.    These are insurance  
23 policies that Americans buy to protect themselves from  
24 lost wages and increased expenses after they have had an  
25 accident or are hospitalized or diagnosed with a

1 particular disease.

2           These indemnity insurance policies pay a set amount  
3 base don the severity of the claim. These help  
4 individuals to address costs and expenses that are not  
5 associated with health insurance. These policies are not  
6 health insurance, but most people equate these policies  
7 with disability insurance which is already excluded from  
8 the excise tax in the Chairman's mark.

9           Senator Bingaman's two components of this amendment  
10 are issues in which we have collaborated in concern  
11 inequities in health care delivery. The first of these  
12 address the fact that federally qualified health centers  
13 today are capped in the amount that they are paid for in  
14 treating Medicare beneficiaries regardless of the  
15 services performed.

16           Last year, for example, Rural Health Center was paid  
17 a maximum of \$100 regardless of whether the amount of  
18 services provided. This arbitrary and unfair payment  
19 system cost the average health center \$85,000 in lost  
20 reimbursements on an annual basis and as more and more  
21 Medicare beneficiaries rely on health centers, this  
22 inequity threatens their ability to meet the needs of  
23 seniors.

24           So I am pleased that the provisions of this  
25 legislation which Senator Bingaman and I have championed

1 to eliminate this cap and bring health centers a fair  
2 perspective payment system is included in the amendment.

3 Also this amendment incorporates another measure on  
4 which Senator Bingaman has championed. That is to say  
5 that those Medicare beneficiaries with HIV/AIDS who rely  
6 on patient assistance programs to obtain vital  
7 medications have those contributions credited towards  
8 their Part D out of pocket spending.

9 Given that the Chairman's mark includes provisions  
10 to credit seniors who receive help purchasing drugs in  
11 the donut hole coverage gap. We should not treat those  
12 obtaining assistance, obtaining HIV medications  
13 differently.

14 Senator Lincoln and Senator Cantwell have also added  
15 a provision to this amendment that will allow small  
16 business that have a large number of seasonal employees  
17 to remain eligible for the Small Business Tax Credit.

18 For instance, the amendment would allow summer camps  
19 that may have only two or three year round employees to  
20 offer health insurance to those employees and not be  
21 disqualified because in the summer months they have  
22 dozens of employees. I know in our state of Maine,  
23 tourism generates more than \$10 billion in sales of goods  
24 and services and more than 140,000 jobs and \$3 billion in  
25 earnings.

1           Much of that tourism is facilitated in small  
2 businesses supported by seasonal workers. So this  
3 amendment is an incredibly important contribution to this  
4 legislation as well and certainly to the people who work  
5 in these facilities across the country. So I want to  
6 thank Senator Lincoln and Senator Cantwell in joining me  
7 in this effort. Thank you, Mr. Chairman. I understand  
8 you will be recognizing both Senator Bingaman and Senator  
9 Lincoln. Thank you.

10           The Chairman. Right. Senator Bingaman?

11           Senator Bingaman. Thank you very much, Mr.  
12 Chairman. Let me congratulate Senator Snowe for this  
13 amendment. I am very glad to co-sponsor it with her.

14           I will not repeat all the points she made about the  
15 different provisions in it. I will point out that the  
16 effect of the amendment as I see it is to shore up the  
17 Medicare program for some of the most vulnerable  
18 beneficiaries under that program, specifically those that  
19 seek services at community health centers, those with  
20 AIDS, and also the Native American population.

21           I think that it is an excellent amendment and I urge  
22 all colleagues to support it.

23           Senator Lincoln. Mr. Chairman?

24           The Chairman. Senator Lincoln?

25           Senator Lincoln. Thank you, Mr. Chairman, and I am

1 so pleased to be a co-sponsor of this amendment.

2 I have heard from a number of Arkansans this week  
3 with concerns about the inclusion of fixed indemnity  
4 coverage being included in the high premium excise tax  
5 and I'm glad that with Senator Snowe's leadership we have  
6 been able to work to address those concerns. I  
7 appreciate the work that she has put into this before and  
8 now including it in the bill I think is incredibly  
9 helpful and I am grateful to her for her leadership  
10 there.

11 I also want to thank my colleague, Senator Bingaman,  
12 for his continued effort on behalf of our nation's safety  
13 net providers, the federally qualified health centers  
14 also known as community health centers. Arkansas' 12  
15 community health centers operate all around our state and  
16 they provide valuable services to Arkansans who currently  
17 have no place else to go for quality medical care.

18 The provisions in this amendment regarding the FQHCs  
19 will ensure continued access to these vital services. I  
20 would also like to take a moment to thank the Chairman  
21 and my colleagues offering this amendment for working  
22 with me to make some changes to the mark regarding  
23 eligibility for small business tax credits. Senator  
24 Snowe and I have worked together for years on small  
25 businesses and the issues that they face and I appreciate

1 so much her tireless work on behalf of the millions of  
2 small businesses in Maine, but she does not exclude the  
3 small businesses from Arkansas either. She works  
4 tirelessly for small businesses all across the country.

5 Particularly the businesses that require the use of  
6 seasonal workers as she mentioned. During harvest, farms  
7 in Arkansas and across the country oftentimes bring on  
8 additional temporary help. Those jobs can last as little  
9 as just a few weeks. But under the Chairman's mark,  
10 those workers' hours would be counted in calculating  
11 whether a farm qualifies for that small business tax  
12 credit.

13 The provision included in this amendment would  
14 exclude temporary workers hours for purposes of  
15 determining whether a business qualifies under the mark  
16 as a small business for the tax credit. This can be  
17 enormously meaningful for our small businesses. Whether  
18 or not they qualify for that credit or being excluded  
19 from that credit just based on as Senator Snowe  
20 mentioned, an addition of workers for only a few weeks  
21 out of the year, but ensuring that our traditional small  
22 businesses can continue to require, that will continue to  
23 require that help and to have them included here I think  
24 is enormously meaningful to them.

25 The language tracks the agreement reached in the

1 Help Committee in their bill. When a similar amendment  
2 was offered by Senator Kay Hagan from North Carolina and  
3 I am pleased that we worked to address these issues in  
4 the Finance Committee mark as well, Mr. Chairman. I  
5 would just add in the sheet that was handed out, we  
6 worked with the Senate Finance Committee Staff and it  
7 actually should have excluded the piece on shared  
8 responsibility to ensure that it actually could meet the  
9 cost estimates that were given to us. So we just want to  
10 make sure that that was clear. Thank you, Mr. Chairman.

11 Senator Ensign. Mr. Chairman? Mr. Chairman? I  
12 have just been asked to say, I do not know that there  
13 would be any problems with the bill, but several Senators  
14 are missing, including Senator Grassley, and if we could  
15 just set it aside so they could have some time to look at  
16 it if that would be okay.

17 The Chairman. Senator Cantwell? First let Senator  
18 Cantwell speak.

19 Senator Cantwell. Thank you, Mr. Chairman. I do  
20 want to thank my colleague, Senator Snowe and my  
21 colleague from Arkansas, Senator Lincoln, for offering  
22 these amendments. Seasonal and temporary workers do  
23 contribute immensely to the economy of Washington State,  
24 everything from our fishing fleet to our farmers employ  
25 thousands of seasonal and temporary workers to harvest

1 fish, shellfish and 250 different crops.

2 Under the Chairman's mark in order to qualify for  
3 the small business credit, a small business employer must  
4 have no more than 25 full time employees employed during  
5 the employer's taxable year.

6 By excluding seasonal workers from this calculation,  
7 our amendment would ensure that these small business  
8 owners and family farms are not disqualified from  
9 eligibility because they have workers who may only have  
10 been employed for a few weeks each year. So I am proud  
11 to be a co-sponsor of the amendment and I urge the  
12 committee to adopt it.

13 I know that Senator Lincoln is also working with the  
14 Chairman to clarify how these workers would be treated  
15 for, these temporary workers, for the purposes of shared  
16 penalty, shared responsibility penalty. So I want to  
17 raise a related issue about temporary staffing firms and  
18 how their employees are calculated.

19 I filed an amendment, Cantwell Number C13 to address  
20 this, but I understand the committee and staff are  
21 working on possible scorings. But I did want to bring up  
22 to the committee's attention just briefly the shared  
23 responsibility penalty in the Chairman's mark as  
24 calculated based on each time an employee receives a tax  
25 credit in the state health insurance exchange. The mark

1 defines full time employees as those working 30 hours or  
2 more each week.

3 I do not believe the Chairman intended this fee to  
4 apply to employees who are not full time employees on an  
5 ongoing basis. And so I wanted to get definition and  
6 clarification for full time employees that some companies  
7 like those who place temporary workers in other firms for  
8 short period of times have employees, have unpredictable  
9 and fluctuating work patterns, so the definition of full  
10 time employee needs to be a little more refined. I hope  
11 that we can clarify this definition so that full time  
12 employee is someone who works at least 30 hours per week  
13 over a course of a calendar quarter which is 390 hours  
14 total, 13 weeks, and make sure that this fee is assessed  
15 quarterly but still capped at \$400.

16 So I thank the Chairman and the staff for helping to  
17 clarify this issue.

18 The Chairman. Just to be even more clear, you are  
19 seeking further clarification, is that correct?

20 Senator Cantwell. Yes.

21 The Chairman. Okay. I will work with you. We  
22 will further clarify.

23 Senator Cantwell. On the definition on full time  
24 employee so that those organizations that are involved in  
25 manpower that do not necessarily have full time employees

1 but rotating employees, so that they have clarity to the  
2 statute.

3 The Chairman. Okay. So it is seasonal, right.  
4 Fine.

5 Senator Cantwell. Yes.

6 The Chairman. Correct. So Senator Ensign, you  
7 would like to have the amendment withdrawn? I mean, not  
8 withdrawn, just temporarily aside?

9 Senator Ensign. Yes.

10 The Chairman. Okay. Next, Senator Bunning?

11 Senator Bunning. Yes. Let me call up Amendment F4  
12 as modified.

13 The Chairman. F4 modified.

14 Senator Bunning. Thank you, Mr. Chairman. This is  
15 a very simple amendment that prohibits any of the tax  
16 increases in Title VI of the mark from going into effect  
17 unless the Secretary of Veteran Affairs certifies to the  
18 Department of Treasury that none of the tax increases  
19 will increase the cost of providing medical care to  
20 veterans or cause veterans to lose access to any medical  
21 device or branded drugs.

22 The majority of this committee may be unwilling to  
23 protect ordinary consumers from the escalating cost of  
24 health care caused by these taxes. But I hope that my  
25 colleagues have some sympathy for our veterans, many of

1 whom have lasting injuries because of their service to  
2 this country.

3 Most of us on this committee are used to dealing  
4 with entitlement programs where people get a benefit, as  
5 long as they qualify under the law. This bill creates  
6 another entitlement program. But veterans health care is  
7 not an entitlement. It is subject to the whims of the  
8 appropriation process.

9 There is no federal guarantee for veterans health  
10 care. That is why we should be especially concerned  
11 about the impact of cost increased on our veterans. The  
12 tax increases in this mark will cause health care costs  
13 to increase. It is a fact. No one disputes that. That  
14 is why we should not rush to pass new taxes until we  
15 understand the full impact on veterans. But the cost  
16 should not be our only concern.

17 We should also ensure that these tax increases do  
18 not threaten veterans' access to life saving treatments.

19 Let me explain why access is a real concern. Just some  
20 background about veterans access to branded drugs.

21 It is my understanding that because the Veterans  
22 Administration sets drug prices, this has resulted in a  
23 very narrow list of approved brand name drugs available  
24 to veterans. As a result, many veterans who are seniors  
25 have left the VA system and enrolled in Medicare Part D

1 plans so they can get brand name drugs they need.

2 Other veterans who are not Medicare eligible do not  
3 have that option. So our veterans already have very  
4 limited access to branded drugs. That is why I was  
5 surprised when I saw the conceptual language about the  
6 new annual tax on manufacturers and importers of brand  
7 name drugs.

8 Under the Chairman's mark, the brand name drug tax  
9 will be based on sales to government programs including  
10 the VA and Tricare. What rational company would want to  
11 increase their taxes by selling to the VA where the price  
12 controls are already well below market rates. It would  
13 be a terrible business decision.

14 Let me ask the Chairman's staff at the table, are  
15 there any provisions in the legislative language we have  
16 not been able to see yet that would prevent the branded  
17 drug tax from causing other drugs to fall off the VA's  
18 narrow list of approved brand name drugs, which would  
19 cause our veterans to lose access to even more of the  
20 brand name medications they need? Anyone? Well, if  
21 there is no one ready to respond --

22 Mr. Clapsis. I have never heard of any provisions.

23 Senator Bunning. Sorry?

24 Mr. Clapsis. We are not aware of any provisions.

25 Senator Bunning. I did not hear what you said.

1           Mr. Clapsis.    There are no provisions like that.

2           Senator Bunning.   There is no provision?  Well,  
3   that is exactly why we should not rush to pass these tax  
4   increases without understanding the impact on veterans.  
5   There should also be an analysis on whether the medical  
6   device tax will cause our veterans to lose access to  
7   prosthetic legs and other critical innovations.

8           My amendment provides a basic safety check.  We need  
9   to ensure our veterans do not become the victims of  
10   unintended consequences.  If the VA Secretary gives the  
11   green light, then the tax increase will move forward.  If  
12   CBO declares that this amendment has a cost, then this is  
13   an admission that these tax increases will indeed damage  
14   veterans health care.

15          In the event that an offset is required, my  
16   amendment delays the effective date of the penalty tax on  
17   uninsured Americans.  In the event that a further offset  
18   is required, my amendment would delay the effective date  
19   of the mandates that states expand their Medicaid  
20   programs.

21          Let me point out that the Chairman has already  
22   delayed effective dates in order to find revenue.  The  
23   least we can do is consider a delay in order to protect  
24   our veterans.  Maybe some of my colleagues believe that  
25   veterans should be a part of the shared responsibility

1 this bill -- forces on Americans. It is my belief that  
2 the men and women who have been willing to make the  
3 ultimate sacrifice to defend our country have already  
4 contributed their shared responsibility.

5 I hope my colleagues will agree with me and support  
6 the amendment. Thank you, Mr. Chairman.

7 The Chairman. You are welcome. Let me ask Mr.  
8 Barthold, what is the revenue effect of this?

9 Mr. Barthold. Well, we have not been able to  
10 estimate the effect of this, Mr. Chairman. It relies on  
11 a determination by the Secretary of the Department of  
12 Veterans Affairs about what will happen. I imagine the  
13 intent is mainly market prices of drugs, medical devices  
14 and other expenditures by that department.

15 I have not had a chance to consult with Mr.  
16 Elmendorf of the Congressional Budget Office, but from  
17 our earlier discussion we did talk about how the basic  
18 economics would be that you would expect some price  
19 increases of some of the covered devices. That would  
20 seem to say that this would have a revenue consequence.  
21 But we have not estimated.

22 The Chairman. But you do not know?

23 Mr. Barthold. I do not know. And I do not know if  
24 under sort of the scoring, I should add that I do not  
25 know if under the scoring guidelines if the Congressional

1 Budget Office would say there is a 50 percent likelihood  
2 or that definitely the Secretary of Veterans Affairs  
3 would certify one way or the other.

4 The Chairman. Frankly I think it is wise to make  
5 sure veterans are protected here for all the reasons that  
6 we know. I am inclined to accept the amendment.

7 Senator Bunning. Thank you, Mr. Chairman. I  
8 appreciate that.

9 The Chairman. With no objection, the amendment is  
10 agreed to.

11 Senator Bunning. Thank you.

12 Senator Ensign. Mr. Chairman? I have an  
13 amendment.

14 The Chairman. Senator Ensign?

15 Senator Ensign. Mr. Chairman, I would like to call  
16 up Ensign Number C8 as modified.

17 The Chairman. Okay.

18 Senator Ensign. It is the healthy behaviors  
19 amendment. Mr. Chairman, this amendment has been scored  
20 by CBO and has no significant revenue effect.

21 Senator Conrad. Is this the amendment with Senator  
22 Carper?

23 Senator Ensign. Yes, it is. Number C8. Mr.  
24 Chairman, as this amendment is being passed out, I want  
25 to thank my colleague, Senator Carper, for introducing

1 this amendment with me. I will describe the amendment in  
2 fairly good detail and will also explain why I think the  
3 amendment is important.

4 During our health care reform round tables and walk  
5 throughs, I spent a lot of time talking about voluntary  
6 wellness programs that are offered by health plans and by  
7 employers. While I appreciate your efforts to add a new  
8 subtitle to the mark called Strengthening Employer  
9 Sponsored Wellness Programs, I am disappointed by the  
10 language.

11 Based on my reading of the language, it appears that  
12 the mark would keep the amount employers can use to  
13 reward employees for adopting healthy behaviors at the  
14 current 20 percent HIPAA threshold. The Chairman's mark  
15 would then give the Secretaries of Health, Labor and  
16 Treasury discretion to increase the amount employers can  
17 use to reward employees from the existing 20 percent  
18 threshold to 30 percent. But in all practical terms, the  
19 Chairman's mark is current law.

20 Mr. Chairman, this language takes a significant step  
21 away from the Harkin language that was inserted into the  
22 HELP Committee bill. As you may know, the Harkin  
23 committee language immediately raises the threshold from  
24 20 percent to 30 percent and then allows the Secretaries  
25 of Health, Labor and Treasury to take the percentage up

1 to 50 percent if such an increase is deemed appropriate.

2 Mr. Chairman, as we debate health care reform it is  
3 critical for us to discuss using market-based solutions  
4 that achieve savings by providing individuals rewards for  
5 engaging in healthy behaviors.

6 When you offer financial incentives to individuals,  
7 they will respond. In fact, I believe that people are  
8 more likely to change their behavior if the rewards are  
9 higher. Although I would like to offer an amendment to  
10 increase the existing HIPAA threshold from 20 percent to  
11 50 percent, we have compromised and we are going to offer  
12 this amendment with Senator Carper to increase the  
13 existing threshold from 20 percent to 30 percent and then  
14 give the Secretaries the ability to go higher.

15 Our amendment would strike the employer-sponsored  
16 wellness language in the underlying Chairman's mark and  
17 insert language very similar to the Harkin Amendment.  
18 Our amendment focuses on healthy behaviors, not on  
19 genetics. Let me emphasize that point which is incredibly  
20 very important. We reward healthy behaviors. We do not  
21 penalize people for a genetic problem that they may have  
22 or a disease that they get.

23 Mr. Chairman, many factors are driving up health  
24 care expenditures including of course the unhealthy  
25 behaviors of people. Research shows that risk factors

1       like smoking and obesity contribute to a long list of  
2       chronic health conditions like health disease, cancer,  
3       stroke and diabetes which in turn drive up health  
4       expenditures.

5             Let me show you this chart. This chart shows the  
6       estimated annual direct medical expenditures for smoking  
7       and obesity. According to the Centers for Disease  
8       Control and Prevention, smoking costs this nation more  
9       than \$96 billion per year in medical expenses. Obesity  
10      also poses a serious problem. In fact, a recent study  
11      has estimated that the annual medical cost of obesity has  
12      risen to almost 10 percent of all medical spending and  
13      may be as high as \$147 billion a year.

14            Senator Roberts, you are a very capable assistant.  
15      Vanna White I guess we would call you.

16            Factors such as smoking and obesity contribute to a  
17      long list of chronic health conditions such as heart  
18      disease, cancer, stroke and diabetes which in turn drive  
19      up health expenditures. If I could have the next chart  
20      held up, please.

21            This is really important, Mr. Chairman. About 70  
22      percent of health care costs are driven by behavior. As  
23      you can see from this chart, the incremental medical cost  
24      of a tobacco user is about \$1,400 a year for smokers and  
25      \$1,400 a year for someone who is obese. In other words,

1       it cost \$1,400 a year more to insure somebody and the  
2       health care costs are \$1,400 more for somebody who smokes  
3       or for someone who is obese. Both of them cost about  
4       \$1,400 a year.

5               For somebody with uncontrolled hypertension it is  
6       about \$600 a year. The incremental medical costs for  
7       uncontrolled cholesterol is around \$500 a year. As you  
8       know from our multiple meetings and discussions, I  
9       believe that a key to achieving savings in the health  
10      care systems is to provide rewards to people engaging in  
11      healthy behaviors. Thank you for your assistance.

12             I believe that we need to encourage these types of  
13      incentives in the group and individual markets. We also  
14      need to have these types of incentives in the federal  
15      employee health benefit program, which we are all part  
16      of.

17             Over the past six months, I have talked to multiple  
18      companies about their wellness programs. Throughout this  
19      process, I have learned about a myriad of complex federal  
20      laws and regulations. The most important legal  
21      provisions involve HIPAA which I previously mentioned.

22             Some of my colleagues may not be familiar with this  
23      law. The HIPAA wellness regulations allow group plans to  
24      offer wellness programs if certain requirements are met.  
25      There are strict rules for programs that provide

1 incentives based on participation in a wellness program.

2 In addition, there are rules for programs that  
3 provide incentives based on the achievement of a  
4 particular goal such as meeting a particular body mass  
5 index or a simple way to explain that is height/weight  
6 ratio.

7 Some employers offer incentives for voluntary  
8 participation in wellness programs. Pitney Bowes, for  
9 example, pays \$100 cash rewards to employees who  
10 participate in the company's learn and earn program.  
11 Under this program, employees earn financial incentives  
12 for taking classes covering topics such as weight  
13 management, stress management and emergency preparedness.

14 Other employers like Safeway offer financial  
15 incentives on the basis of voluntarily, let me repeat  
16 that, voluntarily meeting a particular health goal.

17 Under current HIPAA wellness program regulations,  
18 health plans can offer financial rewards to individuals  
19 based on achieving a certain health goal only if five  
20 criteria are met. The most important of these principles  
21 is that the reward is limited to less than 20 percent of  
22 the total cost of the employee's coverage.

23 The reward can come in the form of discounts or  
24 rebates of the premiums and waivers of all or part of any  
25 cost sharing requirements under this plan. If it is

1 "unreasonably difficult" or "medically inadvisable" for a  
2 person to satisfy the particular health goal because of a  
3 medical condition, then that person must be offered a  
4 reasonable alternative or waiver. We keep that  
5 protection in our amendment. Most employers design the  
6 alternative based on the individual's specific situation.

7 Safeway, the large grocery store chain is currently  
8 using the HIPAA wellness regulations to encourage its  
9 employees to adopt healthy behaviors through a voluntary  
10 wellness program. Safeway has found that four chronic  
11 conditions comprise 74 percent of all health care costs.

12 These conditions are smoking, lack of exercise,  
13 obesity, uncontrolled hypertension, uncontrolled  
14 cholesterol. Obviously obesity is a driving factor in  
15 all four of these chronic conditions.

16 To improve employee health and lower costs, Safeway  
17 provides its employees with discounts of \$260 for  
18 participating in a voluntary health assessment. The  
19 company also provides up to \$780 in discounts on health  
20 insurance premiums for achieving certain health goals.

21 Under a voluntary program called Healthy Measures,  
22 Safeway rewards its employees for achieving certain goals  
23 related to smoking, obesity, blood pressure and  
24 cholesterol. Employees who choose to participate in  
25 Healthy Measures program can receive discounts on the

1 premiums of up to \$6 a week or \$312 a year for achieving  
2 a certain body mass index that is less than 30 or meeting  
3 a certain waist measurement.

4 They can also receive discounts of about \$300 a year  
5 for not using tobacco products. On top of that, employees  
6 can receive discounts for meeting certain blood pressure  
7 and cholesterol levels. You see, they do not penalize  
8 people for having high cholesterol or having high blood  
9 pressure. The company rewards employees if they keep  
10 levels controlled with medication.

11 As a result of these changes, Safeway's health costs  
12 have been flat while most American companies costs have  
13 increased nearly 40 percent over the same four-year  
14 period of time. In fact, according to a company  
15 executive, Safeway's health care costs will even go down  
16 a bit this year.

17 The way Safeway has done is through wellness and  
18 prevention. To assist employees in meeting their health  
19 goals, Safeway provides free on-site fitness centers,  
20 deeply discounted gym memberships, subsidized healthy  
21 meals in the company cafeteria, free smoking cessation  
22 tools and other on-site wellness programs.

23 Safeway has learned that when consumers bear more  
24 responsibility for the true cost of covering employees  
25 who do not take responsibility for their own health, they

1 are motivated to change. This results in improved health  
2 for the employee, higher productivity, and lower health  
3 care costs both for the employee and for the employer.

4 Today, however, Safeway is constrained by current  
5 laws. The company would like to do more. Because  
6 Safeway offers rewards, it is only able to discount up to  
7 20 percent of their policies; they would like to provide  
8 greater discounts in order to change behavior even more  
9 dramatically. In other words, Safeway would like to do  
10 more in order to get more people to stop smoking and to  
11 get more people to lose weight.

12 Mr. Chairman, comprehensive health care reform  
13 legislation needs to raise the federal HIPAA limits so  
14 that incentives can better match the true incremental  
15 benefit of not engaging in unhealthy behaviors.

16 I appreciate the work that Senator Harkin has done  
17 to incentivize healthy behaviors. That is why I believe  
18 that this committee should codify the HIPAA wellness  
19 regulations and increase the existing 20 percent HIPAA  
20 limit to 30 percent and allow the Secretaries of Health,  
21 Labor and Treasury at their discretion to take the  
22 percentage up to 50 percent.

23 The Ensign/Carper amendment does just that. The  
24 amendment provides protections to plan participants who  
25 cannot meet the applicable standard due to a medical

1 condition or because it is medically inadvisable to do  
2 it.

3 Specifically, if it is unreasonably difficult to do  
4 due to medical standard or medically inadvisable to  
5 attempt to meet the otherwise applicable standard, then  
6 that person must be offered a reasonable alternative  
7 standard or a waiver and still be entitled to receive the  
8 reward.

9 This amendment also allows carriers to participate  
10 in the FEHPB program to reward individuals for engaging  
11 healthy behaviors. It also creates a 10-state pilot  
12 program to encourage those who obtain health insurance in  
13 the individual market to adopt healthy behaviors.

14 Mr. Chairman, we need to encourage the use of  
15 incentives in this health care reform bill in order to  
16 motivate people to adopt healthy behaviors. I encourage  
17 my colleagues to support this amendment.

18 Just to close, Mr. Chairman. We know that the more  
19 we pay for things, the more we are going to get. So we  
20 basically need to pay for healthy behaviors. We know if  
21 we can change the behavior related to obesity and to  
22 smoking, there will be dramatic cost savings to this  
23 country. Unfortunately, CBO's models do not show the  
24 savings because they are not capable in the modeling to  
25 show.

1           But by common sense, we know that if we change those  
2 two things in America, we can dramatically change the  
3 cost curve in health care spending in this country and we  
4 also know that obesity in our children is an epidemic.

5           As a matter of fact, 42 percent of Americans today  
6 are obese. Let me repeat that: 42 percent of Americans  
7 today are obese. And, Type II diabetes, which is not  
8 insulin dependent, this is the type that is mostly  
9 behaviorally caused, it is not always, but mostly  
10 behaviorally caused is epidemic in this country and it is  
11 going to get worse in the future as our kids age.

12           So we need to tackle this issue, and we need to  
13 tackle it now. We need to applaud companies like Safeway  
14 and others who are engaging in efforts to encourage  
15 healthy behaviors. We need to talk about these examples,  
16 and we need to encourage other companies to engage in  
17 these types of activities so that we can change behaviors  
18 in the United States.

19           Senator Kerry.    Would the Senator yield for a  
20 question?

21           Senator Ensign.    Sure. I would be happy to yield.

22           Senator Kerry.    Well, obviously we want to  
23 encourage wellness and I understand that under HIPAA  
24 process, the wellness regulations are divided into two  
25 categories.

1           The first category includes gym memberships, waiving  
2           co payments for parental care, et cetera. There is no  
3           automatic kind of permissibility. We are talking about  
4           the discretionary component of achieving a goal.

5           My concern is, and I do not necessarily have the  
6           answer, but I am very concerned about it. You have got  
7           this fixed amount of money that is going in to support  
8           the universe of a certain group of people within a health  
9           care plan. The fees for those premiums are set according  
10          to the ability to pay that universe. If you start doing  
11          anywhere from 30 up to 50 percent rebates because  
12          somebody achieves a healthy outcome, aren't you then  
13          asking the sicker people to subsidize the healthy people  
14          in the long run?

15          Senator Ensign. I would say you would be correct  
16          if you were looking at this as healthy behaviors not  
17          saving money.

18          You saw the chart. It costs \$1,400 a year more to  
19          insure a smoker than a non smoker. In other words, if  
20          you can get somebody to quit smoking, it costs less money  
21          so there is, to insure the non smoker, so there is more  
22          money in the pot.

23          Senator Kerry. I understand that.

24          Senator Ensign. You do not have to penalize the  
25          smoker, but can reward the non smoker.

1           Senator Kerry.    I understand, Senator.    Again, I  
2    think the principle of encouraging healthy behavior is  
3    good.    I am just trying to avoid negative and unintended  
4    consequences.

5           I think that some companies that I have met, I think  
6    we had them in the course of some of our testimony.    One  
7    company chose to pay people \$50 for each pound that they  
8    lost.    In effect, I think they wound up with tens of  
9    thousands of pounds lost company-wide.    It was very  
10   remarkable.

11           But by doing that, they changed their global  
12   arrangement in what they negotiated for a price and were  
13   able to save money for the whole universe.    When you  
14   start picking people off on an individual basis of  
15   reducing their premium individually, you do not adjust  
16   for what else may be happening within that universe and  
17   then other people are picking up the overall costs.

18           Senator Ensign.    Well, except that if you are  
19   saving, let us just say that you had 100 people and 25  
20   people decided to get healthier and it lowered the amount  
21   of money that you had to spend for those 100 people.    Not  
22   all 100 should benefit in that.    Only the 25 that made  
23   the difference should benefit in that.    That is fairness.

24           I mean, if the 25 are the ones who are changing  
25   their behavior and that is the reason you have to spend

1 less, they should be the ones rewarded, not the people  
2 who did not change their behavior. We should reward the  
3 ones who do change and that is what this amendment goes  
4 after.

5 That is why Senator Harkin I think - right wing  
6 conservative saw the wisdom.

7 Senator Kerry. Let me give you an example. In  
8 many instances you can have people who change their  
9 behavior and for that particular outcome of changing  
10 behavior they get the benefit of a reduction in their  
11 premium and then they get a different kind of sickness  
12 and they are paying a lesser premium but they are getting  
13 the care. Now who pays for that? People are not  
14 necessarily only going to sick because they are obese or  
15 they smoke or whatever. They have many other issues.

16 Senator Ensign. We do not penalize for having a  
17 disease or genetic problem. We reward people for good  
18 behavior.

19 Senator Kerry. Why not encourage the companies to  
20 reward them or the --

21 Senator Ensign. That is what we are doing. We are  
22 encouraging companies to provide rewards for healthy  
23 behaviors. Under this amendment, both the company  
24 benefits and the employee benefits. You see, the company  
25 is going to save money because they share in this. They

1 share in the benefit.

2 If you can get somebody to quit smoking and it costs  
3 \$1,400 a year less to insure a non smoker versus a  
4 smoker, then, and you are only discounting a percentage  
5 of the premium, that is why Safeway has been able to save  
6 money on what they spend and their employees have been  
7 incentivized.

8 By the way, these are all voluntary programs. So  
9 nobody forced a single employee, a single Safeway  
10 employee to participate in any of these programs, but yet  
11 a lot of their employees are signing up.

12 Senator Carper. Mr. Chairman?

13 Senator Kerry. I am just told that under the  
14 Safeway plan those who score the lowest pay 51 percent  
15 more for health insurance premiums than those who score  
16 perfectly.

17 Senator Ensign. They start here, and so yes. If  
18 somebody gets discounted, okay, but if you are just  
19 starting here and you are providing the incentives, the  
20 incentives through the health care premium, yes, they  
21 paid the same as what they were paying if they did not  
22 engage in healthy behaviors. But the people who did  
23 engage in healthy behaviors got a lower premium.

24 Senator Kerry. What do you say to those who  
25 suggest that a large disparity in premiums becomes a

1 proxy for medical underwriting and encourages a 50  
2 percent differential in a premium. You encourage people  
3 who do not participate in the wellness program to  
4 actually opt out of the employer based insurance.

5 The discount then becomes a vehicle for risk  
6 selection. You wind up removing employees who have  
7 problems participating from the employee's pool.

8 There is a cost shifting that occurs here. I am  
9 just inquiring truly. I do not know. But these are  
10 issues that have been raised.

11 Senator Ensign. Let me turn this question over to  
12 Senator Carper. I believe that Senator Carper wants to  
13 answer this question.

14 Senator Carper. First of all, CBO has done an  
15 analysis to see what kind of diversion there is to the  
16 kind of concerns that you are raising that actually  
17 occurred at Safeway or the other companies that are doing  
18 this. We have asked them to consider whether we can  
19 anticipate through our amendment the kind of concerns  
20 that you have raised. They have said that is not a  
21 concern. We have not analyzed it or considered it. So  
22 that is not a concern.

23 Speaker. That is CBO?

24 Senator Carper. I just want to go back. We have  
25 done any number of things in this legislature, smart

1 things to bend the cost curve. We have, among other  
2 things that we have done, we have said let us create  
3 these purchasing pools to enable people to do what we do  
4 through the FEHBP program.

5 We have said let us move away from fee for service  
6 and let us try to emulate the Mayo's and the Cleveland  
7 Clinics as they deliver health care in a smarter way. We  
8 said that we are -- information technology and make sure  
9 more people have the electronic health records, all kinds  
10 of smart things that we have done.

11 But if you look at the legislation that we have done  
12 and I am proud of what we have done so far. If you look  
13 at it, we have not done a whole heck of a lot with  
14 respect to saying to individuals that we have some  
15 responsibility here too to do a better job of taking care  
16 of ourselves.

17 We all have car insurance. This summer our boys  
18 came home. We had an extra car at our house and they  
19 went back to school a month ago and we sold one of the  
20 cars. I got a statement from my insurance company and it  
21 said here is your interest bill because you sold one of  
22 your cars. I actually took the time to do something I do  
23 not think I have ever really done before and I looked  
24 through my insurance statement at all the discounts that  
25 we earned.

1           We received discounts for safe drivers, we received  
2 discounts for smart student discounts, we received  
3 discounts for not running traffic lights and not getting  
4 into accidents. We received discounts for all kinds of  
5 things that incentivize us to do those things.

6           Meanwhile, we do not get discounts through FEHBP if  
7 we stop smoking. We do not get discounts through FEHBP  
8 if we lose weight, control our overweight or obesity. We  
9 do not get discounts through FEHBP for controlling our  
10 cholesterol or reducing hypertension. But we know that  
11 if we actually control those things, we would  
12 dramatically reduce our cost, what we are paying for  
13 ourselves for our coverage and what the taxpayers and  
14 employers are paying.

15           I would like for us to be able to get those kinds of  
16 discounts for federal employees and retirees and our  
17 dependents. Frankly the kind of stuff that they are  
18 getting at Safeway, that they are doing at Pitney Bowes,  
19 that they are doing at Delta, that they are doing at  
20 Johnson and Johnson to reduce their health care costs and  
21 get better outcomes.

22           John said it. He went through the kind of discounts  
23 they offer at Safeway. They offer, a person can get a  
24 discount on their premium of about \$300 a year by  
25 stopping smoking. We know empirically that the reduction

1 in costs that are incurred by stopping smoking is  
2 something like \$1,400 a year, yet they can only offer a  
3 discount for \$300 a year.

4 One of the reasons why we want to go up above the 20  
5 percent to 30 percent is so that the discount, the  
6 premium discount is more reflective of the reduction in  
7 cost that has occurred because of the change in behavior.

8 I am not interested at putting anybody at a  
9 disadvantage. If folks are unable to voluntarily  
10 participate in these programs, fine, they do not have to.  
11 It is something they do voluntarily. If they cannot  
12 participate at Safeway, for example, they say go to the  
13 doctor, have the doctor present the reason why you cannot  
14 participate, that works. I think we ought to provide  
15 that kind of safeguard and we do in this case as well.

16 This is a good amendment. This is a very good  
17 amendment. I am excited to offer it with Senator Ensign.

18 You know we haven't had a whole lot of bipartisan  
19 amendments that have been offered in the last day or two  
20 or three. This is a bipartisan amendment and it is one  
21 that is designed to bend the cost curve, it is going to  
22 bend the cost curve in a way that I think is responsible,  
23 but some ownness on the individual. Rewards incentivize  
24 good behavior.

25 To the extent that people do the right thing for

1 themselves, they lower their cost, they lower their  
2 health insurance costs really for the other people, too  
3 in the program. Think about it. If somebody gets  
4 rewarded \$300 in their premium, a \$300 discount, they  
5 have reduced, by stopping smoking they have reduced the  
6 cost for the plan by \$1,400.

7 They say a rising tide lifts all boats. In this  
8 case, everybody in that plan benefits from that person  
9 having stopped smoking.

10 Senator Grassley. Mr. Chairman?

11 The Chairman. Senator Grassley?

12 Senator Grassley. I'm surely glad that an  
13 amendment like this one is put forth because there is  
14 nothing to help America save more on health care than  
15 better prevention and wellness.

16 While the mark and the modification of the mark make  
17 some modest improvements in prevention and wellness,  
18 there is more that can and should be done to promote  
19 healthy behavior. In order to promote healthy  
20 lifestyles, a number of employers have initiated healthy  
21 behavior wellness programs. So I am happy to tell you  
22 about John Deere as an example, one of the largest  
23 employers in Iowa has a program called Healthy Directions  
24 that promotes prevention by offering wellness programs,  
25 tobacco cessation and weight management.

1           No cost health coaching is available. John Deere  
2 employees are encouraged to participate in these risk  
3 assessments to identify and manage their health risks and  
4 can lower their premiums through participation. The good  
5 efforts of John Deere are not unique. According to one  
6 of my Iowa constituents supporting the Ensign/Carper  
7 amendment, thousands of employers in Iowa and across the  
8 country offer work site wellness programs for their  
9 employees.

10           The programs offered include awareness, education  
11 and behavior change. Additional efforts include  
12 providing health risk assessment, biometric screenings,  
13 education on managing stress, weight and physical  
14 activity, as well as smoking cessation and medical self  
15 care and disease management. Iowa employers use a  
16 variety of methods to educate and motivate employees to  
17 change behavior including workshops, newsletters, health  
18 fairs, group classes, individual health coaching, online  
19 tools and work site based incentive challenges.

20           Iowa employers also do a great job of encouraging  
21 employees to participate and make these changes in health  
22 style. Those incentives have a variety of incentives  
23 that bring people to that.

24           Tomorrow, 12 Iowa companies will be recognized in  
25 excellence in the work site health promotion following

1 the annual conference on work site wellness, an event  
2 that over 200 companies will attend. We should be very  
3 proud of companies who do this and so I am for Iowa  
4 companies. Unfortunately the Iowa innovators are  
5 frustrated by certain federal laws and regulations that  
6 make it difficult to implement really effective programs.

7 We should make it easier for employers and insurers  
8 in the individual market to do the right thing. That is  
9 what the Ensign/Carper amendment accomplishes. This is  
10 common sense bipartisan and it will result in a healthier  
11 population and more productive workforce. So I hope it  
12 will pass unanimously.

13 The Chairman. Any further discussion?

14 Senator Enzi. Mr. Chairman?

15 The Chairman. Senator Enzi?

16 Senator Enzi. Thank you, Mr. Chairman. I still I  
17 am sitting in an invisible zone. I too want to thank  
18 Senators Ensign and Carper for working on this amendment.  
19 It does reflect a lot of common sense at promoting  
20 healthy behaviors which I know will lower costs. I know  
21 incentives work. I want to thank Safeway and Mr. Burg  
22 for the time that he spent speaking to both the Democrats  
23 and the Republicans about the way that he was able to  
24 control health care costs through this incentive process.  
25 I think it is good that they brought it to us.

1           We did work on this in the Health, Education, Labor  
2           and Pensions Committee again in a bipartisan way. I was  
3           pleased that Senators Harkin and Dodd and Greg and  
4           Alexander got together with me and we made only a handful  
5           of amendments and it had both Republican and Democrat  
6           support.

7           I can tell you in the Health, Education, Labor and  
8           Pensions Committee that was not the rule, that was  
9           definitely the exception. This is one of the few. It  
10          passed unanimously. Of course there was a lot of work  
11          that went into it, but it did pass unanimously.  
12          Unfortunately sometimes unanimous does not mean anything.

13          Between the time the bill was voted out of the Help  
14          Committee which was July 15<sup>th</sup> and the time that it was  
15          reported out which was September 17<sup>th</sup>, the language again  
16          laterally changed.

17          My colleagues were never consulted and the  
18          democratic majority staff removed that. Never notified  
19          us of it. We had to discover that on our own. I think  
20          that is an outrage anytime that a member or a democrat  
21          thinks they have negotiated a deal on a health care bill  
22          and looks carefully at what happened here, they are going  
23          to be upset. I do not think that is the way the Senate  
24          is supposed to work, so I hope that it gets into this  
25          bill so that it will be considered when it is going into

1 a merged bill since it was adopted unanimously there. I  
2 would hope it would be unanimously adopted here.

3 An excellent amendment. It does not penalize  
4 anybody. It helps at least level costs, probably cut  
5 them significantly and winds up with a healthier bunch of  
6 people. Healthier, happier, more productive bunch is  
7 what Safeway has found with it. So I would hope that we  
8 could put in this amendment that assures that there can  
9 be 30 percent flexibility and then the Secretary going to  
10 up to 50 percent. It would be nice when that person  
11 saves \$1,400 for the company and they get \$700 worth of  
12 benefit, not \$300 worth of benefit. Thank you.

13 Senator Ensign. If nobody else would like to  
14 speak, then I would like to make just a couple of closing  
15 comments.

16 The Chairman. I might say a word or two actually.

17 Senator Ensign. Okay. Go ahead.

18 The Chairman. Thank you. This kind of reminds me  
19 of a paraphrase -- which is nothing is as good as it  
20 seems and nothing is as bad as it seems. This has a lot  
21 of service appeal. We all talk about wellness. That is  
22 sort of the issue of the year and health care reform is  
23 wellness prevention. Clearly that is true.

24 I think to be honest, some of the thinking around  
25 this is not as rigorous as it probably should be. For

1 example, one thing that comes to my mind off the top is  
2 that the premium discounts almost by definition are going  
3 to raise the premiums for others who do not participate.

4 Those people that do not participate may not  
5 participate for many reasons. I know that the attempt  
6 here is to say that those who do not want to participate,  
7 if they get a certification from their doctor or  
8 something that they cannot or whatnot that they do not  
9 have to and also they get the same premium discount even  
10 though they cannot. I understand that is what is  
11 provided for in this amendment.

12 Well, off the top I wonder if the premium discount  
13 could be up to 50 percent and say 23 percent of the  
14 people participate. That is a big discount. Other folks  
15 cannot, they get the discount, too. Or they do not for  
16 whatever reason.

17 What is left of the policy? It seems like  
18 potentially it is kind of a hollowing out here. After  
19 that, we do in the bill recodify the 20 percent discount  
20 and that is a pretty significant discount to allow that  
21 to be increased to 30 percent, that is pretty hefty.  
22 That is getting close to \$1,000 per person.

23 Then again, if somebody cannot participate, let us  
24 say it is a working mom. Let us say it is a person that  
25 has two jobs. It is not that the person cannot

1 participate because, not because of medical conditions  
2 but because of circumstances. I do not know if it is  
3 fair to discriminate against those people.

4 It also applies to the individual market. Frankly  
5 what we are trying to do here is reduce discrimination of  
6 the individual market. That is prevent companies from  
7 denying health insurance based on health status. This is  
8 the inverse of that. This basically says that based on  
9 health status we are going to give you a break or  
10 penalize those people who cannot participate.

11 I am not saying that they cannot just because of  
12 medical condition. They cannot based on circumstance.  
13 Fifty percent sounds pretty hefty to me. And after that  
14 there is no, I mean, a lot of health care experts say  
15 yes, this is what we should do, yes chronic care accounts  
16 for, chronic disease accounts for maybe 70, 80 percent of  
17 our health care dollars that is true I guess. The  
18 experts say it so many times so it must be true. That is  
19 smoking, it is obesity, it is cardiac issues and similar.  
20 That is true.

21 But when I ask people like at the Walmart, somebody  
22 is pretty excited about what is going on at Walmart. I  
23 say, what works? Why does it work in your store? They  
24 claim it works. The answer I got was it was partly  
25 financial incentives. But everything else is cultural.

1 Just the cultural ethic of that store.

2 So if companies do work to get that cultural ethic,  
3 that is great. But if I am in the individual market and  
4 I go to my insurance policy and the policy starts to  
5 reward based on health care status in a sense, it just  
6 seems to me that that is a little strange.

7 So I just think there is a lot here. I will start  
8 where I left which is certainly we should encourage  
9 wellness. There is no doubt about it. I know that  
10 everybody talks about Safeway. My gosh, Steve Bird I  
11 think is going for President of the United States. He  
12 has seen every Senator many, many times. And Pitney  
13 Bowes, too. Everybody loves Pitney Bowes. We all love  
14 Pitney Bowes, Safety and so forth. But that is those  
15 stores.

16 A lot of Safeway savings, and I do not know if they  
17 have been fully documented either. Steve Bird is a good  
18 salesman. He is a very good salesman and I am sure that  
19 is probably why Safeway does so well.

20 I frankly -- on this because it has such appeal. We  
21 certainly want to encourage wellness. We want to send a  
22 signal to encourage wellness and prevention. But there  
23 are a lot of issues that I do not think this amendment  
24 has fully addressed.

25 Senator Ensign. May I close?

1           The Chairman.    Sure.

2           Senator Ensign.   Thank you.   First, we have to ask  
3 ourselves a question.   Why would the CEO of a company  
4 like Safeway spend so much time on this important issue?

5           How would they benefit?   Why would they benefit from  
6 doing this kind of a program and wanting us to enact  
7 something like this for the rest of the country that  
8 would encourage larger rewards?

9           I asked that question to Steve Burd.   His answer was  
10 that it surprised him that his company was able to save  
11 so much money and change so many people's behavior based  
12 on these financial rewards and knowing that they did this  
13 to save their company because health care costs were  
14 going to destroy their company.   So he wanted to share  
15 his company's story with the rest of the country.   He is  
16 doing this basically as an American.   By the way, I hope  
17 Steve Burd does not mind me sharing this story, but his  
18 wife is a Type I diabetic.   She has never been to the  
19 hospital because she really takes care of herself and  
20 manages her diabetes.

21           We are not penalizing somebody like that.   Most of  
22 Steve Burd's relatives died in their 40s due to heart  
23 disease.   That is a genetic problem due to heart disease.

24           That is a genetic problem that he has.   Steve Burd takes  
25 personal responsibility for his own health by making sure

1 that he eats right, exercises, and takes care of himself.

2 We have all seen Steve, he is in great health.

3 So Steve wants to change the culture as far as  
4 health is concerned at Safeway, but he also wants to  
5 share his story and encourage other companies and other  
6 individuals in the rest of the country because he saw  
7 what was happening at Safeway with their health care  
8 costs skyrocketing. He has seen the results that they  
9 have had.

10 Let me emphasize a couple of other points. The HELP  
11 Committee language, as Senator Enzi described, was  
12 bipartisan and unanimous. The HELP Committee language is  
13 basically what we are trying to do here. We do not take  
14 the HIPAA threshold to 50 percent right away. We take it  
15 to 30 percent and then it is at the discretion of the  
16 Secretaries to take it to 50 percent if they think it is  
17 appropriate.

18 Lastly, we do not penalize somebody for a health  
19 condition. This cannot be emphasized enough. We do not  
20 penalize individuals for their health status. We do not  
21 penalize somebody for having high cholesterol. We reward  
22 them for keeping their cholesterol under control.

23 By the way, if it is medically unadvisable for them  
24 to do any of these things, we protect them in the legal  
25 language of the amendment. The language indicates that

1 if it is unreasonably difficult or medically inadvisable  
2 for a person to satisfy the particular health goal  
3 because of a medical condition, then that person must be  
4 offered a reasonable alternative or a waiver.

5 So Mr. Chairman, I think we have put the needed  
6 protections into the amendment. If we really care about  
7 wellness and encouraging and incentivizing healthy  
8 behaviors, then we will adopt this amendment in a  
9 bipartisan fashion. If we really do mean that we want to  
10 do a bipartisan bill, there is no better way to at least  
11 adopt a few bipartisan amendments. Thank you, Mr.  
12 Chairman.

13 Senator Carper. Mr. Chairman?

14 The Chairman. I might say I agree with the concept  
15 and I am going to vote for it. I think it has, it needs  
16 a little cleaning up frankly and a little of the cleaning  
17 up a little later. But I intend to vote for it. Senator  
18 Carper?

19 Senator Carper. First of all, I want to say thank  
20 you. Senator Ensign kind of preaches to the choir  
21 because probably nobody is more fit here than I suspect  
22 you are. You are a guy who runs 50 mile races and that  
23 sort of thing. So we understand that you and others in  
24 our colleagues know the value of fitness.

25 When people say to me, we -- encourage Senator

1 Carper that what you are doing in this bill will actually  
2 bend the cost curve? I believe there is a number of  
3 things that are in the bill that actually do  
4 significantly help to bend the cost curve, to reign in  
5 the growth of the health care costs.

6 There are a couple of things that are not really in  
7 the bill that I find encouraging as well. One of those  
8 grows out of a conversation that I had at the Cleveland  
9 Clinic about three weeks ago when I said to the folks at  
10 Cleveland Clinic, I said, you know, when people are  
11 graduating from medical school these days and trying to  
12 decide what kind of practice to go into, an individual  
13 practice or small group practice or maybe practice with  
14 the Cleveland Clinic or Gisinger or May Clinic. How do  
15 those young docs do it? Where do they want to end up?

16 I was very encouraged by their response. They said  
17 you know, they want to practice in a practice like this.  
18 They do not want to have to worry about the insurance  
19 forms, they do not want to have to worry about putting up  
20 with Medicare and Medicaid, they do not want to have to  
21 worry about the malpractice. They want to be in a  
22 practice like this.

23 The other thing that I find encouraging about  
24 bending the cost curve is frankly the stuff that is going  
25 on is not just at Safeway, it is not just at Pitney

1 Bowes, it is not just at Johnson and Johnson. It is not  
2 just at Delta. There are a bunch of employers, private  
3 sector employers who are doing smart things to  
4 incentivize their employees to take better care of  
5 themselves, to help them live longer and healthier lives  
6 but also to help reduce health care costs of those  
7 employers.

8 I am very much encouraged by what I see and I want  
9 to encourage more than that. One minute and I am done.  
10 Think about the number of times that we have had people  
11 say to us, I know I should stop smoking. I have tried to  
12 do it before but I always go back. I know I should stick  
13 to my diet, I just cannot stick to my diet. I know I  
14 should do that but I just keep -- I have a gym  
15 membership. I stopped going. I know I should. I know I  
16 should walk.

17 I know I should do all those things, but they do not  
18 do it. We want to make sure that they have a good  
19 financial incentive, an economic incentive. Not only  
20 should you start those things, but you should stick to  
21 them. I am convinced that we have the ability here to  
22 make sure that that happens.

23 The Chairman. The clerk will call the role.

24 The Clerk. Mr. Rockefeller?

25 The Chairman. No by proxy.

1           The Clerk.    Mr. Conrad?  
2           Senator Conrad.   Aye.  
3           The Clerk.    Mr. Bingaman?  
4           Senator Bingaman.   Aye.  
5           The Clerk.    Mr. Kerry?  
6           Senator Kerry.    Aye.  
7           The Clerk.    Mrs. Lincoln?  
8           Senator Lincoln.   Aye.  
9           The Clerk.    Mr. Wyden?  
10          The Chairman.   Pass.  
11          The Clerk.    Mr. Schumer?  
12          The Chairman.   No by proxy.  
13          The Clerk.    Ms. Stabenow?  
14          Senator Stabenow.   Aye.  
15          The Clerk.    Ms. Cantwell?  
16          Senator Cantwell.   Aye.  
17          The Clerk.    Mr. Nelson?  
18          Senator Nelson.    No.  
19          The Clerk.    Mr. Menendez?  
20          The Chairman.   Pass.  
21          The Clerk.    Mr. Carper?  
22          Senator Carper.    Aye.  
23          The Clerk.    Mr. Grassley?  
24          Senator Grassley.   Aye.  
25          The Clerk.    Mr. Hatch?

1 Senator Hatch. Aye.  
2 The Clerk. Ms. Snowe?  
3 Senator Snowe. Aye.  
4 The Clerk. Mr. Kyl?  
5 Senator Kyl. Aye.  
6 The Clerk. Mr. Bunning?  
7 Senator Bunning. Aye.  
8 The Clerk. Mr. Crapo?  
9 Senator Crapo. Aye.  
10 The Clerk. Mr. Roberts?  
11 Senator Roberts. Aye.  
12 The Clerk. Mr. Ensign?  
13 Senator Ensign. Aye.  
14 The Clerk. Mr. Enzi?  
15 Senator Enzi. Aye.  
16 The Clerk. Mr. Cornyn?  
17 Senator Cornyn. Aye.  
18 The Clerk. Mr. Chairman?  
19 The Chairman. Aye.  
20 The Clerk. Mr. Conrad?  
21 Senator Conrad. Aye.  
22 The Chairman. Senator Menendez is no by proxy.  
23 The Clerk. Mr. Wyden?  
24 Senator Wyden. Aye.  
25 The Clerk. Mr. Chairman, the final tally is 18

1 ayes, four nays and one pass.

2 The Chairman. The amendment carries.

3 Senator Kyl. Mr. Chairman? May I just take one  
4 moment to thank both Senator Carper and Senator Ensign  
5 for their leadership on this. I did not dare speak up  
6 for it during the debate. It did not want to jeopardize  
7 its passage. But I do compliment you.

8 Senator Conrad. Mr. Chairman, can I change my  
9 vote?

10 Senator Kyl. It is a testament to a lot of hard  
11 work. I know I do not know for sure about Senator  
12 Carper, but I know Senator Ensign has been working on  
13 this a long, long time and I really appreciate his  
14 leadership on this.

15 The Chairman. Senator Stabenow?

16 Senator Stabenow. Thank you, Mr. Chairman. I do  
17 have an amendment. This is a modified Amendment D6 that  
18 would ask, would direct the Secretary of Health and Human  
19 Services to convene a working group of experts in  
20 emergency care, in-patient crucial care, hospital  
21 operations, to focus on issues around emergency room  
22 care.

23 Mr. Chairman, I have raised what seems like a long  
24 time ago, I think last week concerns about what is  
25 happening in our emergency rooms and the fact that our

1 emergency room doctors are in fact in many cases our  
2 primary care doctors right now. I would like very much  
3 to see us address that as it relates to payment  
4 incentives for emergency room physicians.

5 This amendment does not do that, but it does do  
6 something else which is very important which is to focus  
7 on what we know to be critical issues about patient  
8 access and it would set up a working group to recommend  
9 guidelines to ensure patient access to emergency rooms.

10 In fact, the Chairman commissioned a GAO report that  
11 was released in June that found that patients in need of  
12 immediate care, someone that needed care between one  
13 minute and 14 minutes actually waited twice as long as  
14 that, up to 28 minutes and 75 percent of the time people  
15 had to wait longer than the recommended time for  
16 emergency room care.

17 The report cited a lack of in-patient beds as the  
18 largest contributor to overcrowded emergency rooms,  
19 inadequate access to primary care was also a contributing  
20 factor. So it is important that we look at and develop  
21 recommendations, how to address overcrowding, what is  
22 called boarding, that threatens to overwhelm our  
23 emergency rooms.

24 We know in the long run that what we are doing here  
25 will affect emergency rooms so that fewer people are

1 using emergency rooms for primary care doctors, but it is  
2 going to be a few years before we see a change in that.  
3 In Massachusetts, they found that in fact just focusing  
4 on insurance alone did not resolve the problems related  
5 to emergency rooms, they needed to focus on what should  
6 be done in terms of various guidelines and procedures.

7 So this simply sets up a working group. There is no  
8 cost, Mr. Chairman.

9 The Chairman. I am prepared to accept the  
10 amendment.

11 Senator Stabenow. Thank you.

12 The Chairman. Without objection, it is agreed to.

13 Senator Cornyn. Mr. Chairman?

14 The Chairman. Senator Cornyn first sought  
15 recognition.

16 Senator Cornyn. Mr. Chairman, I would like to call  
17 up Amendment C22.

18 The Chairman. C22.

19 Senator Cornyn. Mr. Chairman, there has been a lot  
20 of discussion about personal responsibility on the part  
21 of individuals to see that they are covered and we have  
22 heard of course from Senator Carper and Senator Ensign  
23 about the importance of personal responsibility and  
24 taking care of yourself and hopefully reducing the costly  
25 impact of chronic diseases and the like.

1           This amendment makes sure that this principle of  
2           personal responsibility applies to every American  
3           including those who are on Medicaid. I have shamelessly  
4           borrowed from West Virginia provisions which have been  
5           implemented a few years ago for its Medicaid population.

6           All it did was ask these beneficiaries to receive  
7           public dollars to do things that will keep them healthy.  
8           It reads as follows. Number one, I will do my best to  
9           stay healthy. Number two, I will show up on time when I  
10          have appointments. This is particularly one reason why I  
11          have heard from doctors in Texas why they will not take  
12          Medicaid patients because Medicaid patients do not show  
13          up on time or when their appointments are scheduled. So  
14          this seems like a logical one.

15          I will use the emergency room only for emergencies.  
16          This as we know is a huge issue. It is the least  
17          efficient, most costly means of delivering care. If we  
18          can find ways to encourage Medicaid beneficiaries to seek  
19          clinical care and stay out of the emergency room where  
20          possible, that seems like a good thing.

21          Finally the last two says I have a right to decide  
22          things about my health care and the health care of my  
23          children. Last, I will be treated fairly and with  
24          respect.

25          So I think the promotion of this principle of

1 personal responsibility hopefully is non-controversial,  
2 something we can agree on and I ask my colleagues for  
3 their support.

4 The Chairman. Is there discussion? Senator  
5 Rockefeller? Senator Rockefeller has the floor. I just  
6 recognized Senator Rockefeller.

7 Senator Hatch. Okay.

8 The Chairman. Senator Rockefeller deferred. If  
9 you have a question, Senator. Senator Hatch recognized.

10 Senator Hatch. Yes, I just have a question.  
11 Earlier in the day, I believe it was you who brought up  
12 that the CBO just recognized that it had an \$11 billion  
13 error in its scoring. It was not their fault but it was  
14 clearly something that had to be rechecked and they  
15 rechecked it and it turned out to be a total of \$11  
16 billion.

17 It seems to me and the reason I raise it is because  
18 you are bringing up the amendment and I would just like  
19 to ask you a question or two about it.

20 It seems to me that that is one reason why we really  
21 should go back to the burning amendment of not only  
22 having the language in the bill ultimately but really  
23 make sure we are right on the scoring. That is one  
24 reason why I think maybe, you know, it does not seem like  
25 we are rushing this, but we are rushing this if we don't to

1 have the scoring on these matters.

2 Who knows how much other scoring is going to be off.

3 I just wanted to know if you feel that is really a very  
4 important issue.

5 Senator Cornyn. Well, yes, certainly. We have  
6 seen a number of mistakes on scoring because of the  
7 problems that, as Dr. Elmendorf said that they believe  
8 going at maximum safe speed we have seen an erroneous  
9 score initially on my SGR amendment to do the doc fix.  
10 It was initially scored at \$10 billion more than it  
11 ultimately ended up being scored. This other one  
12 involving the agreement of the American Hospital  
13 Association for a certain price to be excluded from  
14 provisions of the Med Pack on steroids provision where  
15 essentially that entity would not be able to make cuts  
16 that it deems necessary because of this deal.

17 So yes, I am concerned about it and I agree with you  
18 that the Bunning amendment could have gone a long way to  
19 help us fix it.

20 Senator Hatch. Well, what I am concerned about it  
21 is I think members of the committee need to know whether  
22 or not this new analysis will have a negative impact on  
23 long-term spending reductions that I suspect it will.

24 Also there is a \$100 million mistake on the stamina  
25 amendment that was brought up earlier, too. So I think,

1 Mr. Chairman, the reason I raise this is because I know  
2 there is a desire to get through this and get over it.  
3 No one has that desire more than I do.

4 But I just wonder, we are not pushing this to the  
5 point where we are not getting what we ought to get. I  
6 guess we have to finish this process before the CBO can  
7 literally do the scoring for the whole process. I hope  
8 that once we are finished in this mark up, that the  
9 committee will allow the CBO enough time to really score  
10 this doggone thing before it comes up in committee.

11 We need to know what we are voting on. We need to  
12 know what the costs are. Frankly I am really concerned  
13 about it. I have been thinking about this all day. I  
14 think CBO has been under tremendous pressure by all of  
15 us.

16 I think they do a great job. I have a lot of  
17 confidence in Mr. Elmendorf and he is never afraid to  
18 tell us when they think they have not quite got it right.

19 This morning was almost more than I thought could  
20 happen during this process. So I am hoping, Mr.  
21 Chairman, that once we get through this conceptual mark  
22 up, that we will have time to give the CBO enough time to  
23 really look at what we have done and tell us what the  
24 final economics of the matter really are going to be.

25 I do not think we are doing what is right for the

1 population at large and I do not think that we are doing  
2 what is right for ourselves if we do not get that kind of  
3 information.

4 So I wanted to just bring it up while Senator Cornyn  
5 was doing his amendment because he raised it this  
6 morning. I thought it was a very, very important thing.  
7 I said the stamina, the mistake that was made on that was  
8 \$100 million. It is actually \$600. These are not  
9 inconsequential things. I am just very, very concerned  
10 about it and I wonder if my colleagues are as well.

11 The Chairman. Senator, we discussed this many  
12 times. Let me say as I have said many times and in  
13 particularly conversations with the Senator of North  
14 Dakota several times that it is my intention that we will  
15 get a score on this bill before we finally vote on it.

16 It may take a few days once we finally wrap up what  
17 we agree to here, the majority agree to and then send  
18 that to CBO. It might take a few days to get the score  
19 for a final vote, but that is my intention to make sure  
20 we get a score before we have the final vote. Senator  
21 Cornyn?

22 Senator Kyl. Mr. Chairman, might I ask you a  
23 question just on that?

24 The Chairman. Sure.

25 Senator Kyl. You are aware of the new stories on

1 this and I am just wondering. Do you think that there is  
2 any additional legislative amending or change in your  
3 mark that needs to be done to effectuate the policy that  
4 you intended? If not, would the CBO simply, what  
5 assumption would the CBO be using with respect to this so  
6 called carve out so that they could take into effect what  
7 it is that the authors of the mark intended.

8 The Chairman. CBO will score the bill as they read  
9 it, and they will use their objective, neutral, unbiased,  
10 fair, and balanced analysis. They will read the language  
11 and use their fair and balanced--

12 Senator Kyl. And it would be your view that there  
13 is not anything necessary--

14 The Chairman. That is my--

15 Senator Kyl. --by way of amendment to further  
16 clarify--

17 The Chairman. That is correct. That is right.

18 Senator Kyl. --anything that has been raised.

19 The Chairman. Because, otherwise, you go back and  
20 we could--somebody could find some ambiguity someplace,  
21 and we have to do the bill over again. So I think it is  
22 wise to let CBO work with what they have.

23 Senator Hatch. Will it be done on the conceptual  
24 bill, or will it be done on the final draft?

25 The Chairman. Well, it is going to be conceptual

1 first, and then we will have to cross that next bridge  
2 when we get there. As I recall, Dr. Elmendorf at one  
3 point said here--we can get the record to confirm it--  
4 that it will take him 2 weeks to score legislative  
5 language. And I do not know if we have 2 weeks to wait  
6 around.

7 We will give him time, several days, to score this  
8 bill, as we customarily have in the past, although I  
9 might say that we are going to give him more time and  
10 sufficient time to score the--do his preliminary  
11 analysis, and my guess is the scoring based on statutory  
12 language might not be that different. But let us be  
13 honest here, let us be open about all this. We have to  
14 merge the two bills, too, and I think we will be working  
15 on the score while we are merging the bills. But we will  
16 have a vote after CBO scores the modified mark as  
17 amended. As I said, we have 3 days, probably about 3  
18 days. My guess is about 3 days. Then after the 3 days,  
19 we will then have a vote on the bill, once we know the  
20 scoring.

21 Senator Snowe. Mr. Chairman?

22 The Chairman. Senator Snowe?

23 Senator Snowe. Mr. Chairman, based on the story  
24 this morning, the CQ, about this hospital carve-out, is  
25 it clear or not clear? I mean, why was there a question

1 by CBO with respect to that?

2 The Chairman. I do not know. You would have to  
3 ask CBO that question. I do not know.

4 Senator Snowe. But was it clear from our  
5 standpoint? I mean, it is in the language? I mean,  
6 what--has CBO communicated with the Committee on that  
7 question? I mean, I think that is what is important here  
8 because--

9 The Chairman. Not to my knowledge. Not to my  
10 knowledge.

11 Senator Snowe. They did not?

12 The Chairman. Not to my--

13 Senator Snowe. Is there a carve-out or not,  
14 specifically, in the legislation? I mean, I think it is  
15 just a good example and illustrative of the problems that  
16 we could potentially face. And I remember, you know,  
17 this summer between Joint Tax and CBO, we had errors or  
18 miscalculations or underestimations of more than \$70  
19 billion. So I just think it is important that we learn  
20 from this experience in these specific instances.

21 The Chairman. Let me have Ms. Eisinger address  
22 that question.

23 Ms. Eisinger. On this issue, I think there was  
24 ultimately a bit of confusion, which we realized after  
25 the mark was released, which is we had talked to CBO

1 during the day about how to handle this issue, and we  
2 were going back and forth on it. Ultimately, we made the  
3 decision to include language which essentially does  
4 result in a carve-out, which we can talk about that if  
5 need be. But I think CBO was left with the impression  
6 from our conversations that that maybe was not the case  
7 even though the paper that we sent them did clearly  
8 indicate it. And so much after the fact we realized that  
9 maybe their score did or did not reflect it, and from  
10 their perspective they are still looking at it.

11 The Chairman. Let me say my objective is Senators-  
12 -

13 Senator Snowe. I mean, there has got to be clarity  
14 in these policies.

15 The Chairman. That is my intention. I was going  
16 to say, we will work with CBO to achieve that clarity.

17 Senator Snowe. Then will we have the opportunity  
18 as a Committee to respond to some of these issues before  
19 the final vote? Because that is the other question.

20 The Chairman. Yes.

21 Senator Hatch. Well, Mr. Chairman, I have no doubt  
22 you are going to be fair about this, and as far as I am  
23 concerned, you have been totally fair on this process,  
24 and I personally appreciate it. But this is one-sixth of  
25 the American economy. If we do not get it right, then I

1 cannot tell you the repercussions and problems we are  
2 going to have in the future--not we as legislators,  
3 although that would be bad enough, but that the country  
4 is going to have.

5 So, you know, I do not see any reason to overly rush  
6 this, and I agree you have got to--I guess you have to  
7 meld it somehow or other with the HELP bill. I sure hope  
8 that is not the bill that we are going to base this on in  
9 any real sense, having lived through that markup as well.

10 But I think it is really important that we give CBO  
11 enough time to really be able to tell us what is going on  
12 here, and hopefully in a confident manner, so that, you  
13 know, we do not have to keep coming back to it and  
14 revisiting it again and again.

15 This is an important issue, and I think had we  
16 agreed to the Bunning amendment, we would be a lot  
17 farther down the line, and we would have a lot more  
18 confidence in what is going on here. And I know you  
19 intend to do a good job here, but I do not see how you  
20 could expect CBO in one-sixth of the American economy,  
21 with all of the language we have that we have had to  
22 discuss back and forth, and we are just hardly denting  
23 even the conceptual language that you have brought here.

24 We are giving them almost an impossible job if you say  
25 you are just going to give them a few days to be able to

1       come up with some sort of an answer before we vote in  
2       Committee.

3             Senator Conrad.     Mr. Chairman?

4             Senator Hatch.     I am sorry.   Go ahead.

5             The Chairman.     No, no.    I will wait until you  
6       finish, Senator.

7             Senator Hatch.     All right.  Well, I--

8             The Chairman.     Are you finished?

9             Senator Hatch.     Not yet.

10            The Chairman.     Well, I will wait until you finish.

11            Senator Hatch.     I will just take another couple of  
12       sentences.

13            Look, I think CBO has a very, very difficult job.  I  
14       do not think we have been all that helpful to CBO with  
15       some of the things that we voted upon here, both  
16       positively and negatively.  I have a desire to help them  
17       to be able to have every ability they can exercise to get  
18       this job done right.

19            The way I have interpreted what you have said is we  
20       will finish the conceptual markup; they will then score  
21       that in a certain number of days; and then because of the  
22       HELP Committee bill, there will be some work to try and  
23       resolve the conflicts between the two bills.  And then  
24       hopefully they will come up with the final legislative  
25       language, which CBO says will take them at least 2 weeks

1 to--it would be 2 weeks to do this conceptual language.  
2 It may take them 2 weeks or longer to do the final  
3 statutory language.

4 So I just want to make sure I understand this  
5 process, because I am very concerned about it. I think  
6 we are--we can hardly say we are rushing this, but I  
7 think we can be too concerned about not giving enough  
8 time.

9 The Chairman. Wait until Senator Hatch is  
10 finished.

11 Senator Hatch. I am finished.

12 The Chairman. Okay. Actually, Senator, that is  
13 not what I said. I said that when we finished the bill,  
14 we will then give the bill to CBO.

15 Senator Hatch. Right.

16 The Chairman. And then CBO--

17 Senator Hatch. Conceptual bill.

18 The Chairman. Conceptual, preliminary--the  
19 conceptual bill to CBO.

20 Senator Hatch. Right.

21 The Chairman. Which this Committee has done for  
22 more years than anybody--

23 Senator Hatch. I am not griping about that.

24 The Chairman. And I might add, too, this is the  
25 longest markup in 15 years. We will then give the

1 language to CBO. CBO has told me that they need about 3  
2 days. Then they will give us their preliminary score.  
3 We then vote on the bill.

4 Now, it may be that the preliminary score is out of  
5 balance, that it is not deficit neutral over 10 years, as  
6 is required by the budget resolution. If that is the  
7 case, then we are going to have to modify it. We will  
8 need a modifying amendment.

9 To be honest with you, I am not quite certain how  
10 long it will take CBO then to score that. My assumption  
11 is and my hope is that when they tell us we are out of  
12 balance, if we are out of balance--I am doing my best to  
13 make sure we are not in the first place. But if we are  
14 out of balance, my hope is they could tell us not only  
15 that we are, but how and why so that could be remedied  
16 very quickly. They then give us a ruling that we are  
17 deficit neutral.

18 Then we have to merge the bills afterwards, after we  
19 vote. I want to vote on this bill first before there is  
20 any merger, if you will. But in talking to the Leader,  
21 he would like to move this bill after we get a score.  
22 And I talked to him about that just a few hours ago; that  
23 is, he fully expects us to vote after we get the score  
24 from CBO--not before, but after.

25 Senator Hatch. Sure.

1           The Chairman. He, therefore, expects us to vote on  
2 this bill sometime next week. Then he begins the process  
3 of merging the bills together with the HELP Committee,  
4 and to be honest with you, I do not quite know what he  
5 has in mind. I do know that he has been talking to CBO,  
6 and has for some time, to work on a HELP score and also  
7 to try to work with the two committees to get a score on  
8 the bill before it is brought up on the floor of the  
9 Senate.

10           It is my view that we need to have a ruling by the  
11 CBO before we vote on the Finance Committee bill. It is  
12 also my view that we need a CBO ruling before we go to  
13 the floor on the merged bill.

14           That is all I can say at this point. To be candid,  
15 I think--you may not like this, but I just do not think  
16 we can wait around 2 weeks for a score on legislative  
17 language, because if there is a problem later on, we can  
18 always amend it, fix it, and one thing or another. But I  
19 do not expect with the legislative language the score  
20 will be that different than the preliminary score.

21           I want to also say on a more narrow issue, Senator,  
22 that we will work with CBO on the so-called MedPAC  
23 provision to get the scoring savings that we hope to get  
24 with that provision. If it turns out that CBO says,  
25 sorry, we do not get the scores that we want, then we may

1 have to come back with an amendment to try to get the  
2 score that we want to get--that is, the savings that we  
3 want to get in that amendment. But we are somewhat in  
4 the hands of CBO at this point, and we are going to just  
5 do our very best, totally open, totally transparent in  
6 dealing with CBO.

7 Senator Bunning. Mr. Chairman?

8 Senator Conrad. Mr. Chairman?

9 The Chairman. Senator Conrad.

10 Senator Conrad. Mr. Chairman, I have served on  
11 this Committee a lot of years and on the Budget Committee  
12 for my entire time in the Senate, and I know there is a  
13 concern. I have talked to some colleagues on both sides  
14 of the aisle about what happens if there is a discrepancy  
15 between the bill as written in plain English, which is  
16 the way this Committee considers legislation, and the  
17 legislative language, which is to follow. And I was in  
18 conversations with CBO, as was the Chairman, in which  
19 they said--and I think they said here they would need 2  
20 or 3 days once we are done here to provide us a score.  
21 That would be before they take the legislative language  
22 and prepare another score.

23 And the concern that I have picked up from a number  
24 of colleagues is: What if there is a discrepancy between  
25 the bill as written in plain English so all of us can

1 understand it and our constituents can understand it when  
2 it is on the website, and the legislative language? And  
3 my experience has been--and I would ask the Chairman if  
4 it is not his intention--that if there is a discrepancy  
5 between the score on the bill written in plain English,  
6 which is what we would vote on, and the score provided by  
7 CBO, and a subsequent score based on the legislative  
8 language, that if there is a discrepancy, my experience  
9 has always been on this Committee that the Chairman  
10 addresses that in a manager's amendment to recapture the  
11 intention of the Committee when they pass the bill.

12 Is that the Chairman's experience and intention?

13 The Chairman. Absolutely. And, in fact, it is  
14 almost amazing to me how well that has worked and in good  
15 faith. It has always been there. Every Chairman that I  
16 have served under has done that. Republican or Democrat,  
17 it makes no difference, because we have operated  
18 basically on a bipartisan basis in our Committee, and in  
19 good faith and just trust each other. That is exactly  
20 right, Senator. Exactly right. It has always worked  
21 seamlessly. There has never been--and if there is a  
22 little discrepancy, we talk to Senators and work it out.

23 I have never seen anything come close to being  
24 characterized as heavy-handed or as deceitful or a  
25 sleight of hand. Nothing ever. It is always transparent

1 and good faith, and that is what I would intend to do.

2 Senator Hatch. And, Mr. Chairman, if I could just  
3 answer that--

4 The Chairman. I want to call on somebody else  
5 first--

6 Senator Hatch. I just want to praise you.

7 The Chairman. Sorry?

8 Senator Hatch. Could I praise you for a minute? I  
9 just want to say something nice about you. I do not  
10 think anybody would doubt that you will act in total good  
11 faith.

12 The Chairman. I am waiting for the "but."

13 Senator Hatch. No, there is not a "but" here.

14 But-

15 [Laughter.]

16 Senator Hatch. I have no doubt about your good  
17 faith, but the fact of the matter is that there will be a  
18 subsequent bill where you work with the HELP Committee.

19 The Chairman. Yes.

20 Senator Hatch. Which is an entirely different  
21 matter. They do not do it this way. They do it only on,  
22 as I recall, when I was Chairman, a full-scored,  
23 legislative language way. And so you can see why I am  
24 concerned about the process here, how we handled this. I  
25 do not think anybody doubts that you would handle this in

1 a very good-faith manner, and certainly I do not. But I  
2 wanted to raise these procedural issues because they are  
3 tough issues, and will we be given, will the general  
4 public and everybody be given at least 3 days on the  
5 Internet to read it and look at it and see if there are  
6 any mistakes that we can come up with?

7 The Chairman. Well, as I said, when the CBO gives  
8 a score, then we have an opportunity to vote. And we  
9 will not vote--

10 Senator Bunning. Mr. Chairman?

11 The Chairman. My intention is we do not vote on  
12 the bill until we have that CBO score.

13 Senator Hatch. And we have some time to look at it,  
14 too.

15 The Chairman. Senator Bunning.

16 Senator Bunning. Thank you. I just want to bring  
17 to the Chairman's attention that the HELP bill, the H-E-  
18 L-P bill--and I went down and talked with the Ranking  
19 Member--passed the Committee on July 15th with three  
20 titles not in legislative language and no score.

21 The bill was sent to the floor of the U.S. Senate on  
22 September 17th with legislative language and still no  
23 full score. So they never got a final score prior to  
24 voting on the bill.

25 I just want to make sure that this Committee does

1 not try to do that, and then after its final passage the  
2 merger of the two bills--we cannot have one conceptual  
3 and one in legislative language to get a final score on a  
4 merged bill. So what is the Chairman's intention at that  
5 time?

6 The Chairman. Well, first of all, we can only  
7 control what we can control. There are certain matters  
8 we cannot control. What can we control a little better?

9 Well, we can control to some degree--and hopefully  
10 entirely--our Committee. It is difficult to control  
11 other committees. And we will do our very best, as I  
12 have said, to get the score--we will get a score from  
13 CBO. We are not going to vote on the final bill until we  
14 get that score from CBO.

15 Then the next step, as you said, is to merge this  
16 bill with the HELP Committee bill. That is more up to  
17 the Leader. I do not know what the Leader's plans are.  
18 I do not know what his intentions are. I do suspect that  
19 he wants to move without too much delay, and I think he  
20 would like to get this bill on the floor after a couple  
21 three weeks.

22 Senator Bunning. Could you give us some assurance  
23 that we are at least going to see a final merged bill  
24 before we vote on it?

25 The Chairman. I cannot give total assurance, but

1 that would be my strong intention and that would be my  
2 wish.

3 Senator Bunning. With a score?

4 The Chairman. Yes.

5 Senator Bunning. Thank you very much.

6 Senator Snowe. Mr. Chairman?

7 The Chairman. Senator Snowe.

8 Senator Snowe. A quick question. Will we have  
9 sufficient time to review the mark after it has been  
10 scored?

11 The Chairman. You will certainly have time to  
12 review the mark while CBO is reviewing the mark, because  
13 it will take them several days--

14 Senator Snowe. No, but when we get the score, to  
15 review it from that standpoint?

16 The Chairman. We are going to have to cross that  
17 bridge when we get there.

18 Senator Snowe. I mean, I hope we do not get it at  
19 9 o'clock and we are voting at 10:00.

20 The Chairman. No, no, no.

21 Senator Snowe. Okay, or midnight and the next  
22 morning at 9:00.

23 The Chairman. That would not be--

24 Senator Snowe. That is the point.

25 The Chairman. That would not be in good faith.

1 Senator Snowe. Okay. Thank you.

2 The Chairman. You bet.

3 Senator Crapo. Mr. Chairman?

4 The Chairman. Senator Crapo.

5 Senator Crapo. I think you have answered the  
6 question I was going to ask, but I want to be clear on my  
7 understanding. I was going to ask in the process that  
8 you described whether we would have bill language at the  
9 time the HELP bill and the Finance bill are merged. And  
10 I understood you to answer that question by saying that  
11 you would expect that that should be the way we should do  
12 it, but that you could not control it.

13 The Chairman. That is right. I cannot control the  
14 HELP Committee. I cannot control what the Leader wants  
15 to do.

16 Senator Grassley. It seems to me, though, to be  
17 Chairman of the Finance Committee, if we work for a year  
18 and probably 3 weeks in this Committee to vote a bill  
19 out, that we ought to be able to see the product that we  
20 have produced. If you are telling me that we might not  
21 see statutory legal language as a product, then I think  
22 what are we wasting our time here for.

23 So we ought to have two products, one from the HELP  
24 Committee, one from this Committee, and then at that  
25 point somebody in the Senate above us decides how it is

1 going to be done?

2 Senator Conrad. Mr. Chairman?

3 Senator Crapo. Mr. Chairman, I had--

4 The Chairman. Senator Conrad?

5 Senator Crapo. Mr. Chairman, I had not completed  
6 my remarks.

7 The Chairman. I recognize Senator Conrad. Senator  
8 Conrad is recognized.

9 Senator Conrad. I would defer to Senator Crapo if  
10 you have not completed your thought.

11 Senator Crapo. Well, thank you, Mr. Chairman. I  
12 had not concluded my thought.

13 My point was that from the answer that you gave, it  
14 sounded to me like there was the possibility that we  
15 could yet again after this Committee had concluded its  
16 work be facing a circumstance when, after the two bills  
17 were merged, that we have been merging a conceptual bill  
18 with a statutory language bill, and we would still not  
19 have an opportunity for the public and for the Members of  
20 the Senate at that point to be able to observe and vet  
21 legislative language.

22 And I just wanted to say, just to make a point, that  
23 the circumstance that came up today with regard to the  
24 CBO's score on the MedPAC language is an example of the  
25 concern, namely this: Apparently the conceptual language

1 led CBO to believe that the hospital deal was not  
2 included, but the hospital deal was supposed to be  
3 included. And when CBO figured that out from the  
4 conceptual language, they indicated that they had a \$10  
5 billion mistake.

6 My only point is to say that that is an example of  
7 what many of us are concerned about happening, and that  
8 is one of the reasons why we would like to get some kind  
9 of certainty with regard to when there will be statutory  
10 language for the Senate to consider.

11 The Chairman. Okay. Let us--are you finished?  
12 Let us go to the amendment. Before we go to the  
13 amendment, let me just say this: I intend to operate  
14 totally in good faith, all the way around. And to be  
15 honest with you, I do not know if we can wait 2 weeks for  
16 the legislative language. And, frankly, it might take  
17 longer given the experience with CBO.

18 But we will operate in total good faith--that is, we  
19 will get the CBO score after we complete our business  
20 here. We will look at the score, and in good faith there  
21 will be time to look at the score. We will operate in  
22 good faith, and protecting this Committee's prerogatives  
23 and rights, and when we get to the floor and merge with  
24 the HELP Committee bill, and do all I can to make sure  
25 that it is a score on the merged bill, and just in good

1 faith so that people have an opportunity to see what is  
2 in the product and what is not in the product.

3 We are a democracy. We are an imperfect  
4 institution. We try our best. We work hard. The real  
5 glue here, the real way to make this work is good faith.

6 If we all operate in good faith, both sides--both sides--  
7 -if we operate in good faith, then we are going to  
8 accomplish our objective here, and we will be doing our  
9 business, and Senators can vote any way the Senators wish  
10 to vote at different stages along the way.

11 All I am saying is I will do my very best to operate  
12 in good faith and to give Senators an opportunity to  
13 review the score--the bill and review scores.

14 Let us get back to business here.

15 Senator Conrad. Mr. Chairman?

16 The Chairman. Senator Conrad.

17 Senator Conrad. Mr. Chairman, isn't it the case  
18 that when there is a merged bill that comes to the floor,  
19 by definition that will have to be in legislative  
20 language?

21 The Chairman. That is correct.

22 Senator Conrad. So what we have is what we have  
23 always had. It is a little--maybe it is because other  
24 members have not been in chairmanships or not gone  
25 through the hoops here, but the path here is one well

1 traveled. This is not something new. The pattern is  
2 very clear. You have the bill that is reported here that  
3 is in plain English. That is scored by CBO. The  
4 Chairman has said very clearly we will not vote until  
5 there is a score. Then the plain English is translated  
6 into legislative language. That will be several weeks  
7 before CBO has a score on that.

8 By definition, the bill that goes to the floor that  
9 is a merged bill between the two committees of  
10 jurisdiction has to be in legislative language. Has to  
11 be. And so that will be the bill for all to see, for all  
12 to read, for all to evaluate. And that will be scores.  
13 That will be scored.

14 The Chairman. Okay.

15 Senator Roberts. Mr. Chairman, could I just have a  
16 short question?

17 The Chairman. Senator Roberts.

18 Senator Roberts. My concern--it is like "Cool Hand  
19 Luke." We have a failure to communicate. My concern is,  
20 obviously, in reconciling the scoring and we have the  
21 legislative language and all that has been talked about  
22 by my colleagues. But what I do not get--and I guess I  
23 just did not get it until I read the press articles about  
24 this. Here we have the assertion that the American  
25 Hospital Association made a deal--if that is the way to

1 put it--or at least agreed to \$150 billion worth of cuts.

2 And then made an additional deal or a carve-out with  
3 somebody and said, But we are not going to take any  
4 additional cuts--I do not know whether that is the first  
5 year after this or next year. I do not know how this  
6 figure was reached, i.e., \$11 billion separate that would  
7 be recommended by the Medicare Commission that Senator  
8 Rockefeller spoke so strongly for that would be immune to  
9 this kind of a deal. And it would mean that the Medicare  
10 Commission has already succumbed to the hospital lobby  
11 saying, Look, we gave \$150 billion up front, we are not  
12 going to give any more to the tune of \$11 billion, and  
13 that that is really responsible for the carve-out  
14 deficiency. And if that is the case, it speaks to what  
15 Senator Rockefeller was trying to do. And it speaks to  
16 the fact that deals can still be made because, obviously,  
17 if it is the AHA or if it is big PhRMA, or if it is  
18 anybody else, they can come here and lobby, and still,  
19 despite Senator Rockefeller's efforts with the Medicare  
20 Commission, bypass that.

21 And I would like to know if that, in fact, is  
22 correct and who is responsible for the carve-out for \$11  
23 billion.

24 The Chairman. Okay. Let us go to the amendment.  
25 Is there further debate on the Cornyn amendment?

1           Senator Rockefeller.    Yes.

2           The Chairman.    Senator Cornyn.

3           Senator Rockefeller.    I have been patiently been  
4 waiting since holding--

5           Senator Cornyn.    I think Senator Rockefeller--

6           The Chairman.    Senator Rockefeller.

7           Senator Rockefeller.    Yes, that is me.  --holding  
8 West Virginia up as an example.  I think that is  
9 unfortunate.  Our Governor is a Democrat.  I happen to  
10 disagree with him on his approach to a State that both he  
11 and I know very, very well.  We are not a rich State.  We  
12 have a lot of people that do not have automobiles, do not  
13 have doctors, do not have insurance, do not know where  
14 they can get health care.  If they want to go to the  
15 emergency room, they have no idea where the emergency  
16 room is or, in fact, how they could get there, having no  
17 transportation.

18           So the concept of the personal responsibility  
19 agreement to me has always--and, you know, our Governor,  
20 whom I respect and like and agree with on most things.  
21 But he applied for the first Medicaid waiver.  I never  
22 did like that program.  I never did like that program  
23 because it allows Governors to cut Medicaid and in my  
24 case, particularly, to cut the Children's Health  
25 Insurance Program, which is exactly what happened in West

1 Virginia when he took this "personal responsibility, you  
2 have got to sign the pledge" rule.

3 I think it is condescending. I think it is  
4 Government doing what I think I have been hearing all of  
5 you folks say that you do not think Government should be  
6 doing: telling people what they have to do in order to  
7 get health care services.

8 I happen to agree with the concept of personal  
9 responsibility. It is just a whole lot easier for people  
10 that have had education, have had experience, and have  
11 means, et cetera, to exercise that. But the whole  
12 concept of doing this, Senator Cornyn--I admire you  
13 greatly--would require all Medicaid beneficiaries to sign  
14 a member agreement. That is not a country club. That is  
15 a personal responsibility club, similar to the one used  
16 by the West Virginia Medicaid program, and that one was a  
17 disaster. It was a disaster.

18 I was the Governor there for 8 years. It was a  
19 disaster. And it would have worked with part, but it  
20 would not have worked with most of the Medicaid  
21 community, because as you have in East Texas, we have all  
22 over West Virginia--people who are not capable of knowing  
23 how to make decisions, even though preventive care,  
24 wellness is such a high order of business, and we all  
25 know that.

1           But I have to recognize that these are human beings,  
2           and I have to recognize the people factor. Yes, it would  
3           work for some. But, no, it would not work for a lot.  
4           And it would backfire, and, in fact, it has backfired  
5           under the Medicaid waiver where they had to do that, that  
6           the Senator from Texas refers to. Medicaid has been cut,  
7           and the number of children under the Children's Health  
8           Insurance Program has dropped greatly.

9           So I would oppose the amendment.

10          The Chairman. Okay, let us close the amendment.

11          Senator Bingaman. Mr. Chairman?

12          The Chairman. Senator Bingaman.

13          Senator Bingaman. Mr. Chairman, let me agree with  
14          Senator Rockefeller in opposing the amendment. It seems  
15          to me we have heard speech after speech here for the last  
16          6 or 8 days about how we were not being fair to Medicaid  
17          recipients and that we were allowing Medicaid to be a  
18          second-class health care system and that physicians would  
19          not take Medicaid patients and that we ought to increase  
20          reimbursement in Medicaid and on and on.

21          To me, this amendment drives home the point that we  
22          think Medicaid is a second-class medical system. And it  
23          is demeaning to the people who have to be presented with  
24          this so-called personal responsibility agreement. It is  
25          demeaning to require them to sign it. And I think it is

1       ironic that the last statement in it is, "I will be  
2       treated fairly and with respect." In my view, giving  
3       somebody this kind of agreement and saying you have got  
4       to sign this if you want to participate in Medicaid is  
5       not treating that person with respect. We would never  
6       think of doing that with veterans. We would never think  
7       of doing that with Medicare beneficiaries. We would  
8       never think of doing that with FEHBP participants. And  
9       there is no reason why we ought to be thinking about  
10      doing it with Medicaid.

11             The Chairman. Further discussion? Senator Cornyn.

12             Senator Cornyn. Mr. Chairman, if I could close.  
13      Mr. Chairman, my friend, the Senator from West Virginia,  
14      seemed to suggest that Medicaid benefits would be  
15      contingent on signing the pledge. That is not what my  
16      amendment proposes, so under no circumstances would it  
17      affect somebody's right to receive Medicaid if they  
18      otherwise qualify.

19             Let me just read the words again because I have yet  
20      to understand what it is about this that people disagree  
21      with.

22             Number one, "I will do my best to stay healthy." I  
23      think that was what the Carper-Ensign amendment was about  
24      that was embraced by broad margins.

25             Number two, "I will show up on time for my

1       appointments." As I indicated, doctors in Texas have  
2       told me one reason they do not take Medicaid is because  
3       many Medicaid patients, because they do not pay anything,  
4       they have no skin in the game, they do not show up for  
5       appointments on time. So encouraging them to show up for  
6       appointments on time so they can get the treatment that  
7       they need seemed to be common sense.

8               And, third, we have talked about overutilization of  
9       emergency rooms, and it says, "I will use the emergency  
10      room only for emergencies." Bending the cost curve by  
11      getting people treatment in a clinic or in a clinical  
12      setting rather than the emergency room seemed to me to be  
13      a salutary objective.

14             The last two, "I have a right to decide things about  
15      my health care and health care of my children," and, "I  
16      will be treated fairly and with respects," I just do not  
17      see how that could possibly be demeaning. It is an  
18      affirmation of the fact that have a right to decide about  
19      their health care and we treat them fairly and with  
20      respect.

21             I think if there is anything that has happened here  
22      that sort of ensures the second-class status of Medicaid  
23      beneficiaries, it has been the votes we have had which  
24      have given them no choice, with limited access to doctors  
25      because of low reimbursement rates, and the kind of

1 arguments we have been trying to make on this side, but  
2 which have apparently fallen on deaf ears.

3 The Chairman. The clerk will call the roll.

4 The Clerk. Mr. Rockefeller?

5 Senator Rockefeller. No.

6 The Clerk. Mr. Conrad?

7 The Chairman. No by proxy.

8 The Clerk. Mr. Bingaman?

9 Senator Bingaman. No.

10 The Clerk. Mr. Kerry?

11 The Chairman. No by proxy.

12 The Clerk. Mrs. Lincoln?

13 The Chairman. No by proxy.

14 The Clerk. Mr. Wyden?

15 Senator Wyden. No.

16 The Clerk. Mr. Schumer?

17 The Chairman. No by proxy.

18 The Clerk. Ms. Stabenow?

19 Senator Stabenow. No.

20 The Clerk. Ms. Cantwell?

21 Senator Cantwell. No.

22 The Clerk. Mr. Nelson?

23 The Chairman. No by proxy.

24 The Clerk. Mr. Menendez?

25 The Chairman. No by proxy.

1           The Clerk.    Mr. Carper?  
2           Senator Carper.  Aye.  
3           The Clerk.    Mr. Grassley?  
4           Senator Hatch.  Aye by proxy.  
5           The Clerk.    Mr. Hatch?  
6           Senator Hatch.  Aye.  
7           The Clerk.    Ms. Snowe?  
8           Senator Snowe.  Aye.  
9           The Clerk.    Mr. Kyl?  
10          Senator Kyl.    Aye.  
11          The Clerk.    Mr. Bunning?  
12          Senator Bunning.  No.  
13          The Clerk.    Mr. Crapo?  
14          Senator Crapo.  No.  
15          The Clerk.    Mr. Roberts?  
16          Senator Hatch.  Aye by proxy.  
17          The Clerk.    Mr. Ensign?  
18          Senator Ensign.  Aye.  
19          The Clerk.    Mr. Enzi?  
20          Senator Enzi.  Aye.  
21          The Clerk.    Mr. Cornyn?  
22          Senator Cornyn.  Aye.  
23          The Clerk.    Mr. Chairman?  
24          The Chairman.  No.  The clerk will tally the vote.  
25          The Clerk.    Mr. Chairman, the final tally is 9

1 ayes, 14 nays.

2 The Chairman. The amendment is not agreed to.

3 Senator Cornyn, do you have another amendment?

4 Senator Cornyn. Mr. Chairman, I would like to call  
5 up amendment C30, hopefully with better prospects than my  
6 last amendment.

7 Mr. Chairman, as we have been discussing, the  
8 Medicaid program is not working today for taxpayers or  
9 beneficiaries of that program. And I believe, as the  
10 President said during his inaugural address, that we  
11 ought to ask the question not so much whether Government  
12 is too small or too big, but whether it works, and where  
13 it does not, to fix it.

14 The American people agree with that, according to an  
15 Insider Advantage poll from July that found that by a  
16 margin of 61-27, Americans believe the issues of fraud  
17 and waste in Medicaid and Medicare should be addressed  
18 prior to creating new Government-run programs. So let us  
19 look at the fraud in the Medicaid program.

20 In 2008, Medicaid's total costs were \$332 billion.  
21 According to Health and Human Services, fraud, waste, and  
22 abuse in the Medicaid program equals 10.5 percent--10.5  
23 percent--of Medicaid expenditures, or \$32.7 billion.  
24 Medicaid has three times the fraud, waste, and abuse of  
25 Medicare. That is also three times the Federal agency

1 improper payment rate of 3.9 percent. So Federal  
2 agencies, on average, pay improperly at the rate of 3.9  
3 percent, yet Medicaid pays wrongly in 10.5 percent of the  
4 cases.

5 The Government Accountability Office has determined  
6 that the Medicaid program is plagued with fraud and in  
7 2009 labeled Medicaid a high-risk program.

8 A series published in the New York Times a few years  
9 ago revealed that New York's improper payment rate may be  
10 as high as 40 percent--40 percent. Those are dollars  
11 that should go to pay benefits to Medicaid beneficiaries,  
12 but 40 percent of them are lost to fraud, waste, and  
13 abuse.

14 In July 2009, the New York Times reported on six  
15 people charged with stealing more than \$47 million in  
16 Medicaid in the last 10 years.

17 Also in July 2009, the New York Times reported that  
18 Federal officials had arrested 20 people who said they  
19 worked for a company that defrauded California Medicaid  
20 \$4.6 million by sending untrained, unlicensed individuals  
21 to care for disabled children and adults. Although some  
22 of those arrested worked as nurses abroad, officials said  
23 none trained in the United States, and many had no health  
24 care experience at all.

25 And, unfortunately, even in the great State of

1 Texas, in Houston in August 2009, the Houston office of  
2 the FBI found that a doctor and his wife were accused of  
3 conspiracy to defraud Medicare and Medicaid and private  
4 health care providers of more than \$31 million by falsely  
5 claiming to have administered facet joint injections and  
6 blocks to patients and routinely prescribing excessive  
7 amounts of hydrocodone.

8 The Associated Press recently reported that the New  
9 York Attorney General recovered \$263 million from  
10 Medicaid fraud in 2008 alone. That is 263,000 in New  
11 York in the year 2008 alone. And these are just a few  
12 examples.

13 The most recent examples can be found in a GAO  
14 report called "Fraud and Abuse Related to Controlled  
15 Substances Identified in Selected States." This was  
16 delivered today. And it documents, for example, one Ohio  
17 physician who was convicted in 2006 for filing \$60  
18 million--\$60 million--in fraudulent Medicaid, Medicare,  
19 and other insurance claims, and two patients who  
20 regularly saw him died under his care--one from a multi-  
21 drug overdose in the physician's office and one from an  
22 overdose of OxyContin taken on the same day that the  
23 prescription was written.

24 If we do not restore accountability now, Medicaid  
25 spending will grow by 7.9 percent per year, and by 2017,

1 it will explode to \$673 billion. But GAO has repeatedly  
2 warned that entitlement spending will threaten America's  
3 international competitiveness and the Federal  
4 Government's long-term capacity to respond to national  
5 emergencies.

6 My amendment would simply say that before Congress  
7 expands the Medicaid program, we need to stop the  
8 hemorrhaging of taxpayer dollars to fraud, waste, and  
9 abuse--something we heard from President Obama during the  
10 joint session of Congress. The Federal agency average is  
11 3.9 percent for improper payments, and my amendment would  
12 require that the Medicaid program achieve at least that  
13 level of integrity--I wish it were lower, but achieve at  
14 least that level of integrity before we expand it by  
15 billions of dollars. This is not unreasonable compared  
16 to the private sector's success in preventing fraud.

17 Let us look at the credit card industry, for  
18 example. The credit card industry is a model of fraud  
19 containment compared to Medicaid or any Federal agency.  
20 According to the Center for Health Transformation, the  
21 credit card industry processes more than \$2 trillion in  
22 payments every year from 700 million credit cards being  
23 used at millions of vendors to buy countless products.  
24 Fraud in that industry is one-tenth of 1 percent--one-  
25 tenth of 1 percent--while fraud in Medicare and Medicaid

1 is about 100 times that.

2 Since the Medicaid expansions in the mark do not go  
3 into effect until 2014, 5 years from now, I think it is a  
4 reasonable requirement and consistent with the  
5 President's promise to hold accountable those who manage  
6 the public dollars. And, furthermore, it is a quest that  
7 Secretary Sebelius has already begun, working with  
8 Attorney General Holder. In May, Secretary Sebelius  
9 announced a new administration initiative to fight fraud.

10 She said, "Today we are turning up the heat on  
11 perpetrators who steal from taxpayers and threaten the  
12 future of Medicare and Medicaid. Most providers are  
13 doing the right thing and providing care with integrity.

14 But we cannot and we will not allow billions of dollars  
15 to be stolen from Medicare and Medicaid through waste,  
16 fraud, and serious abuse of the system."

17 Given Secretary Sebelius' intentions to be zealous  
18 about fighting fraud in the Medicaid program, I would  
19 hope that she would have no problem getting the Medicaid  
20 fraud in check by 2014.

21 So I hope my colleagues will support me in  
22 supporting this amendment. I know waste, fraud, and  
23 abuse are discussed by every administration and perhaps  
24 by every Member of Congress, but this gives us an  
25 opportunity to put some teeth in the requirement to at

1 least bring it down to the improper payment rate of  
2 Federal agencies generally of 3.9 percent and down from  
3 the 10.5 percent currently experienced.

4 The Chairman. Further discussion?

5 Senator Crapo. Could I ask Senator Cornyn a  
6 question, please?

7 The Chairman. Senator Crapo.

8 Senator Crapo. Senator Cornyn, could you just  
9 review for me the numbers you gave? What was the total  
10 level of waste, fraud, and abuse in the Medicaid system?

11 Senator Cornyn. It is 10.5 percent of every  
12 Medicaid dollar spent.

13 Senator Crapo. And do you have any numbers on that  
14 for--

15 Senator Cornyn. That is \$32.7 billion.

16 Senator Crapo. Over 10 years? Or do you know?

17 Senator Cornyn. Per year. Per year.

18 Senator Crapo. So if you reduced it by about two-  
19 thirds, you would be reducing \$20 billion--

20 Senator Cornyn. That would be \$20 billion that we  
21 could either save for the taxpayers or deliver in terms  
22 of enhanced care, maybe reimbursement rates for Medicaid  
23 patients so they could--or for doctors who see Medicaid  
24 patients so they could actually get in to see a doctor.

25 Senator Crapo. And then just a last question.

1       What was the source? Was CBO the source of those  
2       numbers?

3               Senator Cornyn. That was Health and Human  
4       Services.

5               Senator Crapo. All right. Thank you.

6               The Chairman. Mr. Schwartz, could you just comment  
7       on the effect of this amendment?

8               Mr. Schwartz. Sure, I would be happy to, Mr.  
9       Chairman. So the measurement of error rates in Medicaid  
10      is relatively new. CMS within HHS has been doing it on  
11      the Medicare side much longer, on the fee-for-service  
12      Medicare side much longer. And so, Senator Cornyn, I  
13      have the same number you do, the 10.5 for fiscal year  
14      2007 in Medicaid. It is actually roughly the same number  
15      for Medicare Advantage. I think it was 10.6 percent on  
16      the Medicare Advantage side because they also just  
17      implemented PERM. But the effect of the amendment would  
18      say that you have to bring down that 10.5 to, I think it  
19      is, 3.9 percent now, so it would--before the mandatory  
20      levels in the Chairman's mark for a Medicaid expansion  
21      can take effect. So the net effect is that people below  
22      133 percent of poverty have to wait to get their health  
23      care until that magic number of 3.9 is reached.

24              The Chairman. Any further discussion of the  
25      amendment?

1           Senator Bingaman.    Mr. Chairman?

2           The Chairman.    Senator Bingaman.

3           Senator Bingaman.    I think the point is fairly  
4   obvious that there is no justification for penalizing the  
5   Medicaid beneficiaries for the error problem or the  
6   failure to meet the 3.9--which I think is a fairly  
7   arbitrary number--the 3.9 percent PERM rate.  We are  
8   talking about real people here who we are trying to give  
9   access to health care to, and that is a major thrust of  
10  this legislation, is to make it possible for a lot of  
11  people who do not have access to health care today to get  
12  access to health care.  And I think it would be a major  
13  mistake for us to say that they will be held hostage to  
14  some kind of change in the bureaucratic PERM error rate  
15  or the implementation of the PERM error rate by folks in  
16  Washington, D.C., when they have no--the beneficiaries  
17  who we are hoping to assist to get the health care have  
18  no way of affecting that.

19          The Chairman.    The clerk will call the roll.

20          The Clerk.    Mr. Rockefeller?

21          Senator Rockefeller.    No.

22          The Clerk.    Mr. Conrad?

23          The Chairman.    No by proxy.

24          The Clerk.    Mr. Bingaman?

25          Senator Bingaman.    No.

1           The Clerk.    Mr. Kerry?  
2           The Chairman.  No by proxy.  
3           The Clerk.    Mrs. Lincoln?  
4           The Chairman.  No by proxy.  
5           The Clerk.    Mr. Wyden?  
6           The Chairman.  No by proxy.  
7           The Clerk.    Mr. Schumer?  
8           The Chairman.  Pass.  
9           The Clerk.    Ms. Stabenow?  
10          Senator Stabenow.  No.  
11          The Clerk.    Ms. Cantwell?  
12          The Chairman.  No by proxy.  
13          The Clerk.    Mr. Nelson?  
14          The Chairman.  No by proxy.  
15          The Clerk.    Mr. Menendez?  
16          The Chairman.  No by proxy.  
17          The Clerk.    Mr. Carper?  
18          The Chairman.  No by proxy.  
19          The Clerk.    Mr. Grassley?  
20          Senator Grassley.  Aye.  
21          The Clerk.    Mr. Hatch?  
22          Senator Hatch.  Aye.  
23          The Clerk.    Ms. Snowe?  
24          Senator Snowe.  Aye.  
25          The Clerk.    Mr. Kyl?

1 Senator Kyl. Aye.

2 The Clerk. Mr. Bunning?

3 Senator Bunning. Aye.

4 The Clerk. Mr. Crapo?

5 Senator Crapo. Aye.

6 The Clerk. Mr. Roberts?

7 Senator Grassley. Aye by proxy.

8 The Clerk. Mr. Ensign?

9 Senator Ensign. Aye.

10 The Clerk. Mr. Enzi?

11 Senator Enzi. Aye.

12 The Clerk. Mr. Cornyn?

13 Senator Cornyn. Aye.

14 The Clerk. Mr. Chairman?

15 The Chairman. No.

16 The Clerk. Mr. Conrad?

17 Senator Conrad. No.

18 The Clerk. Mr. Wyden?

19 Senator Wyden. No.

20 The Chairman. Senator Schumer is not here.

21 Senator Schumer is no by proxy. The clerk will tally.

22 The Clerk. Mr. Chairman, the final tally is 10

23 ayes, 13 nays.

24 The Chairman. The amendment fails.

25 Senator Enzi, I understand you have an amendment.

1           Senator Enzi. Yes, Mr. Chairman, I do. And I  
2 appreciate your calling on me. I guess for all the hours  
3 that you have put in on this bill, I know that there  
4 probably is not anybody that has put in more time on it  
5 than you have, unless it might be Senator Bingaman and I,  
6 who are on the HELP Committee.

7           The Chairman. I was going to say, I think you two  
8 Senators have put in more time.

9           Senator Enzi. We had to work a different Committee  
10 before we could join in that.

11          The Chairman. Right, exactly. Absolutely.

12          Senator Enzi. I appreciate what you have put  
13 together. Now, I did miss the hospital carve-out, and  
14 then in the manager's amendment, I noticed that there is  
15 a provision that caps the FSAs at \$2,500, and it has got  
16 my name on it. I have always insisted on the old one,  
17 not the new one. And I did have an amendment in at  
18 \$3,000, so if you could just drop my name from that, that  
19 would be okay.

20          The Chairman. You got it.

21          Senator Enzi. But what this amendment does is go  
22 to some of the germaneness debates that we have had. I  
23 have no problem at all with what I am striking. I  
24 appreciate Senator Bingaman's effort in working on this,  
25 but the Public Health Service Act is totally within the

1 jurisdiction of the HELP Committee, and in several  
2 instances, we have ruled non-germane because they were in  
3 the jurisdiction of other committees. And from a  
4 fairness standpoint, it seems to me like we have either  
5 got to look at those ones that we ruled non-germane  
6 before or we have got to rule this one non-germane. Even  
7 though it appears in the mark and I think it is an  
8 important amendment, but it does not come under our  
9 jurisdiction here. That is totally under the  
10 jurisdiction of the HELP Committee, and as the Ranking  
11 Member, I feel compelled to kind of preserve the  
12 jurisdiction of that Committee if we are preserving  
13 Committee jurisdictions.

14 So I think a vote for this amendment would be a vote  
15 for consistency and fairness. I do not know if we are  
16 doing that. I do not object to the substance of the  
17 provision. We have repeatedly seen during the markup  
18 that we have ruled things non-germane and kept them from  
19 being in here. So I just think that it ought to be  
20 applied fairly, and I hope the Chairman will support this  
21 amendment to ensure that the same jurisdictional rule  
22 gets applied equally to both sides.

23 Just as an example of some of the ones that were  
24 ruled non-germane was the Kyl C25, which limited non-  
25 economic damages, and Ensign C5--that one was Judiciary.

1       Then the Ensign C5 as modified, which was health savings  
2 accounts, and we ruled that that was Banking  
3 jurisdiction.

4           So I hope you would support the amendment, or my  
5 preference would be to revisit some of those.

6           Senator Bingaman.    Mr. Chairman?

7           The Chairman.    Senator Bingaman.

8           Senator Bingaman.    Mr. Chairman, I would strongly  
9 oppose the amendment that Senator Enzi is offering.  The  
10 Chairman's modification consists of two parts with regard  
11 to these teaching health centers.  The first part is  
12 start-up grants within the Public Health Service Act, and  
13 that is in the HELP Committee's jurisdiction.  And the  
14 other part, which is in the Finance Committee's  
15 jurisdiction, is the new graduate medical education  
16 payment.

17           These two pieces were filed jointly to create a  
18 comprehensive package.  The HELP portion was approved by  
19 the HELP Committee to be included in the modifications in  
20 the Chairman's mark, and that was checked before it was  
21 included.

22           Teaching health centers represent a new paradigm in  
23 health care training that is critically important to my  
24 State of New Mexico, to Senator Enzi's State of Wyoming,  
25 to other rural States represented on this Committee, as

1 well as to urban underserved areas.

2 Instead of primary care residents having to spend  
3 most of their time training at a hospital and then doing  
4 a rotation to a community health center, this program  
5 will allow just the reverse happen; that is, primary care  
6 residents will locate at a teaching health center and  
7 then rotate to a teaching hospital.

8 Workforce experts tell us that this paradigm shift  
9 is critical in getting primary care physicians to become  
10 invested in rural and other underserved communities and  
11 to remain there after their training is complete. The  
12 portion of the proposal that Senator Enzi's amendment  
13 would strike would remove the start-up funding that  
14 teaching health centers need to meet the standards  
15 required by the Accreditation Council for Graduate  
16 Medical Education. And they need that--those standards  
17 are in the curriculum development and recruitment and  
18 training of residents and faculty development, in  
19 equipment and in health information technology. And once  
20 primary care residency programs are established in  
21 community health centers, the second half of the proposal  
22 provides a new graduate medical education funding source,  
23 will provide ongoing support to the program.

24 The proposal would add as many as a thousand  
25 physicians to the primary care workforce in 5 years. It

1 is strongly supported by the American College of  
2 Physicians, the American Academy of Family Physicians,  
3 Service Employees International Union, Society of General  
4 Internal Medicine, National AHEC Organization, and  
5 others. So I urge my colleagues to oppose the Enzi  
6 amendment.

7 Senator Enzi. Mr. Chairman?

8 The Chairman. Senator Enzi.

9 Senator Enzi. Again, I do not have any problem  
10 with the content. I now have a new problem because it  
11 was said that this was approved by the Committee. It had  
12 to be unilaterally approved by the Democrats on the  
13 Committee because this was never brought to me. So, you  
14 know, it was not a Committee decision because normally  
15 they would confer with me and see if that was okay, too.

16 So I have a little problem with that, just like I do  
17 with them taking out the Safeway amendment after we had  
18 unanimously voted that through.

19 So those are things that I will have to clear up  
20 with the HELP Committee itself, but I, again, am just  
21 making the point that we said that we were not going to  
22 consider these other things because they were in other  
23 jurisdictions. These are some big money savers we could  
24 have put in this one, and we are refusing to do them  
25 because we say the Judiciary Committee and the Banking

1 Committee have jurisdiction in two important areas--the  
2 Judiciary one being the one where there is the most  
3 concern and the most opportunity for savings, and we are  
4 just not going to do anything with that. And neither  
5 will the Judiciary Committee. And I will not even go  
6 into the accusations for the reasons why that is  
7 happening.

8 But I think that those are things that we need to do  
9 if we are going to report out a bill that really reforms  
10 health care, and we are going to ignore them.

11 The Chairman. Well, frankly, I think it is a very  
12 good program. We have the approval of the HELP  
13 Committee, and based on that, I suggest we adopt it--no,  
14 we oppose the amendment. The clerk will call the roll.

15 Senator Enzi. So a vote for this, then, is a vote  
16 against the germaneness issue.

17 The Chairman. Well, Senator, as you well know,  
18 many times, in Committee and on the floor, when there is  
19 a question about jurisdiction of a committee, we check  
20 with the Chairman of the other Committee, and the  
21 Chairman says fine, and so we proceed. And that is what  
22 happened here.

23 Senator Enzi. Okay. So the--

24 The Chairman. I mean, that is standing procedure.

25 Senator Enzi. Thanks for conferring with me. I

1 was, you know, for countless hours--

2 The Chairman. I did not know that you--

3 Senator Enzi. It must have been an oversight on my  
4 part. Sorry.

5 The Chairman. I did not know that you were not  
6 conferred with. All I know is what I know, and we had  
7 the approval of the HELP Committee. That is all I know.

8 Senator Enzi. I will withdraw my amendment.

9 The Chairman. The amendment is withdrawn.

10 Senator Grassley. I think I am up next.

11 The Chairman. Senator Grassley, that is correct.

12 Senator Grassley. Okay. This would be amendment  
13 C11, and I thank Senator Snowe for working with me on  
14 this amendment. It is a modified combination of my  
15 original amendment and Senator Snowe's amendment C5. The  
16 mark has a mandatory expansion of the Medicaid program to  
17 133 percent of Federal poverty. The mark recognizes that  
18 mandating the new coverage will not be easy on the  
19 States, so under the mark States will receive  
20 approximately a 90-percent Federal match for these newly  
21 eligible populations starting in 2014.

22 The mark also requires States to maintain existing  
23 income eligibility levels for all Medicaid populations  
24 upon enactment. This maintenance-of-effort provision  
25 would expire in 2014.

1           The goal is to preserve coverage in Medicaid until  
2 States are ready to expand. Right now, States are  
3 operating under a maintenance of effort that was enacted  
4 in the stimulus bill. The States have to maintain their  
5 existing populations as a condition of the billions and  
6 billions of dollars they received in additional  
7 assistance that they received in the stimulus bill. That  
8 assistance expires at the end of 2010.

9           So as of January 1, 2011, States have to maintain  
10 their Medicaid populations regardless of their economic  
11 situation for yet an additional 3 years. If this were to  
12 become law, it would mean that Congress has effectively  
13 raised the mandatory minimum coverage levels for 5 years,  
14 while only providing States additional resources for 2  
15 years. On top of that, the mark increases State spending  
16 by \$33 billion.

17           We went through this exercise during the stimulus  
18 debate. States simply do not have the resources to  
19 absorb additional spending that this bill demands.  
20 Somebody is going to have to pay for the bill.

21           States will have to either cut spending or raise  
22 taxes, so you can bring up all sorts of scenarios. Who  
23 will pay the \$30 billion? Will it be the local school  
24 systems? Will it come from roads and bridges? Will it  
25 come from local law enforcement? Or maybe it will just

1 be passed on to the taxpayers?

2 Well, my amendment recognizes this fiscal challenge  
3 facing these States. My amendment would strike the  
4 maintenance of effort for adult populations above 133  
5 percent of poverty. States are required to maintain  
6 coverage today through the end of next year, and so they  
7 get additional assistance for doing so.

8 States will be mandated to cover a significant new  
9 population in 2014, and they will get additional  
10 assistance for so doing. But for 3 years--2011 through  
11 2014--States will be required to maintain coverage  
12 without any additional assistance. That is a burden on  
13 States that they should not have to bear. If a State  
14 needs to make changes to its Medicaid program, the States  
15 should be allowed to, unless the Federal Government is  
16 willing to offer additional assistance. We should think  
17 twice before writing checks to States that they cannot  
18 cash.

19 So that is my amendment. I hope you will vote for  
20 it.

21 The Chairman. Is there further discussion?  
22 Senator Snowe.

23 Senator Snowe. Thank you, Mr. Chairman. I want to  
24 thank Senator Grassley for offering this amendment. I am  
25 pleased to join him in this effort, and I do think it is

1 critical. I think we have an obligation to be cognizant  
2 of the States' fiscal problems during these very  
3 difficult economic times, and especially in the years  
4 ahead, because it is clear from all of the information,  
5 the reports that we have received, that that will not  
6 abate.

7 Even with the assistance that was provided as part  
8 of the stimulus package that Senator Grassley referred to  
9 in support of Medicaid programs, States will continue to  
10 be struggling with the increased cost. And when States  
11 are no longer receiving increased FMAP after December  
12 2010, the tremendous fiscal pressure will still be acute.

13 In fact, according to the National Council of State  
14 Legislatures, nearly two-thirds of the States they  
15 surveyed already project a budget gap in 2011.

16 The Chairman's mark provides significant relief for  
17 States with low Medicaid eligibility that need to ramp up  
18 their programs. Beyond that, it also provides extra  
19 assistance for high-need States such as Nevada, Michigan,  
20 Oregon, and Rhode Island that have high unemployment and  
21 low Medicaid enrollment compared to the national average.

22 The reason why we are pursuing these policies is  
23 abundantly clear. We want to expand coverage in a way  
24 that is affordable to States. Yet under the maintenance-  
25 of-effort provisions in the mark, we are making the

1 extraordinary assumption that States with high Medicaid  
2 eligibility levels are somehow immune to the budget  
3 difficulties being experienced nationwide and that they  
4 are in a financial position to continue to provide a high  
5 level of coverage without the need for additional  
6 support.

7 And consider for the moment that in the stimulus  
8 package where we are providing additional support to the  
9 States to maintain their current level of eligibility, it  
10 would be unprecedented to require the States to continue  
11 their expanded population eligibility without providing  
12 additional Federal support.

13 When considering Medicaid eligibility for working  
14 parents, the lowest State covers 17 percent of poverty,  
15 while the highest States covers 275 percent of poverty,  
16 which is an enormous range. Twelve States, including my  
17 own State of Maine, have expanded Medicaid coverage to  
18 parents at 133 percent of poverty or higher. In fact, it  
19 is as high as 206 percent.

20 Many of these States have led the Nation in health  
21 insurance coverage. For example, less than 10 percent of  
22 Maine's population is uninsured. But that hardly means  
23 that Maine is a wealthy State or that the economic  
24 downturn has somehow skipped over us. In fact, it is  
25 quite the contrary. Maine's income per capita is \$38,000

1 in fiscal year 2008, 34th in the country. We have a  
2 projected State budget gap of \$765 million for fiscal  
3 years 2011 and 2012. So to require States like Maine to  
4 maintain a higher level of coverage than would be  
5 required of them in 2014 without providing additional  
6 assistance is inequitable and unfair.

7 I might also say, Mr. Chairman, based on the recent  
8 reports, States cumulatively will be facing more than  
9 \$200 billion in deficits over the next 2 years because of  
10 the budgetary problems and because of the economic  
11 downturn. So it is obviously something that has to be  
12 addressed with respect to this particular issue. We are  
13 imposing a fiscal burden on States that have made a  
14 decision to expand their populations above 133 percent,  
15 and most likely our States will continue that. I am not  
16 suggesting that somehow they are going to drop their  
17 coverage to 133 percent. But given the projected  
18 deficits over the next few years--and, in fact, as I  
19 indicated the other day, there is a report recently  
20 issued that indicated that States in 2014 will not  
21 achieve their revenue levels of 2007, pre-recession  
22 levels. That suggests to me that they are going to be  
23 facing a long-term budgetary problem, and that is going  
24 to require them from year to year to make adjustments.  
25 And I think that we have an obligation to ensure that

1 flexibility for States as they continue to struggle to  
2 balance their budgets.

3 It is obviously, I think, a laudable goal to expand  
4 populations. Some States, many States, have not chosen  
5 to even go above 100 percent. So I do not think that we  
6 should require States who have gone above 133 percent,  
7 made some very difficult choices over time in making  
8 those investments and expanding the eligibility under  
9 Medicaid, to then suggest that during the difficult  
10 fiscal years ahead that somehow they have to maintain a  
11 much higher level than most States across the country.

12 In fact, the Kaiser Foundation issued a report  
13 today, Mr. Chairman, that I think illustrates the  
14 dimensions of the fiscal woes experienced by States  
15 across this country. Total Medicaid spending growth  
16 averaged 7.9 percent across all States in fiscal year  
17 2009--the highest rate of growth in 6 years and higher  
18 than the original projections of 5.8 percent growth.  
19 Enrollment growth averaged 5.4 percent in 2009,  
20 significantly higher than the 3.6 percent enrollment  
21 growth projected at the beginning of fiscal year 2009.

22 The growth rate in 2010 for total Medicaid spending  
23 is expected to be higher than 6.3 percent, and  
24 legislatures are appropriating further reductions in  
25 State general funds that average 5.6 percent. These

1 declines in State spending are the first in the program's  
2 history.

3 So I think it is illustrative of the magnitude of  
4 the problem that States are experiencing today and for  
5 the years ahead. Even with the stimulus relief, nearly  
6 every State implemented at least one new Medicaid policy  
7 to control spending in fiscal years 2009 and 2010, with  
8 more States implementing provider cuts and benefit  
9 restrictions than in the previous few years. Some States  
10 reported program reductions in multiple areas and also  
11 reported that mid-year budget reductions were possible.

12 While most States mentioned the stimulus helped to  
13 avoid or mitigate provider rate cuts, many more States  
14 cut or froze rates in 2009 than planned, 33 States versus  
15 22; and even more States are cutting freezing rates for  
16 fiscal year 2010, which means about 39 States.

17 Several States are considering additional provider  
18 rate cuts that have not yet been implemented. But,  
19 again, I think that that serves as an indication of how  
20 severe the problems are at the State level. States are  
21 struggling.

22 So I would hope that we would consider the inequity  
23 of requiring this maintenance of effort for those States  
24 who have chosen to make the investments in health here  
25 over the last few years, expanded their populations and

1 the eligibility standards beyond 133 percent, because  
2 they may have to make some difficult choices.

3 So the amendment that Senator Grassley and I have  
4 introduced would allow States to go back to the level of  
5 133 percent. And mind you, most States are not there,  
6 even at 133 percent, let alone 206 percent, or one State  
7 is at 275 percent of poverty level.

8  
9 Those are significant investments, very important  
10 choices that have been made by taxpayers in those  
11 respective States, and I think we should applaud them.  
12 But I think we also should understand that these States  
13 are going to be facing some very tough budgetary choices  
14 in the years ahead that will not abate and will not  
15 recede, even over time, even as the economy improves.

16 I think we also know that if the States are required  
17 to make some tough choices in Medicaid, they will cut  
18 their provider rates, which conflicts with the ultimate  
19 goal. We already know that many providers are not taking  
20 Medicaid patients. We also know that reimbursement rates  
21 for providers are certainly subpar. In fact, Medicaid  
22 reimbursement rates are 28 percent lower than Medicare  
23 rates nationwide.

24 So there is a significant disparity, you know, among  
25 Medicaid providers with respect to the choices of taking

1 Medicaid patients, but also because of the reimbursement  
2 rate.

3 So, Mr. Chairman, I would hope that we would support  
4 this amendment and not punish those States who have made  
5 some tough choices in the past and using their taxpayer  
6 dollars to expand Medicaid, but may find that they have  
7 to make a choice in the 2 years ahead. So I would hope  
8 that we would support this amendment.

9 The Chairman. Senator Rockefeller?

10 Senator Rockefeller. Thank you, Mr. Chairman.

11 I do not quite understand it, but maybe I do. There  
12 is a proclivity, it seems to me, on this Committee to  
13 really have at it when it comes to poor people, people on  
14 Medicaid. There is kind of--a number of amendments have  
15 been introduced tonight. There is sort of, I would say,  
16 a condescending feeling, these people--you know, God  
17 creates all people equal, I thought. But then if you  
18 grow up poor, somehow you are not equal.

19 And then these people who I grew up with, so to  
20 speak, in West Virginia, who are very close friends to  
21 me, who happen to be on Medicaid, become victims of  
22 manipulation by maintenance of effort. Is it going to be  
23 in or is it going to be out? Was this a terrible thing  
24 that we put money into the stimulus package to help these  
25 people? People. Human beings. Families.

1 I do not understand it. I do not understand it, and  
2 it bothers me deeply, and it bothers me deeply about this  
3 Committee.

4 If I understand this amendment correctly, it is  
5 going to mean States can drop the poor and the near-poor  
6 for at least the next several years, there being no  
7 exchange that starts until 2014. And, you know, then we  
8 talk about was it 150 percent or what are we up. I mean,  
9 in West Virginia we have gone up to 300 percent poverty,  
10 then down to 200, then up to 250, then down lower than  
11 that. It keeps changing.

12 And who are the pawns? Who are always the pawns in  
13 all this? They are the people who are in the  
14 circumstance of birth where they do not have choices,  
15 they do not have the knowledge, they do not have lawyers  
16 to help them make decisions about getting health care.  
17 And somehow the concept that, you know, my daughter, who  
18 is doing okay financially in life, has three children and  
19 she does not have any problems because she can pay for  
20 that thing, and so she is good. But if you are poor, you  
21 are a poor mother or you are poor kids, why does that  
22 make you less worthy of having health care? Isn't that  
23 of all things maybe what Government might help with?  
24 And, indeed, that is what maintenance of effort is about,  
25 and the Chairman was correct to put it in his mark. They

1 want to take it out.

2 What will happen, I guarantee you, is that a whole  
3 lot of poor and near-poor people are going to be dropped  
4 of being able to get health care over at least the next 2  
5 years, maybe beyond. Maybe that is the purpose. I do  
6 not know. I have enormous respect for the Senator from  
7 Maine, and so I hesitate to question what she would  
8 propose. But I just have to simply because I know my own  
9 State and I know my own people, and they are hurting and,  
10 if this amendment passes, they are about to get another  
11 setback from this Committee and from the Government that  
12 is meant to represent them.

13 I do not like it. It makes me angry. And I really  
14 want this amendment to lose.

15 Senator Snowe. Mr. Chairman?

16 Senator Rockefeller. I doubt that it will, but  
17 that would be sad.

18 Senator Snowe. Mr. Chairman?

19 Senator Conrad. Mr. Chairman?

20 The Chairman. Senator Conrad.

21 Senator Conrad. Mr. Chairman, might I inquire of  
22 the staff a few questions with respect to this amendment?

23 The Chairman. Sure. Absolutely.

24 Senator Conrad. Is my understanding correct, Mr.  
25 Schwartz, that the Recovery Act included a provision that

1 requires States to maintain coverage levels in exchange  
2 for additional FMAP assistance?

3 Mr. Schwartz. That is correct, Senator.

4 Senator Conrad. And is it correct that the  
5 assistance part of that, the additional FMAP, ends on  
6 December 31, 2010?

7 Mr. Schwartz. That is correct, Senator.

8 Senator Conrad. So the maintenance of effort that  
9 is in current law is predicated on additional FMAP  
10 assistance, that additional FMAP assistance ends on  
11 December 31, 2010. And the Chairman's mark, as I  
12 understand it--and I would ask, Mr. Schwartz--requires  
13 that States maintain existing eligibility levels upon  
14 enactment of this bill, and this maintenance-of-effort  
15 provision would expire but not until January 1, 2013?

16 Mr. Schwartz. That is partially correct, Senator.  
17 The Chairman's mark actually has a stop date of January  
18 1, 2013, for the maintenance of effort for part of the  
19 population, and for the remainder of the population, it  
20 extends it to January 1, 2014.

21 Senator Conrad. Ah, that is one of the things I  
22 wanted to ask about, because it does appear to me that  
23 there is a differential treatment. Could you explain the  
24 differential treatment? It is for those at 133 percent  
25 of the Federal poverty level. Is that correct?

1           Mr. Schwartz. That is correct, Senator. So the  
2 Chairman's mark contains a provision that we have  
3 referred to as the "Medicaid bridge" in which individuals  
4 between 100 percent of poverty and 133 percent of  
5 poverty, adult individuals, non-pregnant, non-elderly  
6 adult individuals, are given the choice between  
7 traditional Medicaid coverage or coverage through the  
8 exchange.

9           So that group is subject to a maintenance of effort  
10 until the exchange is up and running, and in the original  
11 Chairman's mark it says January 1, 2013. The start date  
12 for the exchange has, I guess, now been pushed back, so  
13 we would true that up. But the basic concept is there is  
14 a requirement on--there is a requirement on States to  
15 maintain their current eligibility levels, procedures,  
16 and practices so that people do not become uninsured  
17 before there is an alternate source of coverage.

18           Senator Conrad. I understand that, but, you know,  
19 it seems to me Senator Grassley and Senator Snowe have a  
20 point here; that is, the maintenance-of-effort  
21 requirement was put in place in exchange for additional  
22 FMAP funding from the Federal Government. That funding  
23 ends, but we are extending the requirement. And as much  
24 as I have sympathy for the argument advanced by Senator  
25 Rockefeller, you know, some of these States--this does

1 not affect my State, so this is not a parochial issue  
2 with me. But it affects other States, and it is a little  
3 hard for me to understand how we are telling States they  
4 have got to maintain level of effort based on additional  
5 assistance they are being provided, and then we stop the  
6 assistance, but the requirement continues.

7 As I have listened to this, it strikes me that  
8 Senator Grassley and Senator Snowe have a point. If this  
9 were a time of strong economic performance and the States  
10 were doing well in running surpluses, that would be one  
11 thing. But that is not the circumstance we confront, and  
12 I do not know, it just strikes me as a bit of a bait-and-  
13 switch deal to tell the States you have got a  
14 maintenance-of-effort requirement based on additional  
15 assistance you are giving, then we end the assistance,  
16 but we tell them, oh, but the requirement remains.

17 You know, that strikes me as not quite fair.

18 Senator Crapo. Mr. Chairman?

19 The Chairman. Senator Crapo.

20 Senator Crapo. Thank you, Mr. Chairman. I just  
21 want to follow up on Senator Conrad's and Senator Snowe's  
22 remarks and just reiterate something that Senator Snowe  
23 already stated. That is, just today the Kaiser  
24 Commission on Medicaid released a report, and I will  
25 quote from the report. The report says, "The survey

1 finds that Medicaid spending across the States is  
2 expected to grow by an average of at least 6.3 percent in  
3 fiscal year 2010. Officials in three-fourths of the  
4 States are concerned that appropriations will not be  
5 enough, leading to more budget shortfalls and more  
6 pressures to trim services and spending."

7 The point, just to follow up, is that to require the  
8 States to maintain populations without providing  
9 additional resources ignores the budget realities that we  
10 are facing in the States and literally extends the  
11 mandate of the Federal Government without extending the  
12 support the Federal Government provided when the mandate  
13 was originally created.

14 The Chairman. Senator Stabenow?

15 Senator Stabenow. Thank you, Mr. Chairman. I am  
16 very sympathetic to the concerns about what is happening  
17 in the States. I think it would be difficult to find a  
18 State that is in more financial crisis than we are given  
19 our unemployment rate being over 15 percent. So I am  
20 very appreciative and understanding of what is attempted  
21 here.

22 But my concern is that this takes us in the opposite  
23 direction of where we are trying to go in terms of  
24 coverage. And the States that are fudging a maintenance  
25 of effort of State money would be asked to continue their

1 State money, and it is a question of trading off coverage  
2 for people, low-income people, versus what I know to be  
3 extremely difficult budget situations. Our State  
4 legislature right now, today, probably as we speak, are  
5 trying to negotiate this year's budget, which is very  
6 difficult.

7 But, Mr. Chairman, I know that Senator Cantwell has  
8 another option that I believe--I am assuming will be  
9 coming up tomorrow--that really addresses people between  
10 133 percent and 200 percent and supporting the States,  
11 giving them resources. And I am wondering if there might  
12 be a way for us to hold off and work on this and see if  
13 we might compare notes. And Senator Cantwell certainly  
14 can speak for herself, but I know she has been working  
15 diligently on an amendment for States that would affect  
16 the same population of people in a way that would involve  
17 providing assistance directly to States but not losing  
18 the coverage that we are all trying to achieve here,  
19 because we are talking about low-income folks, low-income  
20 working folks that are having the toughest time trying to  
21 make it while our States are having a tough time. We are  
22 getting tens of thousands of new people who never had to  
23 ask for help before in their lives, ever, who are having  
24 to come and ask for help with their health care for their  
25 family.

1           And so I am concerned--I know we all share that, but  
2 I am very concerned about what this would do as it  
3 relates to loss of coverage.

4           The Chairman.   Okay.   Senator Snowe?

5           Senator Snowe.   I appreciate the comments of all my  
6 colleagues.   I think it is just a question of whether or  
7 not we are prepared to give the States who have chosen to  
8 make these investments over the years in expanding  
9 Medicaid populations--not to put them out on a limb, but  
10 to give them the flexibility to tailor their programs in  
11 the event that circumstances require it.

12           As I said earlier, the Rockefeller Institute said  
13 that State tax collections will take about 5 years to  
14 recover from, you know, this current recession and to  
15 return to the pre-recession levels of 2007.

16           Now, these are extraordinary times, unprecedented,  
17 as we all understand.   So our State, you know, has gone  
18 above 133 percent, and I am not suggesting that somehow  
19 my State is going to drop the coverage or go back to 133  
20 percent.   But the circumstances might dictate that, and I  
21 just think that we have an obligation not to impose and  
22 be adamant about them maintaining that level of expansion  
23 in the event that the economic situation warrants  
24 otherwise.

25           I think it is only a matter of fairness.   If you

1 think about working parents in the State of Maine, you  
2 know, under our standards, it is 206 percent of Federal  
3 poverty level, while the national average is 68 percent  
4 of Federal poverty level. We are talking about a dozen  
5 States perhaps that have gone above 133 percent, to their  
6 credit. They made those tough choices, and as I said,  
7 Maine is not a wealthy State. In fact, far from it. But  
8 it chose to make those tough decisions in the best of  
9 times. But we know that ahead it is not going to be the  
10 best of times, and maybe for quite a while. It is going  
11 to be a constant budgetary struggle, and I think in all  
12 fairness, since the maintenance of effort on the part of  
13 the Federal Government will, you know, be suspended in  
14 2010, that we should at least give them the option in the  
15 event that they decide that they have to move in that  
16 direction.

17 I would hope that the Committee would give that  
18 consideration because, otherwise, I think it is going to  
19 make it extraordinarily difficult in the years ahead. We  
20 are not encouraging the States to drop their coverage.  
21 Far from it. We have had a tradition in our State of  
22 prioritizing when it comes to expanding health care  
23 coverage under Medicaid. But if our budget outlook  
24 worsens--and as I said, it is already \$726 million over 2  
25 years of deficits--then we really do not know what the

1 future holds.

2 So I would hope that the Committee would give this  
3 fair consideration.

4 Senator Cantwell. Mr. Chairman?

5 The Chairman. Senator Cantwell. Then we are going  
6 to make a suggestion here.

7 Senator Cantwell. Mine is a question, actually,  
8 for Mr. Schwartz on the timing of this, because I know my  
9 colleagues are talking about giving States flexibility in  
10 the tough times that they are in. But these States have  
11 added people to the rolls, new people, obviously, given  
12 this money during this time period. And if the exchange  
13 is not up and running for a couple of years, then there  
14 would be people who could be impacted without coverage at  
15 all. Is that correct?

16 Mr. Schwartz. That is correct, Senator. It is not  
17 necessarily true that it is people new to the program.  
18 For instance, in Senator Snowe's case, Maine has been at  
19 206 percent for parents for some time, and so they are  
20 not allowed to go below. But they do not have to go  
21 above. They do not have to add, you know, someone at 207  
22 or 208. They just have to maintain where they are

23 Senator Cantwell. Do we have any idea how many  
24 people in America might be impacted?

25 Mr. Schwartz. Unfortunately, I do not think I have

1 a number of individuals. When we found out this  
2 amendment would come up this evening--and I think these  
3 are actually numbers Senator Snowe has already shared in  
4 her statement--it is about 12 States that cover parents  
5 above 133 percent in Medicaid. And for childless adults,  
6 it is a little bit harder because their waivers vary so  
7 tremendously, and so some of the services that these  
8 childless adults actually get do not really resemble  
9 Medicaid in some extreme instances. But it is somewhere  
10 around 14 States that offer some coverage to childless  
11 adults. That could vary. It could be a hospital-only  
12 benefit package. It could be something more substantial.

13 It could even be things like premium assistance programs  
14 that are run through Medicaid.

15 Senator Cantwell. And at some point, say that the  
16 exchange was created, then people would be shifting from  
17 this population of Medicaid to the exchange and getting a  
18 subsidy, which would be more expensive than the care that  
19 States would be providing under the current program.

20 Mr. Schwartz. That is absolutely correct.

21 Senator Cantwell. And so in some ways, we would  
22 just be encouraging more expensive care than solving the  
23 problem, which is how to cover a population when there  
24 are State economic budget challenges.

25 Mr. Schwartz. I think that is correct. I think

1       you are making it very easy for individuals to make the  
2       decision.  If they are not in a program, they are going  
3       to go to the program that exists for them.

4             Senator Cantwell.  So, Mr. Chairman, I think this  
5       certainly--I would like to know, with a State with an  
6       over 9-plus-change unemployment rate, I would be curious  
7       to know what States have actually done--and we have many  
8       States that are either if not at 9, close to double-digit  
9       unemployment rates, and so it would be interesting to now  
10      what population we are really talking about being left  
11      out in the time period up until the exchange, and then  
12      what that impact might be on the exchange.

13            Mr. Schwartz.  Senator Cantwell, I would be happy  
14      to try to get the number of people in those States.

15            Senator Cantwell.  Thank you.

16            Senator Snowe.  I just want to make one point--

17            The Chairman.  Senator Snowe, I would like to set  
18      this aside and let it marinate overnight.

19            Senator Snowe.  The second amendment of mine that  
20      you are allowing to marinate.

21            [Laughter.]

22            Senator Snowe.  I do not know if there is some  
23      problem here.

24            The Chairman.  No, no.  It might be a good idea to  
25      let it rest.

1 Senator Snowe. Okay. A really good idea?

2 [Laughter.]

3 The Chairman. A really, really good idea.

4 Senator Snowe. Okay.

5 The Chairman. Okay. Thank you.

6 Senator Wyden, I think you wanted to seek  
7 recognition with respect to a vote.

8 Senator Lincoln. How about voting on that other  
9 Snowe-Lincoln-Bingaman amendment? Are we ready for that  
10 yet?

11 The Chairman. Tomorrow morning. Okay. I  
12 understand Senator Wyden wanted to be recorded in the  
13 affirmative on the Ensign-Carper amendment, and it would  
14 not change the result, so I ask unanimous consent that  
15 that occur.

16 We have one more amendment, and it is my  
17 understanding--Senator Kyl will not be here tomorrow. He  
18 asked that we take it up tonight. He also assures us it  
19 will take no more than 2 minutes.

20 Senator Kyl. That is right, Mr. Chairman. I will  
21 not be here for a little bit in the morning during the  
22 Judiciary markup, but I will be here after the Judiciary  
23 markup.

24 Mr. Chairman, this is amendment D2 regarding the  
25 physician feedback program. We had laid it aside trying

1 to find an offset. In a short period of time, Senator  
2 Conrad's staff and my staff were unable to find an  
3 acceptable offset. So I want to go ahead and have the  
4 vote, but I want to thank Senator Conrad. I want to  
5 continue to work with him so that we can get this  
6 resolved before we go to the floor. And if we adopt the  
7 amendment, I am perfectly agreeable, obviously, to having  
8 a different offset before the bill gets to the floor.

9 Remember, this is the problem we had to solve  
10 because we were just taking the top 10 percent of  
11 physicians in terms of spending irrespective of who they  
12 were or why they spent the money and fining them--or  
13 reducing their reimbursements by 5 percent arbitrarily  
14 each year. So because it was thought to be too arbitrary  
15 and not an effective way to reduce costs, we wanted to  
16 eliminate that particular program.

17 And as I said, if we can adopt the amendment, I am  
18 sure we can find the appropriate offset before we go to  
19 the floor.

20 Thank you, Mr. Chairman.

21 The Chairman. Is there further--Senator Conrad?

22 Senator Conrad. Mr. Chairman, first I want to  
23 thank Senator Kyl for offering the amendment. I disagree  
24 with the offset, and so I would be constrained to resist  
25 passing the amendment at this point. But I do think

1 Senator Kyl has raised an important point, and I think it  
2 would be--we would all be well advised to have the  
3 physician feedback program, but not to apply a penalty,  
4 because I do not think we know enough to be certain that  
5 there would not be unintended consequences here.

6 So I would resist the amendment, but I would also  
7 commit to working with Senator Kyl before we get to the  
8 floor and see if we cannot find another offset to deal  
9 with this issue.

10 The Chairman. If there is no further discussion,  
11 we will vote on the amendment.

12 Senator Kyl. Mr. Chairman, I do thank Senator  
13 Conrad. I would just note all we do is strike the  
14 penalty. The program continues, but the penalty is  
15 eliminated. Thank you.

16 The Chairman. And the offset is to take it out of  
17 the core. Is that correct?

18 Senator Kyl. That is right. It is a \$1 billion  
19 cost, and that would be taken out of the core funding.

20 The Chairman. I urge the Committee not to support  
21 the amendment. I suppose you want a recorded vote.  
22 Okay. The clerk will call the roll.

23 The Clerk. Mr. Rockefeller?

24 The Chairman. No by proxy.

25 The Clerk. Mr. Conrad?

1 Senator Conrad. No.  
2 The Clerk. Mr. Bingaman?  
3 The Chairman. No by proxy.  
4 The Clerk. Mr. Kerry?  
5 The Chairman. No by proxy.  
6 The Clerk. Mrs. Lincoln?  
7 Senator Lincoln. No.  
8 The Clerk. Mr. Wyden?  
9 Senator Wyden. No.  
10 The Clerk. Mr. Schumer?  
11 The Chairman. No by proxy.  
12 The Clerk. Ms. Stabenow?  
13 Senator Stabenow. No.  
14 The Clerk. Ms. Cantwell?  
15 Senator Cantwell. No.  
16 The Clerk. Mr. Nelson?  
17 The Chairman. No by proxy.  
18 The Clerk. Mr. Menendez?  
19 The Chairman. No by proxy.  
20 The Clerk. Mr. Carper?  
21 The Chairman. No by proxy.  
22 The Clerk. Mr. Grassley?  
23 Senator Grassley. Aye.  
24 The Clerk. Mr. Hatch?  
25 Senator Grassley. Aye by proxy.

1           The Clerk.    Ms. Snowe?  
2           Senator Snowe.   Aye.  
3           The Clerk.    Mr. Kyl?  
4           Senator Kyl.     Aye.  
5           The Clerk.    Mr. Bunning?  
6           Senator Bunning.   Aye.  
7           The Clerk.    Mr. Crapo?  
8           Senator Crapo.   Aye.  
9           The Clerk.    Mr. Roberts?  
10          Senator Grassley.  Mr. Roberts is aye by proxy.  
11          The Clerk.    Mr. Ensign?  
12          Senator Ensign.   Aye.  
13          The Clerk.    Mr. Enzi?  
14          Senator Grassley.  Aye by proxy.  
15          The Clerk.    Mr. Cornyn?  
16          Senator Grassley.  Aye by proxy.  
17          The Clerk.    Mr. Chairman?  
18          The Chairman.   No.  
19          Senator Schumer.  Mr. Chairman?  
20          The Clerk.    Mr. Schumer?  
21          Senator Schumer.   No.  
22          The Chairman.   The clerk will tally.  
23          The Clerk.    Mr. Chairman, the final tally is 10  
24          ayes, 13 nays.  
25          The Chairman.   The amendment is not agreed to.

1           Senator Wyden.    Mr. Chairman?

2           The Chairman.    Senator Wyden.

3           Senator Wyden.    Mr. Chairman, in pursuit of  
4   Committee business, I had to be out of the room during  
5   the Carper-Ensign amendment, the consideration of it.  If  
6   I could be recorded as yes, that would--

7           The Chairman.    You get to vote twice because you  
8   have already done that.

9           Senator Wyden.    Very good.  Thank you.

10          [Laughter.]

11          The Chairman.    You are welcome.

12          I will ask consent that a statement of mine be  
13   printed in the record at this point.

14          [The statement appears at the end of the  
15   transcript.]

16          The Chairman.    I thank the Committee for their work  
17   this evening.  I hope to be as productive tomorrow, and  
18   the Committee will recess until 10:30 tomorrow morning.

19          [Whereupon, at 10:07 p.m., the Committee recessed,  
20   to reconvene on Thursday, October 1, 2009, at 10:30 a.m.]

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**“America’s Healthy Future Act of 2009”  
Statement for the Record  
Chairman Baucus  
Wednesday September 30, 2009**

**I would like to address any concerns related to a modified Wyden amendment that was included in the Modification of the Chairman’s Mark.**

**The accepted amendment as modified allows that a State may be granted a waiver if the state applies to the Secretary to provide health care coverage that is at least as comprehensive as required under the Chairman’s Mark.**

**States may seek a waiver through a process similar to Medicaid and CHIP. If the State submits a waiver to the Secretary, the Secretary must respond no later than 180 days and if the Secretary refuses to grant a waiver, the Secretary must notify the State and Congress about why the waiver was not granted.**

**I want to clarify that this authority only relates to laws under the authority of the Secretary of HHS and does not apply to laws like the Civil Rights Act, ERISA, and American's with Disabilities Act or any other federal law or regulation which is not under the jurisdiction of the Secretary of HHS. Waivers are not intended to thwart or affect the intent of the reforms included in America's Healthy Future Act.**

**SENATOR CHARLES E. SCHUMER**  
**STATEMENT ON KERRY AMENDMENT F-1**

Thank you, Mr. Chairman. I just want to speak for a moment in support of the Kerry amendment, which is also cosponsored by Senators Rockefeller, Cantwell, Stabenow, and Menendez.

The original proposal on the high-premium excise tax contained in the Chairman's Mark, before last week's modification, would have impacted 19 percent of those with single coverage and 14 percent of those with family coverage in 2014, rising to 41 percent and 37 percent respectively in 2019. For those of us that come from high-costs states with large urban centers, these numbers would have been very difficult for us to swallow.

The changes that the Chairman has made in his modification do improve things, and I recognize how hard he and his staff have worked to try to reduce the number of Americans that would be affected by the excise tax over time. The modification does two things that soften the impact. First, the bill before us now indexes the annual thresholds before the tax kicks in to CPI-plus-1 every year, which sounds like a small change but it makes a big difference when compounded over many years. Second, the Chairman has increased the thresholds by \$750 for single taxpayers and \$2,000 for families for those near retirement, or those who work in high-risk professions.

These changes will help – if you take these two changes, and add in the transition for high-cost states, the impact on New York will be significantly less than in the original bill. This is an important step forward. But we must go farther to limit the impact of this provision so that it doesn't ensnare middle-income, hard-working families – particularly those in high cost states.

If we can increase the thresholds to \$9,800 and \$25,000, which the Kerry amendment would do, here's what it will mean: The number of taxpayers affected by the excise tax in the first year will be reduced by nearly two-thirds, and the number of taxpayers affected in 2019 will be reduced by about half. That will make a huge difference. It sets the effective premium before the tax kicks in at FEHP plus 60 percent, or 60 percent above the average premium in the federal employees' health benefits plan. In 2006, less than 7 percent of New Yorkers with family coverage had premiums above FEHP-plus-60.

I think most of us on this side would be willing to live with a \$25,000 exemption because it still bends the cost curve for the highest-cost plans, without casting the net too broadly where it hits the middle class.

The Chairman knows that there are a number of us who want to continue to work with him on this proposal after the bill clears the Finance Committee. I imagine that those on the other side – who supported and pushed the initial idea to tax employee benefits directly and wanted that proposal to raise as much revenue as possible – will not want to increase the threshold. But we are hopeful that the final bill considered in the Senate will have a threshold closer to \$9,800 for singles and \$25,000 for families, or FEHP-plus-60.

Thank you, Mr. Chairman.