United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

Vol. 156 WASHINGTON, WEDNESDAY, MARCH 24, 2010 No. 47

Senate

The Senate met at 9 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty and eternal God, in whose keeping are the destinies of galaxies, here at this altar of supplication we lift our hearts to You. Today, crown the deliberations of our lawmakers with civility and respect as well as passionate sympathy for humanity. Facing great questions and issues, quicken in our Senators every noble impulse, transforming each task into a throne of service. Take away any desire to put off until tomorrow the things they should accomplish today. Lord, make them brave and steadfast until right becomes victorious might. We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 24, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, today the Senate will resume consideration of H.R. 4872, the Health Care and Education Reconciliation Act. Rollcall votes are expected to occur throughout the day. The vote-a-rama, as it has become known, will begin sometime this afternoon.

MEASURE PLACED ON THE CALENDAR—S. 3158

Mr. REID. Mr. President, it is my understanding that S. 3158 is at the desk and due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title for a second time.

The assistant legislative clerk read as follows:

A bill (S. 3158) to require Congress to lead by example and freeze its own pay and fully offset the cost of the extension of unemployment benefits and other Federal aid.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. I object to any further proceedings with respect to the bill.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 4872, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4872) to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010, S. Con. Res. 13.

Pending:

Gregg-Coburn modified amendment No. 3567, to prevent Medicare from being used for new entitlements and to use Medicare savings to save Medicare.

McCain amendment No. 3570, to eliminate the sweetheart deals for Tennessee, Hawaii, Louisiana, Montana, Connecticut, and frontier States.

Crapo motion to commit the bill to the Committee on Finance, with instructions.

Enzi motion to commit the bill to the Committee on Finance, with instructions.

Barrasso amendment No. 3582, to ensure that Americans can keep the coverage they have by keeping premiums affordable.

Grassley-Roberts amendment No. 3564, to make sure the President, Cabinet members, all White House senior staff and congressional committee and leadership staff are purchasing health insurance through the health insurance exchanges established by the Patient Protection and Affordable Care Act.

Mr. REID. Mr. President, would the Chair report how much time is left on general debate on the bill.

The ACTING PRESIDENT pro tempore. The majority has 7 hours 32 minutes and the minority has 8 hours 30 minutes.

Mr. REID. Mr. President, I yield back all time remaining on the bill on the majority's side.

The ACTING PRESIDENT pro tempore. The leader has that right. The time is yielded back.

The Senator from Tennessee is recognized.

MOTION TO COMMIT

Mr. ALEXANDER. Mr. President, I ask unanimous consent to temporarily

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

set aside the pending motion so that I may offer a motion to commit, which is at the desk.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report the motion.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. ALEXANDER] moves to commit the bill H.R. 4872 to the Committee on Health, Education, Labor, and Pensions of the Senate with instructions to report the same back to the Senate within 1 day with changes to reduce the interest paid by student borrowers by 1.5 percentage points and to add an offset.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I wonder if the Senator from Tennessee would agree to modify his request so that the earlier amendments be set aside until a time designated by the leaders and this motion then be taken up at a time to be decided by the leaders, which is the customary practice we have been utilizing with previous amendments.

Mr. ALEXANDER. Mr. President, I wonder if the Senator from Montana would permit me to consider that request and then respond to him within a few minutes.

Mr. BAUCUS. The Senator would withdraw the request and make the request later?

Mr. ALEXANDER. If I may consult with Senator GREGG, then respond. If you will make the request later, I would be grateful.

Mr. BAUCUS. OK.

Mr. ALEXANDER. Thank you very much.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, 19 million American families will be interested in this motion because it will reduce the cost of student loans which 19 million Americans have. This is the season of the year when a great many students have been admitted to a college or a community college and are making plans and looking for where they are going to get their money. This motion is aimed at reducing the interest rate on 19 million student loans from 6.8 percent to 5.3 percent. For the average student loan debt of about $25,000, it would save that student $1,700 or $1,800 over their ten-year loan. More specifically, it would not only help the student, but it would prevent the Federal Government from overcharging 19 million American college students on their student loans to help pay for the health care bill and other government programs.

One may say: Wait a minute, I thought we were debating the health care bill. How did we get to student loans? That is a very good question because it just came up over the weekend. Of course, we have talked about student loans. There have been proposals, but there have been no hearings in the Senate, no consideration in the Senate committee of which I am a member. Yet over the weekend, the Democratic majority said: Well, look, while we are at it, let's have another Washington takeover. Let's take over the Federal student loan program. Let's take a program which is working very well, in which 15 million American students have voted with their feet to say they would prefer to get a regular student loan backed by the government, which they get at their college campuses, through their community bank, through a nonprofit institution. Even though they do have an option for a government loan, three out of four students have said they prefer the student loan through the private lender. Yet over the weekend, the Democratic majority has said: While we are at it, let's take over the Federal student loan program.

That means that starting July 1, students have no choice. They go to the Federal Government to get their student loan, all 19 million of them, which is a new experience for 15 of the 19 million.

The way they are going to do it—and this is all going to be set up in a very short period of time—is they are now going to have to go to four Federal call centers. So instead of going to their local lender or to their nonprofit institution, that can help them with their application form and see what their options are and encourage them as they make their plans for college, welcome to the new government loan program. They have no choice. That is what they are going to do.

What are the other aspects of this? Well, other than denying choice to 19 million students on more than 2,000 campuses who prefer the Federal loan program, the Federal Government is going to have to borrow another $½ trillion in order to make these loans. Let's think about this for a moment. What is the No. 1 issue that most Americans worry about today? It is that we have too much debt. So what did this weekend takeover do? It adds about $½ trillion to the Federal debt in order to make student loans, at the rate of about $90 billion or $100 billion a year for 4 or 5 years.

So we take away choice, we add to the debt, and we also put 31,000 people out of their jobs. These are a lot of loans, and so we have a lot of people in these organizations, such as Edsouth in my State, a nonprofit organization that helps students get their loans. So all these lenders are out of business and we have one big bank—the Federal Government.

The Education Secretary is the new banker of the year. He is a very good Education Secretary, but I don't know how good a banker he is going to be.

But here is the rub, and this is what my motion is about. The Federal Government is going to be borrowing money at 2.8 percent and loaning it to students at 6.8 percent and taking the difference and spending it on new government programs, including the health care bill. So we are going to be overcharging 19 million students to help pay for the health care bill. And, according to the most recent Congressional Budget Office estimates, about $8.7 billion of the overcharged money is going to go to pay for the health care bill.

My friends on the other side have already spent the money, of course. They have announced to everybody that we are going to spend it on this and on that and on this, but what they do not tell you is, where they get the money. Where they get the money is overcharging students—overcharging students.

These aren't Wall Street financiers we are overcharging. This might be a single mom going to a community college in Tennessee who has a job but who wants a better job and so she borrows some money to go to the community college and the Federal Government is going to overcharge her to pay for some government program. She might not like that.

In fact, I think there will be about 19 million student loan holders across the country who will go to school next year and say: Wait a minute here. You mean you are overcharging me on my student loan to pay for this health care bill and to pay for other government programs? The answer will be: Yes, that is what we are doing, unless my colleagues support this motion.

The estimate by our friends on the other side is that their Federal takeover of the Federal student loan enterprise will save $61 billion. If they are correct, let's give it to the students. Let's reduce their interest rate. I mean, $1,700 or $1,800 per student in interest over 10 years is the average amount of savings, and that is a lot of money. It may not seem like a lot of money to Congressmen and Senators in Washington, but to the single mom going to the community college who is borrowing the money to go to school in order to get a better job, $1,700 or $1,800 is a lot of money.

So in addition to the higher premium numbers, the higher taxes, the Medicare cuts, and the new cost to States, we are going to be overcharging on student loans. Let me use a specific example from Tennessee, if I may. I was at the University of Tennessee earlier this week. This is the University of which I used to be president. The University of Tennessee has 30,000 students, and 37 percent of them—or 11,251—have Federal private loans today. The average student debt is about $20,000. After July 1, all 11,000 students at the University of Tennessee, with these Federal loans from private lenders, are going to have to switch to the government loans, and the government is going to overcharge 11,000 students who go to the University of Tennessee at Knoxville and use that overcharged money to pay for new government programs, including the health care bill.

They are going to do the same thing to the University of Tennessee at Martin. There they choose to use the private loan program. They like it better than the government loan program. They think it is more convenient for the students. They have chosen—3,600 students at UT Martin—have chosen Federal private loans. They are going to be out of those loans by July 1. They are going to have government loans, and the government is going to overcharge them to help pay for the health care program.

Maryville College—I will be there Saturday night to help dedicate their arts center. There, 824 students have Federal loans today. They are going to have government loans. They are going to switch from private to government loans. They will have no choice after July 1. I know a lot of these students. They come from modest families, in most cases. They are not going to be very happy to learn that when they switch to a government loan after July 1, and if they have an average-size loan, which is about $25,000, that over 10 years they are going to pay $1,700 or $1,800 to help pay for the health care program or other new government programs.

In Carson-Newman College, it is 1,259 students. In East Tennessee State University, it is 8,187 students. In all of Tennessee, it is 200,000 students who have student loans who are going to be overcharged an average of $1,700 or $1,800 a year to help pay for the health care program or some other government program, and this amendment would say: No, we are not. If we are going to take over the student loan program, at least we are not going to overcharge the students and use it for the health care program. We are going to give the money back to the students.

The point of my amendment is very simple. We are going to reduce the interest rate we charge on 19 million student loans from 6.8 percent to 5.3 percent and let the students have the savings instead of letting the government have the savings. That is what the other side has not told people about the student loans.

If we had an ample opportunity to debate this in the Senate, if we had a committee hearing on it, if we had taken it through the regular process, maybe we could have pointed this out, but no, we do it over the weekend, put it in the House bill, send it over here, jam it through with great breast beating and protestations: Look what we have done for the country. I am accustomed to that. I used to be a Governor. I remember lots of Members of Congress who would say I did a great thing in Washington and then send the bill to me to pay. And then, as Governor—in this case the health care bill will do the same thing. It will send to the Governors and to the States new costs. Our Governor estimates it is $1.1 billion over 5 years, to $1.5 billion. That is about $300 million a year new costs that State taxpayers will have to pay.

As the Medicaid cost goes up, we will get the second blow to the students of Tennessee because either the State is going to have to reduce funding for public higher education—which I believe this health care bill will help permanently damage—or they are going to have to raise taxes, or they are going to have to raise tuition, or they are going to have to do all three. If I am a student at Maryville College, Carson-Newman, or the University of Tennessee, first this health care bill is going to overcharge me on my student loan to help pay for it; second, it is going to send such big new costs to the government that the Governor is going to have to reduce funding to my college or university and my tuition is going to go up.

All those students in California who are protesting a 34-percent increase in tuition probably do not realize the reason for that happening. The main reason is that over the years the Federal Government has so regulated the Medicaid program that the States pay about a third of, that the State budgets have grown and grown and the Governors, such as Governor Schwarzenegger in California, have had no choice except to cut, knowing that when you get down through the budget process you have had no choice except to cut other programs. Governors know when you get down through the budget process in the State, it usually comes down to Medicaid or higher education. So a great university such as the University of California is on its knees, and if it even hoped to keep its quality, it raises tuition 34 percent.

My amendment will not help that problem. The law the President signed yesterday already will transfer to States these huge new costs that are going to permanently damage higher education and raise tuition. But what my amendment will do is say we are not going to overcharge 200,000 students in Tennessee for their student loans and use $8.7 billion to help pay for health care.

Sometimes I think the motto of the Obama administration is: If you can find it in the Yellow Pages, the government ought to be doing it.

This is breathtaking. While we are taking over cars, banks, insurance companies, while we are taking over more of health care, we will also take over the student loan program, add $½ trillion to the Federal debt, overcharge 19 million students, cause 31,000 people to lose their jobs and say ''all in a day's work.'' That is what happened last weekend. Over the weekend that is the decision they made. Then over here bragging about how much we are going to do for everybody. We are going to do a little more for everybody if we have a chance to vote on this amendment because when we go home we will have a chance to say either I cut the interest rate on your student loan from 6.8 to 5.3 percent and give you the savings, or I voted to overcharge you $1,700 or $1,800 a year and give the money to the government to help pay for the health care bill.

Mr. President, I ask unanimous consent to have printed in the RECORD following my remarks a few communications I received from Tennessee.

The ACTING PRESIDENT pro tempore. Without objection, it is ordered.

(See exhibit 1.)

Mr. ALEXANDER. Here is a letter from Vanderbilt University to Congressman COOPER from the Chancellor which says:

> Our overarching concern with [this proposal] is that the legislation forces institutions, including Vanderbilt, to switch to direct lending.

Here is a distinguished university, one of the top research universities in the world. They have chosen—they believe it is best for their students and for their campus to use the private banks and non-profits. We know better, of course, than Vanderbilt University, what is best for the campus and best for the students. We say no, July 1, only the government.

In their letter they continue:

> Vanderbilt opposes the elimination of the FFEL program. We encourage Congress to carefully study the many alternate proposals. . . . In addition to our concerns about the elimination of choice, competition, and the high level of services, products and debt management we believe would come with this switch, we are very concerned that the proposed timeframe for this mandated conversion is unreasonable.

So Vanderbilt opposes that. So does the Baptist College of Health Sciences, so does Maryville College, so does the Middle Tennessee School of Anesthesia, so does Dyersburg State Community College.

I ask to have these remarks printed in the RECORD and an article I wrote in the Washington Post that was published on Sunday, March 7, about the student loan takeover.

EXHIBIT 1

VANDERBILT UNIVERSITY,
September 10, 2009.

Hon. JIM COOPER,
Longworth House Office Building,
Washington, DC.

DEAR CONGRESSMAN COOPER: The House of Representatives will soon consider H.R. 3221, the Student Aid and Fiscal Responsibility Act which would fundamentally restructure the federal student aid system and funnel the projected savings into a variety of higher education and K–12 programs as well as deficit reduction. While Vanderbilt supports efforts to restructure and expand federal student aid programs, we have serious reservations about this legislation.

As you know, one proposed change has to do with the Direct Loan (DL) program, in which the government acts as the lender, and the Federal Family Education Loan (FFEL) program, in which lending institutions provide loans to students. Vanderbilt has a long and successful history of participation in the FFEL program which has provided our students with superior loan products, service, and choice in their federal loans for many years.

Earlier this year, the administration proposed eliminating the FFEL program, requiring all institutions to participate in DL and using the projected $87 billion in savings over 10 years from this switch to fund a mandatory Pell Grant and expand the Perkins

Loan program. [Other estimates have put the ten-year savings figure at closer to $47 billion.] H.R. 3221 seeks to implement those proposals. Unfortunately, the legislation has attracted a host of other education-related provisions which, while perhaps meritorious in their own right, we believe should not be attached to federal student aid legislation.

We applaud and strongly support a number of provisions of H.R. 3221:

Modest increases to Pell Grants. Any increase in Pell Grants is deeply appreciated and will benefit undergraduate students. Although the bill does not create the mandatory Pell Grant proposed by the administration, it calls for $40 billion of the projected savings to be invested in the Pell Grant program, moving it toward a $6,900 maximum grant by 2019.

Converts Stafford Loan interest rates from fixed to variable. The bill provides $3.25 billion to change the fixed interest rates on subsidized loans to a variable rate capped at 6.8 percent.

Simplifies the FAFSA. We support reasonable efforts included in the bill to simplify the FAFSA for federal student aid programs.

ELIMINATING THE FFEL PROGRAM

Our overarching concern with H.R. 3221 is that the legislation forces institutions, including Vanderbilt, to switch to Direct Lending. Of additional concern is the fact that the proposed legislation does not then direct all of the savings from this federal mandate back into federal aid programs. Vanderbilt opposes the elimination of the FFEL program. We encourage Congress to carefully study the many alternate proposals to a mandatory conversion to DL. In addition to our concerns about the elimination of choice, competition, and the high level of services, products and debt management that we believe would come with this switch, we are very concerned that the proposed timeframe for this mandated conversion is unreasonable. Institutions will need sufficient time to make changes to their IT systems and update their printed and on-line recruitment materials. Completing this by the proposed July 1, 2010 deadline is simply not feasible. In fact, Vanderbilt has already printed many of its recruitment materials and launched its 2010–2011 admissions and financial aid efforts. We would advise that, if a mandated conversion to DL is implemented, the earliest effective date be July 1, 2011.

A NEW PERKINS LOAN PROGRAM

The bill restructures the Perkins Loan program into essentially a second DL program that is campus-based, with an additional $5 billion. The legislation proposes a complex institutional allocation formula based on holding past participants, such as Vanderbilt, harmless, while significantly expanding participation based on low tuition and improved Pell recipient graduation rates. We believe that a Perkins program allocation formula should be based on the aggregate need of an institution's students relative to the aggregate need of all students at institutions participating in the program nationally, subject to and including the hold harmless provisions.

While Vanderbilt supports expanding participation in the Perkins Loan program as well as the provisions that would hold harmless existing participants, we are troubled by proposals to eliminate the in-school interest subsidy and loan forgiveness programs. These features have made Perkins Loans uniquely attractive for many of our students. Vanderbilt also opposes proposals to require institutions to pay the accrued interest while students are still enrolled in school. This would impose significant costs on our financial aid budget and could jeopardize our participation in the program. H.R. 3221 is also not clear as to whether institutional matching funds will be required or how that determination would be made.

CREATES ACCESS, COMPLETION, AND PERSISTENCE GRANT PROGRAMS

Included in the bill is $3 billion for the College Access Challenge Grant program. These funds would be allocated primarily to states and guaranty agencies with a small portion retained for a national competition. While Vanderbilt supports the goals of this program, and is proud of our 95 percent freshman retention and 92 percent six-year graduation rates, we are concerned that diverting up to 75 percent of the funding to the states could severely restrict the ability of private institutions to compete for the funding and could inappropriately increase state oversight of private institutions. We also believe that any savings generated from the switch to DL should remain in the existing federal student aid programs.

In addition to these, there are several other provisions of the legislation that are troubling to us:

Family Asset Cap. Students with family assets of more than $150,000 would be ineligible for any need-based federal aid. While the value of a family's house, farm, business, or employee pension benefit plan would be excluded, we believe this cap should be increased to at least $250,000, geographic factors should be applied, and an option established for financial aid administrators to be able to use their professional judgment such that students and parents in unique circumstances can be held harmless by this provision.

Beyond Student Aid. H.R. 3221 goes far beyond federal student aid to include funding for other higher education programs as well as K–12 school construction and early childhood education. We believe that all savings generated from the student aid programs should remain in these programs. These initiatives, while potentially meritorious, should be funded through avenues other than student aid programs' savings.

H.R. 3221 truly is a mixed hag. While Vanderbilt supports the significant new investment in the Pell Grant program, we are concerned that allocations to other initiatives have significantly reduced the possible level of support for the Pell Grant program. We remain strongly opposed to the elimination of the FFEL program. And, although it could bring low-cost Perkins Loans to millions of new students, we are troubled by proposals to eliminate the in-school interest subsidy and other changes to that program.

Vanderbilt remains committed to the federal student aid programs, which provide a foundation to our aid packages for both undergraduate and graduate students. We look forward to continuing to work with you to ensure that all capable and eligible students, regardless of financial circumstances, are able to access and complete post-secondary education. If you have any questions or if I can provide any additional information, please let me know.

Sincerely,

CHRISTINA D. WEST,
Director of Federal Relations.

TENNESSEE ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS,

November 25, 2009.

Hon. LAMAR ALEXANDER,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ALEXANDER: On behalf of the Executive Board of the Tennessee Association of Student Financial Aid Administrators (TASFAA), I want to communicate to you our collective concerns regarding the Federal Student Loan Program (Stafford and PLUS).

TASFAA represents financial aid officers from 106 postsecondary institutions in Tennessee. The Tennessee postsecondary institutions serve several thousand students, many who are student loan borrowers. While our membership and schools are located within Tennessee, we have students from every state in the Union. We seek your support of our requests, which are made on behalf of the students and parents we serve. These students and parents have been well served by not only the institutions and individual professionals, but by the Federal Direct Lending Program (FDSLP) through the Department of Education and by private sector lenders within the Federal Family Education Loan Program (FFELP) also. Importantly, our students and parents have benefitted by the opportunity to seek out lenders who offer loans with savings and service that aid the borrowers throughout repayment.

TASFAA is an advocate for choice within the respective loan programs. As President Obama stated in his address to a Joint Session of Congress, ''Consumers do better when there is choice and competition.'' We also want to focus on the timing of all schools currently participating in the FFELP having to switch to the Federal Direct Student Loan Program should the Senate version of H.R. 3221 be enacted. Recent information from the Department of Education showed that 1,990 of the 5,455 schools that participate in federal student loan programs are currently participating in the Direct Loan Program. Therefore, 3,465 colleges and universities across the country, that serve millions of students, are not yet participating in the FDSLP.

Many elected officials have expressed their concerns regarding the timing of such a transition. Most Tennessee institutions will begin awarding financial aid packages to traditional students in early spring. In addition to the traditional calendar, some institutions have non-traditional students in year-round programs who borrow student loans throughout the year in what is known as the Borrower-Based Academic Year (BBAY). For these students, loans will be packaged in approximately four weeks, and the precarious status of the legislation may greatly harm these student borrowers. The Secretary's assistant has noted it will take 3–4 months for schools to convert their programs. Due to the issues related to the transition to a new program (shortage of staff members, new software systems, lack of training, financial issues at small schools, etc.), we ask that you consider the dilemma that these students face by the timing of such an action and at the very least, delay the implementation of full conversion to FDSLP to July 1, 2011.

If you choose to support the Senate version of H.R. 3221 and move forward with full conversion to FDSLP but allow for the delayed implementation date, we implore you to support S. 2796 to extend the Ensuring Continued Access to Student Loans Act (ECASLA). ECASLA has assured that students have been able to obtain the loan(s) necessary to ensure their educational goals and dreams. This action will ensure that every educational loan borrower will be able to continue to secure the respective loan with no interrupted service.

As of the date of this letter, the Senate committee of jurisdiction has not acted on this proposed legislation, as well as the entire Senate or any conferees. This is of major concern to us as the timing of the possible conversion to, and implementation of, 100 percent FDSLP is further delayed. The Senate had noted it would vote on H.R. 3221 by

October 15, 2009, but as of the date of this letter, proposed legislation still has not reached the Senate for a vote.

With all of the above taken into consideration, the Executive Board of TASFAA, on behalf of our entire membership, urges you to support ''choice and competition.'' But if not, we ask you to implement a reasonable timeframe for transition.

Sincerely,

MARIAN MALONE HUFFMAN,
President, TASFAA.

BAPTIST COLLEGE
OF HEALTH SCIENCES,
Memphis, TN, November 24, 2009.

MEMBERS OF CONGRESS: I ask that you support H.R. 4103 and S. 2796 to ensure uninterrupted FFELP funding of Federal Student Loans for students and parents attending colleges and universities across the country.

I have worked in the student financial aid profession since 1982, ALWAYS at FFELP schools. In my many years of experience, I have witnessed tens of thousands of students being well served by the FFELP system. The idea of the Federal Direct Student Loan Programs certainly contributed to needed improvements to FFELP, and the two programs have served to keep each other ''on their toes.'' To shift now to a federal monopoly in the student loan business could prove to be a monumental mistake.

Schools have had plenty of time to choose between FFELP and Direct Lending. It is clear that FFELP works better for some schools and Direct Lending for other schools. And most importantly, BOTH programs do a good job of serving needy students attend college. Let's please keep it that way.

Sincerely,

JANET BONNEY-BAKER,
Financial Aid Supervisor, Baptist College of Health Sciences.

OFFICE OF FINANCIAL AID,
DYERSBURG STATE COMMUNITY COLLEGE
Dyersburg, TN, November 25, 2009

As a student financial aid administrator for over thirty-five years, I have concerns regarding students receiving needed funds to attend post-secondary institutions in the 2010–2011 academic year. Regardless of our stance on direct lending, we all have one common bond, and that is helping the students we serve.

All schools are planning for the 2010–2011 academic year, and we feel trapped. I implore you to consider extending the Ensuring Continued Access to Student Loans Act (ECASLA) as quickly as possible, so that the students in this country will not suffer with the uncertainties accompanying delays in implementation of new programs. Timing is critical for higher education in this country.

Please consider choice as the loan option for the students of this country. Competition and choice is a foundation of our economy. As President Obama stated in his address to a Joint Session of Congress, ''consumers do better when there is choice and competition''.

The Secretary's assistant has noted that it will take 3–4 months for schools to convert their programs. Due to the issues related to the transition to a new program (shortage of staff members, new software systems, lack of training, financial issues at small schools, etc.), please consider delaying the implementation of full conversion of the Federal Direct Student Loan Program to July 1, 2011, at the earliest which will provide us with a reasonable timeframe for transition, if choice is not an option for us.

Sincerely,

SANDRA ROCKETT,
Director of Financial Aid.

MIDDLE TENNESSEE
SCHOOL OF ANESTHESIA,
November 24, 2009.

MEMBERS OF CONGRESS: I ask you to support H.R. 4103 and S. 2796 to ensure uninterrupted FFELP funding of Federal Student Loans for students and parents attending colleges and universities across the country.

I am the sole worker in Financial Aid at Middle Tennessee School of Anesthesia, (MTSA) and we like the FFELP program. The students here at MTSA DO NOT want to use Direct Lending. The decision to end the FFELP program takes away the right to choose. The advent of the Federal Direct Student Loan Programs certainly contributed to needed improvements to FFELP, and the two programs have served to keep each other ''on their toes.'' To shift now to a federal monopoly in the student loan business could prove to be a monumental mistake. Having the ability to use both programs gives the Financial Aid Industry a healthy competition.

Schools should have the ability to talk to different lenders and choose between FFELP and Direct Lending. It is clear that FFELP works better for some schools and Direct Lending for other schools. And most importantly, BOTH programs do a good job of serving needy students attending college.

Sincerely,

M. JOANNA HAYES DICKENS,
Financial Aid Coordinator.

RHODES COLLEGE,
FINANCIAL AID OFFICE,
Memphis, TN, December 8, 2009.

SENATOR LAMAR ALEXANDER,
Dirksen Senate Office Building,
District of Columbia.

DEAR SENATOR ALEXANDER, I write to urge you to vote in favor of extending the Ensuring Continued Access to Student Loans Act, H.R. 4103 and S. 2796. As a financial aid professional, I know firsthand the importance of these funds in meeting students' educational expenses. I believe that competition breeds excellence and I am in favor of keeping both the FFEL and Direct programs in place. To eliminate FFEL especially during this particular time in history, would be a mistake that would cost institutions and students time and money that we simply can't afford.

An interruption in the delivery of these funds would create a hardship for many students and make the neediest among them unable to attend college. This bill will ensure that sufficient funds will be available for students in the 2010–2011 academic year.

Please Vote YES to H.R. 4103 and S. 2796! Thank you for your understanding and support of our students!

Most Sincerely,

ASHLEY BIANCHI,
Acting Director of Financial Aid.

AND NOW FOR STUDENTS, BIG LENDER

(By Lamar Alexander)

While health-care reform occupies the spotlight, the Obama administration is pushing for another Washington takeover—this time of the student loan system. Last month, U.S. Education Secretary Arne Duncan made the administration's latest pitch on this page.

Here is what the administration and congressional Democrats have told us about this latest attempt: Starting in July, all 19 million students who want government-backed loans will line up at offices designated by the U.S. Education Department. Gone will be the days when students and their colleges picked the lender that best fit their needs; instead, a federal bureaucrat will make that choice for every student in America based on still-unclear guidelines. They say that this will save taxpayers up to $87 billion in subsidies that now go to ''greedy'' banks. In gleeful anticipation, members of Congress have lined up to spend those billions on Pell Grants and almost a dozen other programs. Banks are punished. Students are helped. Members of Congress look good.

Here is what they haven't told us: The Education Department will borrow money at 2.8 percent from the Treasury, lend it to you at 6.8 percent and spend the difference on new programs. So you'll work longer to pay off your student loan to help pay for someone else's education—and to help your U.S. representative's reelection.

And there are some other things the government should tell you: The estimated $87 billion in savings isn't real. According to a July 2009 letter from the Congressional Budget Office (CBO) to Sen. Judd Gregg (R–N.H.), the savings are closer to $47 billion including administration costs, if we use the same ''scoring'' (i.e., cost analysis) method that Congress required the CBO to use when it scored the Troubled Asset Relief Program last year because the method would more accurately calculate the cost to taxpayers.

Finally, the government should disclose that getting your student loan will become about as enjoyable as going to the Department of Motor Vehicles.

Today, roughly 2,000 lenders offer government-backed student loans on more than 4,000 campuses. One lender, Edsouth, offers Tennessee students college and career counselors, financial-aid training, and college-admissions assistance; performs hundreds of presentations at Tennessee schools; and works with 12,000 Tennessee students to improve their understanding of the college-admissions and financial-aid process.

Nonprofit lenders such as Edsouth use the revenue generated under the student-loan system to operate and provide these valuable benefits—but of course, these services cost money. If—under this latest Washington takeover—Edsouth and other nonprofit lenders are prevented from making the number of loans they make today, they will no longer be able to provide these services, depriving students of real choices in lending.

The student loan ''Banker of the Year'' will be the only student loan banker left calling the shots; the education secretary in Washington. Imagine trying to get all Edsouth's services from a federal call center.

I was education secretary for President George H.W. Bush when, in 1991, Congress offered students a choice for borrow from a local lender or the Education Department. In 2008, 15 million students voted with their feet and chose nongovernment lenders—and only 4 million students chose to get their loans from Washington.

Congress has reduced subsidies paid to lenders twice in the past four years, investing the savings in Pell Grants and other programs. But if there really is $47 billion in savings to be found, Congress should return it to students as lower interest rates, not trick students by overcharging them so Washington can create more government programs.

Seven-eighths of students who applied for federal aid using the Free Application for Federal Student Aid (FAFSA) had an average loan debt of $24,651. Assuming a standard 10-year repayment at 6.8 percent, those students would pay roughly $9,400 in interest. If we really want to have students money, why not just reduce the interest rate by 1.5 percentage points, to 5.3 percent, saving students $2,240 in interest?

If this Washington takeover happens, I propose that all 19 million-plus student loans made by the government carry this warning label:

''Beware: Your federal government is overcharging you so your representative can

take credit for starting new government programs. Enjoy the extra hours you work to pay off your student loan.''

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized.

Mr. GREGG. I am recognized, correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. GREGG. I ask unanimous consent at this time to withdraw the amendment of the Senator from—on behalf of the Senator from Tennessee, I ask to withdraw his amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, the amendment is withdrawn.

Mr. BAUCUS. Mr. President, reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I regret, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I withdraw my motion.

The ACTING PRESIDENT pro tempore. The motion is withdrawn.

The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, at this time I yield such time as he may take off the bill to Senator ALEXANDER to discuss his amendment, which he is not offering at this time, while retaining the right to the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Is there objection?

Mr. BAUCUS. Mr. President, reserving the right to object, what is the parliamentary situation at the moment?

The ACTING PRESIDENT pro tempore. There is a Grassley amendment pending.

Mr. BAUCUS. Mr. President, who has the floor?

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire has yielded time off the bill.

Mr. GREGG. Without losing my right to the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee has been recognized.

The Senator from New Hampshire cannot reserve his right to the floor.

Mr. BAUCUS. May I ask who has the floor?

The ACTING PRESIDENT pro tempore. The Senator from Tennessee has the floor.

Mr. ALEXANDER. Mr. President, would you let me know when 10 more minutes has expired, please?

I have a little history with the student loan program. I see the distinguished Senator from Utah is here. When he was the ranking Republican on the Senate Health and Education Committee 20 years ago, I was the U.S. Education Secretary. He even helped me in my confirmation process, for which I have always been deeply grateful. But he and I worked together during that time when the question of having a government loan program or a direct loan program came up. It was widely discussed. We had a Republican President then and a Democratic Congress. We came to a compromise. The compromise was to say let's have both. We will give students the option and help them stay on and keep the organizations on their toes. So if you are a student at the University of Tennessee, University of Utah, you have a choice. You can either say I don't want to fool with all these private lenders or the local bank or the nonprofit organizations in my State or Edsouth or others or the State organization, I want to go straight to the government. All institutions have that choice. That is 6,000 colleges and universities and 19 million students. Only one-fourth of them choose the government direct lending program.

In the United States of America where choice and competition is an important part of our culture, that usually teaches us a lesson. That would suggest to us that most campuses, most students, by overwhelming majorities prefer being in the private market to lining up to go to the government. Otherwise we would have the government grocery store, we would have the government car company. Actually we are beginning to sound like that in this country. We would have the government insurance company and all banks would be government banks. Everything would be in the government.

They used to have a system like that in the Soviet Union. Ours did a little better over time. Generally, our motto has been if you can find it in the Yellow Pages the government should not be doing it. What is happening with this administration and this Congress is the reverse. If you can find it in the Yellow Pages, the government should be doing it.

Here is the situation that developed over the last 20 years. There are roughly 6,000 institutions of higher education in this country. Many people say all higher education is like the University of Tennessee or Harvard or University of California, but there are many kinds of colleges and universities—for-profit, nonprofit, private, public, historically Black colleges, many different kinds of institutions. The genius of our system is that we let Federal dollars, either through Pell grants or through loans, follow the student to the institution of their choice. Choice and competition in our system of higher education has given us by far the best system of higher education in the world.

Of those 6,000 institutions, last year, 2008, 4,421 schools chose to use the regular student loan program. That is three out of four. About one out of four used the government loan, the direct loan program, the one that everybody is going to be made to use now. Currently there are just under 2,000 lenders who participate in the student loan program. They are banks and they are nonprofit institutions such as Edsouth in Tennessee.

Last year nearly $100 billion in student loans was made. Let's keep in mind as the government takes this over we go from a system where we have government-backed loans, which cost the taxpayers very little, to government loans at the rate of $100 billion a year which means we are going to have to run up a half trillion more in debt at a time when our debt is ridiculously out of control. That is this weekend's newest Washington takeover that just occurred.

There is not definitive evidence to suggest that the Federal Government can make these loans better than lenders can make these loans. I don't think the Department of Education has the manpower to do it. I think that by July 1 there is going to be consternation all over the country from families who have applied for student loans and are applying through their Federal call center or through the Internet.

Edsouth, a nonprofit provider in Tennessee, for example, has five regional outreach counselors who canvas Tennessee and provide career training. They made 443 presentations to Tennessee schools to help students understand—remember, we have 200,000 of these students in Tennessee—to help them understand their options. They worked with 12,000 students to help them understand what they could do. They worked with 1,000 school counselors.

The U.S. Department of Education will soon be providing all of these services.

Senator GREGG earlier had written the Congressional Budget Office asking how much money this Federal takeover would save. They came back with an explanation that it is not $67 billion or $61 billion, which is the current number being used today, but more like $47 billion. My own suspicion, and I cannot prove it, but my own suspicion, having been a university president, having been Secretary of Education and having watched this program for 20 years, is that in the real world the Federal Government is not going to make these 19 million loans more convenient for students. It is not going to be able to do it any cheaper. It is just going to deny people choice, run up the debt, throw 31,000 people out of jobs, and the icing on the cake, and it is a sour-tasting icing, is that the 19 million students who have student loans after July 1 are going to be overcharged by the Federal Government, which will be borrowing money at 2.8 percent, loaning it at 6.8 percent, and using the money to help pay for the health care bill and other programs.

Our friends on the other side, they will be saying—they like to blame everything on the bankers or the lenders—well, the lenders are charging too much money. Well, if they are charging too much money, reduce what they get.

You are saying there are $61 billion in savings, much of which comes from the fact that the Federal Government can borrow money more cheaply than private lenders can.

But then you are saying, we are going to take the savings and we are going to spend it. We are going to overcharge these students. I can't believe the brazenness of this, and I believe neither will 19 million students understand it.

So I am glad to come to the floor today and talk about my motion, which I will be glad to introduce at the appropriate time. No Senate bill has been introduced. Our committee has held no hearings. We have not had a markup of this bill. This is a wondrous Washington takeover over the weekend.

We stick into the health care bill another Washington takeover, this time of 19 million student loans. On top of it: Congratulations, Mr. and Mrs. Working Student, you are going to get to be overcharged on your loan to help pay for the health care bill and other government programs.

I hope my friends in the Senate, on both sides of the aisle, will see the injustice of this and say: OK, you are right, Senator ALEXANDER. If we are going to take it over, and if we are going to create $61 billion in savings, at least let's give the students the savings. Let's not give it to the government. Let's not overcharge the students, on an average $25,000 student debt, $1,700 or $1,800 over 10 years.

I think we need to have a truth-and-lending stamp that goes on every single student loan starting July 1 that says: Warning. Your government is overcharging you in order to help pay for other government programs.

We will let the single mom who has a job, who is going to school to help improve her circumstances, see what she thinks about the idea of her being overcharged to help pay for other government programs.

So my motion, when it is voted on, will do a very simple thing. It will say to the 19 million students in the country: We are going to reduce your interest rate on your student loan from a typical 6.8 percent to 5.3 percent. That is going to save you $1,700 or $1,800 on an average loan over ten years. It says: We are not going to overcharge 19 million students to help pay for the health care bill.

Before I yield the floor, I see my friend from New Hampshire is engaged in conversation. I wonder if I could address the Senator from New Hampshire through the Chair. Before I yield the floor, I wished to ask, through the Chair, whether that is what I should do.

Mr. GREGG. Well, I would like to ask the Senator from Tennessee a question on the substance of his proposal.

Mr. ALEXANDER. I will be glad to take the Senator's question.

Mr. GREGG. Because I do think it is an important proposal. As I understand it, what the Senator is saying is that they put this baggage on the train, which is the nationalization of all student loans in this country, the government is going to take them all over, which will be the fourth major nationalization event this administration has undertaken.

First, they nationalized the auto industry. Now, they are in the process of quasi-nationalizing the health care industry. Now they are going to nationalize the educational industry. If the House final reform bill passes, they will essentially be nationalizing the financial industry—or having the capacity to—because they can break up any company, whether they are healthy or not, under the Kanjorski amendment.

So my question is: They threw this proposal on the train, nationalizing the student loan industry, in order to use student loan money to finance the health care bill because this bill would have violated the budget rules if it did not have the student loan money basically paying for it?

Mr. ALEXANDER. Mr. President, I am afraid the Senator from New Hampshire is exactly right. According to the Congressional Budget Office's updated estimate, $8.7 billion of this money that is being overcharged to students will be used to help pay for the health care bill.

The other money, except for a small part, will be used for other government programs. So you are right on both counts—one Washington takeover after another. That is why I am saying, I think we ought to hide the Yellow Pages from these fellows because if they find something in there that is being done in the private sector, they are going to say: Oh, we can cut out the profit, we can cut out the business; why does not the government do it?

Then, second, I mean this is astonishing to me. These are not Wall Street financiers going to community colleges in New Hampshire and Tennessee, these are people with jobs who are trying to improve their lot. Their student loan levels are already too high. We are worried about that. So we are going to take another $1,700 or $1,800 on a $25,000 average loan over 10 years. We are just going to say: Well, we will overcharge you. We are going to use that in government. The answer is, yes, to your question, Senator; $8.7 billion of the money taken from students by overcharging them on their student loans will go to help pay for the health care bill.

Mr. GREGG. If I can ask a further question of the Senator. If they did not have that $8.7 billion of student loan money being used to finance the health care bill, this reconciliation bill would fall; would it not? Because it would not meet the budget instructions of having $1 billion of savings.

Mr. ALEXANDER. The Senator is correct.

Mr. GREGG. The Senator had a further question about whether the floor could be yielded. We are in the process of seeking a unanimous consent agreement.

Mr. BAUCUS. I was going to ask the Senator from Tennessee a question.

Mr. ALEXANDER. I will be glad to have a question.

Mr. BAUCUS. Is it not true that the Congressional Budget Office stated in a letter, dated March 20, commented on the bill in a letter to the Speaker on page 13, where it states: The title as a whole—that is referring to the education title—states that the title as a whole would reduce budget deficits in both the 10-year projection period and in subsequent years.

Is it not true that the Congressional Budget Office reached that conclusion and so states in their letter of March 20?

Mr. ALEXANDER. Mr. President, I do not have that letter in front of me, and I do not know what that has to do with my amendment.

What I am saying is, the Democratic majority is deliberately overcharging 19 million students to help pay for the health care bill. Those are the Congressional Budget Office's figures, not mine.

I would ask, through the Chair, to the Senator from New Hampshire, whether I should at this point yield the floor.

Mr. GREGG. I appreciate the Senator from Tennessee's courtesy. At this time, we are ready to go forward with a unanimous consent request.

Mr. ALEXANDER. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I will propose a unanimous consent. Following that, I will state my intention on the order of votes, which I have yet to clear with the leader's office.

I ask unanimous consent that the total time on the bill be divided equally between the majority and minority leaders or their designees and that the offering of amendments not add additional claims to the time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. GREGG. Reserving the right to object, I would simply note that the next amendment on our side would be offered by Senator HATCH.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I would ask further unanimous consent——

Mr. BAUCUS. Mr. President, I wish to finish up that business. It is something, I think, the Senator will appreciate.

It is my intention—I am not asking for a unanimous consent agreement, but it is my intention that the order of amendments would be, beginning with the Gregg amendment, Medicare; McCain, target provisions; then the Crapo amendment on taxes; then the Enzi motion to commit, regarding employer mandates; the Barrasso amendment regarding premiums; and then,

next, the Grassley amendment regarding executive personnel should be in the exchange.

Mr. GREGG. As I understand what the Senator is asking, is that the voting order be in the order they were offered.

Mr. BAUCUS. That is correct. I am not asking consent. That is my intention, but there is no unanimous consent request at this time.

Mr. President, I yield 10 minutes to the Senator from——

Mr. GREGG. May I make a point? Mr. President, I spoke inappropriately. I believe the Senator from Tennessee will want to submit his amendment back for the RECORD. He had withdrawn it. Can we do that?

I ask unanimous consent that the pending amendment be the Senator from Tennessee's amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BAUCUS. Reserving the right to object, I might ask if the understanding be that the motion, as on the earlier amendments, that this motion be set aside until a time to be determined by the leaders.

Mr. GREGG. Why don't we do that on every amendment we offer so we do not have to do that.

Mr. BAUCUS. That would be fine.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Alexander motion is pending.

Mr. BAUCUS. Mr. President, I yield 15 minutes to the Senator from Michigan, under the motion.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, the debate which will come to a close this week has, in one sense, been going on for a year. But in another sense, it has been going on for a century.

In 1912, Theodore Roosevelt campaigned on the promise of a national health insurance program. Workers, Roosevelt said, are entitled to a basic standard of protection from injury and illness.

> Wherever such standards are not met by given establishments, by given industries, are unprovided for by a Legislature, or are balked by unenlightened courts, the workers are in jeopardy, the progressive employer is penalized, and the community pays a heavy cost in lessened efficiency and in misery.

Well, since Teddy Roosevelt said that, Presidents and Members of Congress from both parties, seeing the same costs Theodore Roosevelt saw in the failure to assure health care for all, have grappled with this issue.

These attempts at reform have largely fallen short. They have foundered for many reasons: Health care is personal and complex. The timing was wrong or the politics were difficult. Leaders on all sides failed to find the compromises that would have enabled them to move forward. But the recurring theme is that time and again, reformers have failed to overcome the enormous obstacles that those who profit from the status quo have been able to erect. Because we have fallen short in the past, Americans today face a health care system that costs too much and too often delivers too little.

In our United States today, mothers and fathers wonder what else they can cut from the family budget to afford yet another increase in their health care premiums. Parents file for bankruptcy because their insurance fell thousands of dollars short in providing for a child's lifesaving treatment. Nearly two-thirds of bankruptcies in this country involve medical costs, and more than half of those involve people who had insurance.

Small business owners eliminate health coverage for employees because they cannot afford another year of massive premium increases. Thousands of Americans who woke this morning with health care insurance will go to bed tonight without it.

Despite those tragic facts, entrenched interests have sought again to prevent reform to consign our Nation to an unsustainable status quo because what is good for the American people will not necessarily profit some company.

The health insurance industry has dominated health care decisions in this country for too long. How often have our constituents come to us with stories of insurance companies that deny them coverage of necessary treatment? How often have our constituents told us of insurance companies that deny coverage because of preexisting conditions or canceled coverage because of minor inaccuracies the company conveniently discovered just after diagnosis of a serious and costly illness?

It is time to end the unhealthy dominance of the health insurance industry. So I will cast my vote again against those entrenched interests and my vote will be for health care reform. I hope our colleagues will do the same.

We have the opportunity to finish the task of overcoming the entrenched opposition to do what so many Presidents and so many Members of this body have fought for decades to accomplish.

The months of debate have been difficult. They have too often been filled with too much heat and too little light, with exaggeration, with half-truth, with untruth, with innuendo designed to obscure rather than to inform.

That is no different in many ways from some previous debates on major reforms. When Congress approved Social Security in 1935, one Republican Senator warned that it would ''end the progress of a great country.'' When Medicare was debated in 1965, one critic charged that cooperating with the plan would be ''complicit in evil.'' Scare tactics of the past proved absurd, but they worked.

Now we get more scare tactics. A number of our Republican colleagues continue to claim this is a big government takeover of health care. The American Medical Association supports this health care plan. Surely the American Medical Association is not a supporter of a government takeover of health care. Then we are told this will hurt Medicare. Yet the association that represents more seniors than any other, AARP, endorses this health care plan.

The scare tactics are coming at it again, but there is a difference. While scare tactics were able to derail health care reform in the past, scare tactics are just not working this time. The American people have expressed their disapproval of wild, inaccurate claims in many ways, including personal conversations with most of us.

It is true that because health care is so complex, because changes must be phased in and transition periods are often necessary, many of the benefits of this bill will not take effect for some time. But improvements in health care for millions of Americans will take place almost immediately.

After President Obama signed this bill into law, small businesses immediately got a tax cut to help defray the cost of providing insurance to their employees. Within 3 months of the signing yesterday, the bill will allow people with preexisting conditions to access a special fund to help cover the gap until insurance exchanges, where they can obtain coverage, become operational. And retiree health plans will qualify for a reinsurance program to help lower cost. In October, the Federal Government will begin helping States set up agencies to help consumers choose new health plans or to challenge unfair decisions by their current insurance plan. Eventually, those agencies will help consumers enroll in insurance exchanges that will help millions of people find dependable coverage that meets minimum quality standards at a price they are more likely to afford. Within 6 months of the President's signature yesterday, insurance reforms will begin to take hold. New health plans will be required to let women see an OB/GYN without seeking insurance company approval. They will be prohibited from denying coverage to children based on preexisting conditions and required to allow children to remain on their parents' policies until age 26. Insurance companies will have to provide preventive care without copays or deductibles, and they will be barred from setting lifetime coverage limits. Those historic improvements in our health care system will take place within the first 6 months after enactment of this legislation.

More sweeping changes will come with full implementation of this bill's provisions. We will protect Americans of all ages from denial of coverage based on preexisting conditions, from annual limits on treatment, from exorbitant out-of-pocket costs, and from confusing and opaque language that disguises the cost or the scope of coverage. We will even require insurers to give customers a rebate if those insurers don't spend enough revenue on patient care. We will fill the Medicare

doughnut hole that hurts many seniors.

At its heart, this bill and its improvements in this reconciliation effort aim to tackle the central problems of our health care system—rising costs and the insecurity many Americans rightly feel about the lack of dependability of their insurance.

The cost of health care already exceeds the ability of many American families to pay, will price more and more families out of the system if it continues to rise, and will present enormous problems for the Federal budget if not contained. We can and we will make the health insurance system work for those who already have coverage by holding down those unsustainable increases in premiums. In ways large and small, we attempt to tame this beast that threatens to swallow family budgets and our Federal budget.

How are we going to do this?

I ask the Chair how many minutes I have remaining.

The ACTING PRESIDENT pro tempore. The Senator has 5½ minutes remaining.

Mr. LEVIN. I thank the Chair.

Mr. President, even though health care experts believe these measures are going to help lower costs for families and the government, the CBO is not even taking into account the savings which will come into existence by ending wasteful subsidies to insurance companies using Medicare Advantage, by requiring Medicare Advantage to spend at least 85 percent of revenue on benefits, and by other kinds of savings. Some of those savings cannot be figured out precisely by the Congressional Budget Office. So they are prudent. They don't even take those savings into account. But what they do, obviously, take into account and do count are savings which will lead to $140 billion for the Federal budget in the first 10 years and $1 trillion over the next decade. Those savings are real savings. Those are savings which they can figure out and cost.

We are going to subject investment income of the Nation's wealthiest families with incomes over $250,000 to the Medicare tax. We are going to impose a moderate Medicare tax increase on those who have that kind of earned income, over $¼ million.

This bill cracks down on artificial financial structures. I commend the Finance Committee, Senator BAUCUS and his colleagues. They are cracking down on artificial financial structures with no economic substance whose only purpose is to allow their users to avoid taxes. The Finance Committee has struggled with that issue for years. They have been trying to do this for years. They have succeeded. We pick up an awful lot of revenue that is owed to Uncle Sam by ending this kind of loophole which has allowed wealthy individuals to avoid paying taxes through the use of artificial financial structures that have no economic substance, whose only purpose is to avoid paying income taxes.

We will take an enormous step with the passage of this reconciliation bill, joined with the bill the President signed yesterday. Leaders of our country—from Franklin Roosevelt to Harry Truman, Richard Nixon to Ted Kennedy—have fought so hard for these kinds of reforms. We are finally going to provide health insurance to millions of Americans who do not now have it, and we are going to protect those workers who Teddy Roosevelt warned nearly 100 years ago were in jeopardy unless every American had health insurance.

Opponents of reform are vocal. They are strident. We are going to hear amendment after amendment being offered in an attempt to derail this effort. I hope our colleagues will answer history's call and make the real and lasting changes these bills provide, which will improve the lives of our citizens in ways we have been struggling to do in this Senate for decades and long before many of us got here.

To those who continue to oppose reform, let me ask some questions. Isn't it long overdue to end discrimination based on preexisting conditions? The American people believe we should. So do I. Isn't it long overdue to end the insurance industry practice of rescissions, the denial of coverage to those who paid for it? The American people believe we should, and so do I. Should we not do something about the thousands of Americans who are forced into bankruptcy because of health expenses even though they have insurance they thought would protect them? The American people believe we should, and so do I. Should we not take strong steps to rein in enormous, ever-growing health care expenses, expenses that threaten to put health care out of reach for more and more Americans and to bankrupt our Nation? The American people believe we should. So do I. And should we not clear the way for 32 million Americans who do not now have health insurance to obtain it? The American people believe we should, and so do I.

I hope we will join together this week and do what so many before us have tried and been unable to do—to reform a system that leaves so many of our fellow citizens in jeopardy. I urge approval of this bill, this essential reconciliation bill, passed by the House as part of a package of historic legislation to finish the task of bringing landmark change to American health care.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I ask unanimous consent that Senators WARNER, BEGICH, BURRIS, TOM UDALL, MARK UDALL, SHAHEEN, and MERKLEY be allowed to engage in a colloquy for up to 25 minutes.

The PRESIDING OFFICER (Mr. WHITEHOUSE). Without objection, it is so ordered.

The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, as we approach the end of this long journey, at least the end of the first step of this long journey, I and a number of my colleagues are going to come one more time to the floor to engage in a conversation for a few moments about what this health care bill will mean to our constituents and to the people of the United States. We are going to talk about some of the causes of how we got here and some of the consequences of what would happen if we don't act. At the end, I will add some comments about how we make sure we implement this bill in the appropriate fashion.

Recognizing that the hour is late and colleagues have other business, I first ask my good friend, the Senator from Illinois, Mr. BURRIS, if he would like to give a brief recap of why he has been such a firm supporter of this legislation and why he thinks this bill is so important, not only to the people of Illinois but to the people of the United States.

Mr. BURRIS. Mr. President, I thank Senator WARNER. I compliment him for his leadership in getting the freshmen engaged and involved in making sure we are getting the message out to the American people.

This piece of legislation, which was signed yesterday by President Obama, is historic. I am proud and appreciative that I had the opportunity to play a part. As you know, my position was for a very strong public option. But as to the issues that are in it, we deal with cost and accountability for the insurance companies. Therefore, it is a major piece of legislation which we want the public to understand.

We want the public to understand that for some people this law takes effect immediately. Small businesses benefit in that they will get a tax credit right away. These tax credits can total as much as 35 percent of total premiums. Secondly, for children there will be no elimination for preexisting conditions. Within the next 90 days, these provisions will kick in on behalf of children. So there are a lot of things in this bill that will benefit all of us.

We have been trying to do this for over 97 years.

I say to my colleagues on the other side, the reconciliation bill is important to make some corrections. The battle they are waging, not from the standpoint of policy but certainly from the standpoint of politics, seeking to make a failure out of this issue, is not really fair to the American people. The misinformation that has been going out about this legislation is not fair.

Not only are we going to see immediate benefits, but the long-term benefits of this legislation are also helpful. Situations dealing with preexisting conditions—in 2014, that will kick in. I remember when my daughter was changing jobs, she needed to get insurance because she had a headache problem. They wouldn't insure her. I had to

battle to get insurance for my daughter.

This is good legislation. It is history. I want the American people to know that it is on the books, and we are going to make necessary corrections. The people will go forward.

I thank my colleague from Virginia.

Mr. WARNER. I thank Senator BURRIS for his comments. I know how hard he fought for this legislation, since day one.

This legislation is going to have wide-ranging effects for people from all across the Nation.

I now know my colleague, the Senator from North Carolina, wishes to speak. North Carolina and Virginia are neighbors. We both share a number of small businesses. We have a vibrant entrepreneurial flavor in Virginia and North Carolina. I know Senator HAGAN has been concerned not only on the overall aspects of health care but particularly how this health care bill is going to affect small business in her State.

I wish to now ask Senator HAGAN to tell us how this bill will affect people in North Carolina.

Mrs. HAGAN. I thank Senator WARNER. I too appreciate the time for us to come down here and talk about the need for health care reform. The bill that was signed into law yesterday is getting us on that track.

The new and historic law, combined with the bill we are now considering in the Senate, is going to reform our health care system to reduce costs and improve patient care for those families in North Carolina and in Virginia and families across America.

In 1996, the average premium in North Carolina for a family of four was $6,000. Today it is $12,000. It is projected, in 2016, to be 24,000. People cannot afford that. That is why we need to have change.

After decades of working to fix a broken health care system, this law controls exploding costs, increases access to health care, and reduces our long-term deficit, which I know we are very concerned about, by as much as $1.2 trillion over the next 20 years.

But in addition to containing costs, health care reform will improve access and quality of health care for millions of Americans. Right now, in North Carolina, we have 1.7 million people without insurance. They will now have access to a family doctor.

This bill provides immediate benefits to small businesses, middle-class families, and seniors in North Carolina. The small business owners whom I talk to want to provide coverage for their employees, but the costs are prohibitive.

This month, I received an e-mail from a small chiropractic practice in eastern North Carolina that had to drop its health plan for its employees because the rates doubled over the last 2 years. But starting today, 112,000 North Carolinian small businesses will be eligible for tax credits to provide health care to their employees.

Within the next 6 months, hard-working, middle-class families will be able to add their children up to the age of 26 on their health care plans. This will benefit about 870,000 young adults in my State.

This year, insurance companies will no longer be able to deny coverage to a child for a preexisting condition, such as asthma or diabetes. And it means insurance companies will no longer be able to drop your coverage because you get sick or because you file too many claims.

In North Carolina, 1.4 million seniors will receive preventive services with no additional costs, and 250,000 seniors will have their drug costs in the doughnut hole immediately reduced and eventually eliminated.

I am proud of these immediate benefits and our efforts to reform the health care system over the long term. The health care reform effort would not have been possible without the work of tenacious Capitol Hill staffers. I personally want to thank two incredible health care staffers on my team, Michelle Adams and Tracy Zvenyach, who worked countless hours for reform in our country.

Mr. WARNER. I thank Senator HAGAN. I appreciate her leadership on this issue. Again, I also appreciate her recognition of not only the Members who have been struggling with the bill for almost a year, but the staff members who help us put together the facts, put together the case studies, who help us crunch the numbers, as we try to make sure we get this right.

I now want to call on my friend, the Senator from Alaska. One of the things the freshmen have always said, as we have come to the floor over these months—as we have pointed out—is that the price of doing nothing is extraordinarily high to our economy, to our families, to our businesses, and that the status quo is not sustainable.

I know this has been a theme Senator BEGICH has echoed repeatedly on the floor. As we come to the closing hours of this debate, if you could share with us one more time why you think the status quo is unacceptable. What is the price of doing nothing? How would that affect the people and businesses in the great State of Alaska?

Senator BEGICH.

Mr. BEGICH. I thank the Senator. Thank you again for your leadership, and especially as the freshmen group worked on the cost containment piece of this legislation. That was an important part we will see for many years to come.

Over the next few days we are focusing on making a good bill a little bit better. Yesterday, the President signed the landmark legislation moving health care reform into law. So over the next few days, again, we are going to work on making that bill a little bit better. You are going to see clearly the differences. You are going to see our side of the equation has worked hard on this legislation. Those who voted for health care reform are on the side of American families, not on the side of the insurance industry. We are on the side of seniors who will see lower prescription drug costs—because reform is going to work in that direction—not on the side of big drug companies. We are on the side of American small business—not business as usual.

I was truly proud to vote for and help pass that legislation last December. But as mentioned already this morning, there are many benefits that occur right now, this year. This year, for example, there is help for small businesses. As you just heard, immediately, firms with fewer than 10 workers get a tax credit worth 35 percent of what they will spend now on health insurance. It will eventually ramp up to a 50-percent tax credit, and firms with up to 25 workers will get a partial credit. For small businesses—truly the backbone of the Alaska business community and this country's business community—that is an immediate benefit.

Coverage for preexisting conditions: Within 3 months, people with preexisting conditions and no insurance will get help. A $5 billion fund is being set up to provide them with affordable coverage.

Coverage for dependent children: Within 6 months, parents will be able to extend their policies to cover their dependent children up to the age of 26.

Some of these points you have already heard, as I said, this morning, but it is important to repeat them because I think in the noise over the last year and a half a lot of it got lost.

Another—a very important one—free preventive care: Within 6 months, all insurance plans must provide free checkups. This includes seniors on Medicare. And there is much, much more when you look at this legislation.

For my own State, the bill addresses many specific concerns I have heard in Alaska. It includes several of my amendments, including a panel to improve Federal health care in Alaska, increased loan forgiveness for thousands of new primary care providers, and added funding for community hospitals.

We also, as a team of freshmen, wrote a cost containment amendment that cuts prices for consumers, increases value and innovation in the health care system and, as mentioned earlier—let's not forget—it is a deficit reducer: in the first 10 years, $143 billion, and in the next 10 years, $1.3 trillion in deficit reduction.

This bill is paid for—paid for. These are many of the improvements. Again, these improvements will save lives; add 32 million people, those uninsured—making sure they have coverage—save seniors on prescription drug costs by closing the doughnut hole; save families, by providing tax relief to help them afford health care; and crack down on waste and fraud.

It has been an enormous time in this last year and a half working on this. But I also want to say, the next 3 days

will also be tedious and confusing to the public because what you will see on the other side is every imaginable amendment we would love to see—many of them we probably would love to vote for. I am not voting for any of them because the whole tactic is to delay the delivery, to ensure that people who want a family doctor will not get one, to protect the insurance companies instead of what we are trying to do to make sure people get a fair shake from their companies. So you are going to see that over the next 3 days.

I think what is important for us is to remind Americans—Alaskans in my State—why this bill is important. It helps small business, families, seniors. It does it now. It is important. It is important for us to get it done. But do not be fooled by the next 3 days on what goes on this floor.

We have passed health care reform. All we are doing now is making a good bill better.

I thank the Senator from Virginia.

Mr. WARNER. I thank the Senator. Thank you for your comments. Thank you for your leadership, particularly on a series of freshmen amendments that dealt with cost containment. And if time exists after my colleagues speak, I am going to go back to that issue.

But I now want to ask my good friend from Oregon a question. No one has come to this body with more passion about making sure working families get a fair break, not only in health care but in the world of financial reform and issues that cut across the spectrum. I know one of the issues Senator MERKLEY has worked on tirelessly throughout this whole conversation is how to make sure the Oregon families get that fair break, get that fair shot, how to make sure health care is affordable.

I would like you to share with our colleagues and those Americans who are at home watching what this health care bill does to help those middle-class Americans, middle-class Oregonians to make sure they get that fair shot, fair break in health care reform.

Senator MERKLEY.

Mr. MERKLEY. I thank the Senator so much. It is a pleasure to come here with my colleagues on the floor.

I know when all of my colleagues go home, they hear stories from their constituents about our broken health care system. That certainly is what I hear. I hear it in my townhalls. I hear it on the street, as people stop me and share their story. And I certainly hear it in my mail.

I have in my hand a few of the stories citizens in Oregon have sent to me. To give you a sense of the type of frustration we are hearing, Don writes:

> Last year my premium went up 65 percent even though I've made no significant claims against my policy.

Or we can turn to Jane, who says:

> . . . we are subject to being turned down for health insurance [because] I have a chronic illness. . . .

Or we can turn to Adrienne, who observes:

> The medical debt was crushing, and we were forced to file for bankruptcy.

Or we can turn to Amanda, who says:

> My daughter cut her finger. I took her to emergency, the hospital is a network provider. The ER Physician said she needed surgery. Okay, what do I know, they are the experts. It turns out that the Surgeon is not a network provider. She bills [me] over $9,000.00. . . .
>
> . . . I have little hope. Do I file [for] bankruptcy?

Or we can turn to Art, who says:

> In less than 5 years, I had to change my health insurance 5 times. It was never a matter of choice; I simply had to take whatever plan my employer decided to offer.

Or Dagne, who observes: When I started to fill out my insurance form, I had ''Questions such as 'Have you ever had . . . '''—for instance, I had asthma.

And he goes on to describe his challenges. And the list goes on and on and on. That is why we are in this health care dialog. Because we need to fix our health care system that is broken for working Americans.

The bill we have passed and the President has signed has three terrific provisions. It creates State-based markets for health care policies, where consumers can shop for the best policy. These markets will increase choice and competition. Second, the bill ends insurance company practices that victimize our working families—practices such as turning people down for preexisting conditions or dumping them off of their policies when they are injured or when they have a disease. And, third, it invests in our provider workforce to counter the rapid retirement of baby boomers. Out in Oregon, we are going to lose 20 percent of our primary care physicians in the next 5 years, while many of us, as baby boomers ourselves, are going to need more health care.

So those things are huge challenges. This bill takes a stride that is very significant, and this week we will work to pass—with an up-or-down vote—a bill that will make further improvements to the bill the President signed yesterday.

I am pleased to join my colleagues in this fight to repair a broken health care system that is not working for our working citizens.

Thank you.

Mr. WARNER. I thank Senator MERKLEY. Thank you for sharing those stories from real folks who are dealing with the current broken health care system. There are enormous stress, challenges, and burdens that our current system places on those families. I think we are taking a giant step forward. The President already has by signing into law the bill yesterday. We will continue that step with passing this reconciliation bill later this week.

I now wish to call on another one of my colleagues, Senator TOM UDALL of New Mexico. Senator UDALL has, again, along with all the other freshmen colleagues, been a leader in this fight. He has particularly taken on the issue of prevention and the fact that we have a health care system in this country that is more a sick care system than it is a wellness and prevention system. I want to hear from Senator UDALL about how the bill is going to affect the good folks of New Mexico.

Senator UDALL.

Mr. UDALL of New Mexico. Mr. President, I thank Senator WARNER for leading us and pulling us together in this freshman effort. It has been a pleasure to work with all of my fellow freshman Senators on the floor again and to join them right now. Last fall, we gathered right here in this Chamber to fight for health care reform. As a group, we helped lead the charge to make quality, affordable health care accessible to all Americans. Yesterday, the change we have been fighting for became a reality. With President Obama's signature, health care reform is now the law of the land.

This moment has been a long time coming. Teddy Roosevelt first called for health care reform nearly a century ago. His banner was taken up by a long and distinguished list of men and women who advocated for change. For too many years, New Mexicans, like Americans across the country, have struggled to find or afford health insurance. They have struggled to hang on to policies that get more and more expensive and more and more restrictive every day. With this reform, all of that begins to change.

No longer will insurance companies be able to discriminate based on preexisting conditions. No longer will they be able to dramatically increase rates without public scrutiny. No longer will 32 million Americans worry every day about what would happen to their families if they get sick or are in an accident. I am proud to have fought for and voted in favor of this historic legislation.

This reform will benefit all Americans, including our country's First Americans, the 1.9 million American Indian and Alaska Natives who have spent too many years suffering because the federal government hasn't lived up to its promise to them.

With this reform, we begin meeting our obligations to Native Americans by reforming the Indian health care system and permanently reauthorizing the Indian Health Care Improvement Act. This law, which provides a framework under which health care programs for Native Americans are delivered, hasn't been reauthorized in more than 10 years. As a result, American Indian and Alaska Natives are three times as likely as whites to be uninsured, and almost half of low-income American Indians and Alaska Natives lack health coverage.

With this reform, no longer will Native Americans be forced to suffer needlessly. No longer will they have to go without treatment for chronic conditions like diabetes and heart disease.

No longer will they have to put off basic care like colonoscopies or cholesterol screenings.

I say again, today is a new day for health care in America. I am proud to have fought for, and voted in favor of, this historic legislation.

Yesterday, we began taking back control of our own health care. Today, the journey continues. I pledge to continue fighting every day to ensure New Mexican families and small businesses have the security and stability that comes with access to quality, affordable health care.

The reason I have fought so hard for reform is simple. For my constituents, the status quo is not an option. So it is the people of New Mexico I wish to talk about today. They are the reason I stand up every day and fight for comprehensive reform.

People such as Katheryn Whitesides—Katheryn lives in Clayton, NM. We met last year when she attended one of my health care townhalls. Katheryn worked hard all her life. She had affordable insurance through her employer. But since she retired, Katheryn's health insurance premiums have risen dramatically from $110 a month when she was working, to more than $800 a month today. Katheryn's insurer recently denied a claim for a treatment she received. Now, on top of skyrocketing monthly premiums, she also owes about $4,000 in medical bills. That is more money than she receives from 5 months of pension payments.

As Katheryn herself said:

It's unsustainable for me. And I know I'm not the only one. I'm just looking for some relief—not just for me, but for all those people coming behind me.

To folks such as Katheryn, I say: Relief is coming. This reform will make health insurance more affordable by placing caps on out-of-pocket medical expenses. It will make it more affordable by providing premium assistance through tax credits for low- and moderate-income families.

I am fighting for New Mexicans such as Katheryn, and I am also fighting for New Mexico's small business and for entrepreneurs such as Arvind Raichur. Arvind has owned a small business in Albuquerque for more than a decade. As the boss, he has made it a priority to provide his employees with good benefits. For years, he paid 100 percent of his employees' health care premiums, but he is not sure how much longer he will be able to do that and stay afloat. You see, for the past few years, Arvind's insurer has increased his company's health care premiums by between 30 and 40 percent every year, and there is nothing Arvind can do about it.

As Arvind said:

We've got no bargaining power. We've got no leverage. I'm insuring maybe a dozen people at my company here. It's very hard. The insurance companies give you a 30 or 40 percent increase and that's what you get. . . . It's too big a bite.

To small business owners such as Arvind and their employees, I say: Relief is coming.

This reform will help small businesses by making it more affordable for them to offer coverage for their employees. We do this by providing tax credits for up to 50 percent of premiums and by creating small business health exchanges to build a larger employee pool.

In New Mexico, the vast majority of our insured are employed, but they and their employers can't afford coverage. These new tax credits will help our small businesses provide insurance for their employees at a cost they can afford.

For hardworking New Mexicans like Katheryn and for small business owners like Arvind, health care reform can't come fast enough. Katheryn and Arvind can't afford the health care status quo. Katheryn and Arvind are the reason I stand here today. To my friends on both sides of the aisle I say: Let's get this done.

I am proud to be part of this body as we cast our final votes in favor of this landmark reform. With this final vote, we will finish this leg of the race. I look forward to building on this solid foundation in the coming months and years.

I yield the floor.

Mr. WARNER. I thank Senator UDALL. I know our time is running out; just a final comment I wish to make.

As many of my colleagues know, I had the honor of serving as Governor of Virginia before becoming a Senator. I think one of the differences between an executive and a legislator is, as a former executive I realize that passing the bill is just the first step. What happens is going to be in the implementation afterwards.

The appeal I would make, particularly to my colleagues on the other side, is, I agree with some of their points that we don't go far enough on cost containment, but there are a lot of things in this bill where we grant the Secretary the ability to start experimental programs—on cost containment, on bundling of payments. How this bill is implemented is going to be where the rubber hits the road. I, for one, believe there is more we can do around this issue of cost containment, and I hope in the coming weeks and months, rather than being for repeal, they would join with us in finding that common ground to make this legislation even better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I wish to let Senators know that we intend to alternate blocks of time, roughly a half hour on each side. So I ask unanimous consent that the next half hour be under the control of the Republicans and the half hour thereafter be under the control of the majority.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Florida.

AMENDMENT NO. 3586

Mr. LEMIEUX. Mr. President, I ask unanimous consent to temporarily set aside the pending motions and amendments so that I may offer an amendment which is at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Florida [Mr. LEMIEUX] proposes an amendment numbered 3586.

Mr. LEMIEUX. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To enroll Members of Congress in the Medicaid program)

At the end of subtitle C of title I, add the following:

SEC. 1207. MEMBERS OF CONGRESS REQUIRED TO HAVE COVERAGE UNDER MEDICAID INSTEAD OF THROUGH FEHBP.

(a) IN GENERAL.—Notwithstanding chapter 89 of title 5, United States Code, title XIX of the Social Security Act, or any provision of this Act, effective on the date of enactment of this Act—

(1) each Member of Congress shall be eligible for medical assistance under the Medicaid plan of the State in which the Member resides; and

(2) any employer contribution under chapter 89 of title 5 of such Code on behalf of the Member may be paid only to the State agency responsible for administering the Medicaid plan in which the Member enrolls and not to the offeror of a plan offered through the Federal employees health benefit program under such chapter.

(b) PAYMENTS BY FEDERAL GOVERNMENT.—The Secretary of Health and Human Services, in consultation with the Director of the Office of Personnel Management, shall establish procedures under which the employer contributions that would otherwise be made on behalf of a Member of Congress if the Member were enrolled in a plan offered through the Federal employees health benefit program may be made directly to the State agencies described in subsection (a).

(c) INELIGIBLE FOR FEHBP.—Effective on the date of enactment of this Act, no Member of Congress shall be eligible to obtain health insurance coverage under the program chapter 89 of title 5, United States Code.

(d) DEFINITION.—In this section, the term ''Member of Congress'' means any member of the House of Representatives or the Senate.

Mr. LEMIEUX. Mr. President, I rise in support of the amendment I am offering today.

I wish to thank my colleague from Virginia who asked us to think about the practical aspects of this health care reform. I just listened to my freshman colleagues on the Democratic side talk about all of the good things, in their opinion, this bill is going to do. There is one thing I didn't hear them speak about. I didn't hear them speak about the fact that half of the new people who are going to be covered by health care in this country—some 16 million of the 30-some million who

have the opportunity for health care under this law—are going into Medicaid.

The practical impact my friend from Virginia asked us to think about is that our States right now are finding themselves in bankruptcy, realistically, because of the obligations of Medicaid. Our States, unlike the Federal Government, have to balance their budgets. Medicaid is a program that the States pay some 50 percent of, and they can't make it work. We are finding out in Florida right now that this program—this new law—will cost Florida $1 billion in the next 10 years. Because they balance their budget and because they can't print money, that means the dollars will go away from teachers, away from students, and away from police.

The point I wish to make today and the amendment I am offering is this: Several times, as I have been on the floor and heard from my Democratic colleagues, they have made this point: Why shouldn't the American people have the same health care that we in the Congress enjoy? Why shouldn't they, as do all Federal employees, be able to pick from a comprehensive and rich plan of benefits in order to take care of their health and the health of their families?

That is a good point, but what is going to happen to these 16 million new Americans? They are going to go on Medicaid. That is not the plan we have. That is not the rich benefits the Members of Congress enjoy. Medicaid—health care for the poor, which will now have some 50 million Americans in it after these 16 million join it—is a program in crisis. It is a program that is failing.

Let me give my colleagues some real examples. Right now we know patients on Medicaid can't find doctors who will treat them. We know in California, for example, 49 percent of family physicians do not participate in Medicaid.

I entered this document into the RECORD last week. On March 17 the Seattle Times reported that Walgreens will no longer take new Medicaid patients in the city of Seattle. On March 15, the New York Times reported about Mrs. Vliet. She is in Flint, MI. She has cancer. For 2 years she has been receiving treatment, but now her doctor is dropping her from Medicaid. He says:

> But after a while you realize that we're really losing money on seeing those patients, not even breaking even. We are starting to lose more and more money, month after month.

All across America, health care providers are dumping Medicaid, and we are about to add 16 million new people. So I wish to take a page from my friends on the other side because they say the American people should have the same rich benefits we have.

What I am proposing today with this amendment is that 535 Members of Congress should have the same benefits as these 16 million new people and these 50 million Americans. Under this amendment, the Members of Congress will go into Medicaid. If it is good enough for 50 million Americans, it should be good enough for us.

So I have offered amendment No. 3586. It will require that the benefits that are paid for health care by the Federal Government for the 535 Members of Congress go to the State Medicaid agencies, and then we can all enjoy this program that 50 million people in America are struggling with. If it is good enough for 50 million Americans, it is good enough for Members of Congress.

I wish to call upon my distinguished colleague from Arizona whom I know wishes to speak on this issue as well.

Mr. MCCAIN. Mr. President, I ask unanimous consent to engage in a colloquy with the Senator from Oklahoma, the Senator from Florida, and myself.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I strongly support the amendment. Let me also just for a moment point out where we are.

Where are we now that all the champagne has been drunk and all the celebration has gone on; the inside-the-beltway excitement has subsided along with the adoring media? Here we are: We have a budget deficit that is still $1.4 trillion. We still have 9.7 percent unemployment. Beginning right away we have $½ trillion worth of Medicare cuts that will take place over the next 10 years—$½ trillion beginning right away, $½ trillion worth of tax increases over the next 10 years.

Beginning in 4 years, $2.5 trillion in new health care entitlements spending begin. The plan still puts government in control. It still mandates that every American must purchase a government designed and approved health policy. It still mandates that employers have to provide health insurance or pay a fee, and 330,000 Medicare Advantage members in my State are going to be exposed to drastic cuts.

Fortunately, we took out one of the sweetheart deals so that now, at least the 800,000 who were carved out before in Florida will be subject to the same cuts. No one, no one, no one believes—the so-called doc fix—that the 21-percent cut in physicians payments for treatment of Medicare patients is going to happen.

You can put lipstick on a pig, but this is still a pig. I noticed the Senator from Illinois came to the floor this morning and said how great this is and how there is going to be real reductions in the deficit as a result of this legislation. I wonder what his response has been to one of the biggest corporations in the State of Illinois, Caterpillar, who sent him a letter saying:

> In our fragile economy, we can ill afford increases that place us at a disadvantage versus global competitors that are not similarly burdened.

They state:

> Elements of the legislation would drive up Caterpillar's health care costs by more than 20 percent, over $100 million.

The Senator from Illinois is sponsoring legislation that increases costs for one of the largest manufacturers and exporters in America that is going to increase their cost by $100 million. I wonder when he is going to go out and visit headquarters out there in Peoria. I hope it is soon.

The fact is, there are things in this legislation that are wrong, and there are things that are left out of this legislation that are wrong, including $100 billion a year that could be saved by medical malpractice reform. Is there anything in those 2,073 pages that have anything to do with medical malpractice reform? That is the dirty little secret. The dirty little secret in this body is that trial lawyers control the agenda, certainly as far as this legislation is concerned.

The State of Texas has reduced costs, has reduced premiums, and has increased the number of people who have been able to—lawsuit filings are down from defensive medicine increases for annual costs by 10 percent. Physician recruitment is up. The largest malpractice insurance company in the State has sliced its premiums by 35 percent, saving doctors some $217 million over 4 years in the State of Texas. And I would like to ask my friend from Oklahoma why in the world we would not enact medical malpractice reform if we are truly interested in reducing the cost of health care in America.

The Senator from Oklahoma and our other doctor in the Senate, Senator BARRASSO from Wyoming, can testify because of their experience of the requirement to practice defensive medicine, which could be as much as $100 billion a year. So here we are, looking at dramatic increases in cost, and the President is going around the country saying that insurance premiums will go down. Individual premiums will go up between 10 and 13 percent. You know, facts are stubborn things.

So I would ask my friend from Oklahoma if he might talk a little bit about not only what is in this bill but what is not in this bill, and medical malpractice reform is certainly something that anyone would logically assume would be part of any real reform if you are interested in reducing cost.

If you are interested in increasing government bureaucracy, I hear this bill could mean the employment or hiring of some 16,500 new IRS agents. We are trying to track down the facts behind that. So we are now embarked on one of the greatest expansions of government in the history of this country.

Mr. COBURN. I thank the Senator for his question. If you look at Thomson Reuters and several others who have studied the health care field, the estimate for defensive medicine costs is $250 billion a year. It is not just that we order tests that protect us from frivolous lawsuits, but those tests have consequences. Some of those tests actually hurt patients or expose them to radiation or, in fact, limit our ability

to do what is best for the patient because we are more interested in protecting ourselves.

Mr. MCCAIN. May I ask the opinion of the Senator from Oklahoma as to why he thinks there is no address of medical malpractice reform whatsoever in this legislation that has the slightest impact on reducing health care costs?

Mr. COBURN. I think there are two reasons. One is because there is large support of those who wrote this legislation by those who benefit from suing doctors. That is pretty straightforward. And the doctor's only defense is to order tests which they need but which the patient doesn't necessarily need. The second is because they couldn't get—or wouldn't put it in the bill because they knew it would pass and the American people would agree with it. You know, it is beyond me.

But let me go to the point of this current amendment. I have delivered somewhere over 4,000 babies, and 2,000 of those were Medicaid babies. Over half the babies I have delivered in my life I have cared for through Medicaid. The State of Oklahoma just cut, in February or March, Medicaid reimbursements 3 percent. They are going to cut it another 8 percent. Forty percent of the primary care doctors don't see Medicaid patients because the price that is paid for the coverage doesn't cover the cost, let alone any margin. It doesn't cover the cost of nurses, the rent, the malpractice, and everything else.

The second point is, of the specialists who are available, 65 percent of the specialists in this country won't see Medicaid patients. So when I am taking care of Medicaid patients, I have trouble finding somebody better than me in a specialized area to care for my patients.

What is the other thing we know about Medicaid? Even if you normalize for social factors, their outcomes are worse. The cost in terms of the number of procedures, the failure of therapeutics—all are worse.

So why is this a good idea? It is not just a political stunt. If Members of Congress are enrolled in Medicaid, the first thing that is going to happen is Medicaid and reimbursements are going to go up so that the availability of the finest and the best and the brightest in this country is available to Members of Congress. So it is not just a stunt to say we put our membership in Medicaid; it is a very important ulterior motive to improve Medicaid.

Think about it. If you are one of the 16 million people who are going to get health care under Medicaid, supposedly, in this bill—and I doubt that seriously, simply because we are going to see a marked decrease of 50 or 60 percent of doctors who won't see them—think about what is going to happen: You are not going to be able to find a doctor. You may have coverage, but you won't be able to get anybody to care for you. Is that coverage? Is that care? Is that prevention? Is that management of chronic disease? No. None of that will happen.

So the whole idea of placing us in a leadership position into Medicaid is so that we will lead and fix it and make it what it should be. There is only one health care system worse in America than Medicaid, and that is the Indian Health Service. That is the only one that is worse. Everything else outside of those two programs is better. So why would we consign 16 million Americans to a health care program that is failing today? So the way to fix that is to put us into it. And I guarantee you, the self-interests of the Members of Congress will fix Medicaid and make it what it should be.

With that, I yield back to the original author of the amendment.

Mr. LEMIEUX. I thank my friend and colleague from Oklahoma.

How could anyone in this body not vote for this amendment? Why should we have better health care than the 16 million people whom we are going to put into Medicaid, and now will be 50 million Americans? Why should we have it better? Why should we have a gold-plated premium health care plan?

Look, I have a family of five. We are going to have a baby any day—could be today—so it will be a family of six. I pay $400 a month on the government program—$5,000 a year. Could I get that in the marketplace? Of course I couldn't. There is a doctor here in the Capitol, a whole staff of them, anytime I want to see a doctor. I get fantastic health care as a Member of Congress.

Why shouldn't we have the same health care we are subjecting 15 million new Americans to and 50 million Americans in total? As my friend from Oklahoma says, certainly won't that make the point to us that this health care system is failing? What will happen when a Member of Congress tries to find a doctor and can't find a doctor who will take him? What is going to happen when he tries to find a specialist and no specialist will take him? You don't hear our friends on the other side talking about the fact that half of the people getting coverage under this legislation are going into a failing system. That is not one of their talking points, but it is the truth. So I challenge my friends who say that they should walk among the least of us to vote for this amendment.

I want to turn again to my colleague from Arizona. He and I have expressed our distress about this bill for lots of reasons, but a specific reason is that we both represent States with lots of seniors.

We have this Medicare Advantage Program that is going to get $200 billion cut out of it. That will really affect our two States. So I wonder—and I would ask my colleague, the distinguished Senator from Arizona, to speak on this issue—how is this going to affect seniors in Arizona when we are raiding Medicare to start this new program?

Mr. MCCAIN. I thank my friend from Florida. The fact is, Medicare Advantage is a program that provides seniors with choices. That is one of the reasons it is a major target of the other side—because it doesn't fit in, then, with the government mandates this whole bill embodies. So I am worried about the 11 million Americans who have the Medicare Advantage Program.

I would like to refer my colleagues to an article—I know the Senator from Utah is waiting, if he would just give me another minute or so here—today in the Wall Street Journal titled ''Now, Can We Have Health-Care Reform?'' And I want to quote from part of it, as follows:

> Health insurers, and indeed Corporate America as a whole, are like monkeys who are caught by staking a glass jar to the ground with a shiny trinket inside. They won't let go so they can't get their hands out of the jar. That trinket is the ruinous and regressive $250 billion-a-year tax benefit for employer-provided insurance.

That is the elephant in the room, my friends.

> Corporate America isn't brave enough to argue against a direct subsidy to its employment costs, no matter how perverse its impact in insulating consumers from the true cost of their health care choices. Insurers are not brave enough to say: Give us a tax code that lets us go back to being insurers rather than a tax laundromat for the middle class's health care spending.
>
> Almost any bill would have been worth having that fundamentally fixed this tax distortion, regardless of its other elements.
>
> We say this because any bill, including the one signed by the President yesterday, will be revisited many times in the future. Millions of pages of rules will be written by regulators before we see how it really works. Congress itself will return in predictable ways: It will reverse the proposed Medicare cuts that created ObamaCare's illusion of fiscal probity. It will tighten the mandate that requires insurers to cover the sick at favorable prices. It will not tighten the requirement that the young and healthy buy insurance at prices that subsidize the old and unhealthy.
>
> More and more tax money will have to be found to keep the jalopy on the road. More and more administrative controls on medicine will attempt vainly to keep the jalopy from bankrupting the Nation.
>
> Under the law just signed, employers have even more incentive than they did yesterday to lavish excessive health insurance on their high-end employees.

Mr. President, I ask unanimous consent to have printed in the RECORD this entire Wall Street Journal article.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Mar. 24, 2010]

NOW, CAN WE HAVE HEALTH-CARE REFORM?

(By Holman W. Jenkins, Jr.)

A certain kind of person—we get emails from them all the time—understands exactly nothing about the health-care debate, but thinks they know who the villain is: the insurance industry.

Barack Obama is not one of them. In the desperate hours he played to public ignorance. But from the beginning, the industry was his ally because he set out to solve its

biggest problem—which is not the same as America's biggest problem.

We'll let Angela Braly, CEO of insurer WellPoint, take the story from here. She was recently hauled before Congress to justify her company's proposed 39% rate hike in California. She explained the source was two-fold: rising medical costs and healthier customers dropping their coverage, forcing the sick to pick up the tab.

Now this sounds like two problems, but for WellPoint and other insurers it's really only one problem. Once everyone is required by government mandate to buy insurance, the industry's survival is no longer threatened: It can just pass its skyrocketing costs along to customers. Once customers can no longer refuse to buy the industry's product, the problem of costs won't be fixed, but it no longer is the insurance industry's problem.

There, in that one sentence, we give you the failure of ObamaCare, the failure of the congressional health-care debate, the failure of health-care politics in this country.

Health insurers, and indeed Corporate America as a whole, are like monkeys who are caught by staking a glass jar to the ground with a shiny trinket inside. They won't let go so they can't get their hands out of the jar. That trinket is the ruinous and regressive $250 billion-a-year tax benefit for employer-provided insurance.

Corporate America isn't brave enough to argue against a direct subsidy to its employment costs, no matter how perverse its impact in insulating consumers from the true cost of their health care choices. Insurers are not brave enough to say: Give us a tax code that lets us go back to being insurers rather than a tax laundromat for the middle class's health-care spending.

Almost any bill would have been worth having that fundamentally fixed this tax distortion, regardless of its other elements.

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More and more tax money will have to be found to keep the jalopy on the road. More and more administrative controls on medicine will attempt vainly to keep the jalopy from bankrupting the nation.

Under the law just signed, employers have even more incentive than they did yesterday to lavish excessive health insurance on their high-end employees. They have less incentive to cover low-end workers, or even hire them.

For the young, healthy or anyone not stumbling into a giant tax handout, buying insurance at the inflated prices available in the marketplace would be an even crazier financial decision today than it was yesterday—because now you can wait and buy it when you're sick.

For insurers, the check is in the mail: So watered down is the individual mandate that it must accelerate the industry's death spiral if not for the massive subsidies the government now has obliged itself to provide to keep the industry afloat and allow insurers to continue scalping their 15% off the top for serving as gatekeeper to a tax loophole.

When all is said and done, with unerring accuracy, ObamaCare has ended up doubling down on the system's existing perversities. The one thing it doesn't do (though it would be perfectly consistent with the Democratic goal of universal access) is incentivize a health-care marketplace based on competition in price and quality.

A world-class hospital in India does heart surgery the equal of any heart surgery in America, but does so at one-tenth the cost (and increasingly attracts a world-wide clientele). The reason is not what you think: low-paid doctors and nurses. The reason is that competition works in medicine as it does in everything else when the patient cares about getting value for money. This is the great low-hanging fruit of health-care reform. It continues to hang.

Mr. MCCAIN. Mr. President, I thank my friend from Utah for his indulgence.

The other side is going around the country right now telling the American people things that simply are not correct, including the fact that these budget projections we know are patently false, not because CBO gave us false numbers but because the assumptions were wrong. One of the biggest assumptions—and we will be talking about this more—is the so-called doc fix. Is there anyone who believes we are going to have a 21-percent cut in Medicare physician payments this fall?

I would ask my friend, the Senator from Utah, who is very familiar with this issue—I know he has an amendment, but this is one of the reasons Americans are so angry. They know they are not going to cut doctors' payments from Medicare by 21 percent, and that is a fundamental part of the assessments as to the cost by CBO. It is a sham perpetrated on the American people.

So I would say to my friend from Florida and my friend from Utah, we will be back on the floor probably this fall sometime or early next year, and we will be talking about the fact that this doc fix—the doctor payments provision of health care for Medicare enrollees—was not cut 21 percent, as the other side is telling the American people that it will be. It is not fair to the American people, I would say to my friend from Utah.

Mr. HATCH. I agree with my friend from Arizona, no question.

MOTION TO COMMIT

Mr. HATCH. Mr. President, I ask unanimous consent to set aside the pending motion to offer a motion to commit.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] moves to commit the bill H.R. 4872 to the Committee on Finance with instructions to report the same back to the Senate within 1 day with changes to strike all cuts to the Medicare Advantage program and add an offset if the Department of Health and Human Services' actuary certifies that 1,000,000 or more Medicare Advantage beneficiaries, American seniors, and disabled individuals, will lose their current Medicare Advantage coverage or plan benefits.

Mr. HATCH. Mr. President, before I discuss my motion to commit to protect the Medicare Advantage Program for more than 10 million seniors, I would like to take a few moments to discuss the broader issue of health care reform.

To be honest, we have never seen anything like the issues facing our country right now. We are at a pivotal point as a Nation. The line between private businesses and public government has never been so blurred. Government effectively owns several of our Nation's financial institutions, insurance companies, and auto manufacturers. CEOs have been fired by government bureaucrats, and Washington is now in the business of running our health care system more than ever before.

Our fiscal outlook is bleaker than ever. According to the recent 10-year outlook by the Congressional Budget Office, the CBO, the current administration's policies would add $8.5 trillion to our already record national debt. The report also confirmed that we would be facing a record deficit of $1.5 trillion this year, along with a dire prediction of our deficits only getting worse after 2015 and beyond.

Let me put this in perspective. Our deficit this year is the largest yearly deficit since 1945. It is 10 percent of our entire economy. Our national debt is on a path to double in the next 5 years and triple in the next 10 years. According to CBO, our national debt will explode to $20.3 trillion by 2020 or 90 percent of our GDP. We are literally drowning the future of this Nation and the future of our kids and grandkids in a sea of red ink.

I deliver these remarks with a heavy heart because what could have been a strong bipartisan bill reflecting our collective and genuine desire for responsible health care reform turned out to be an extremely partisan exercise resulting in one of the largest big-government spending bills being signed into law yesterday. We are jamming through another 153-page addition of new taxes and spending.

Recent polls show that a majority of Americans remain concerned and skeptical about all the promises of reduced deficits and lower costs under this legislation. Why? Because they know there is no such thing as a free lunch, especially when Washington is the one inviting you over.

According to the administration's own Actuary at the Centers for Medicare and Medicaid Services, CMS, the health care bill signed by President Obama yesterday will actually raise our total health care spending by $222 billion over the next 10 years. That does not even include the doc fix the distinguished Senator from Arizona was talking about, which is as much as $371 billion more.

But the most cynical joke played by Washington on the American people in this entire exercise has been the promise of this $2.5 trillion tax-and-spend bill actually reducing our deficit. Nobody believes that.

The biggest bait and switch on the American people about the bill's impact on the deficit is a simple math

trick. If something is too expensive to do for a full 10-year period, just do it for 5 or 6 years. Most of the major spending provisions of the bill do not go into effect until 2014 or later—coincidentally after the 2012 Presidential elections. So what we are seeing is not a full 10-year score but rather a 6-year score. According to the Senate Budget Committee, the full 10-year score of the Senate bill would approach $2.5 trillion. We are already spending $2.4 trillion.

More importantly, let me also clarify what the Congressional Budget Office has said on the nearly $500 billion in Medicare cuts which my friends on the other side argue will magically not only extend Medicare solvency but also pay for a large part of this bill. This is like telling American families that they can spend the same magical dollar to not only pay their mortgage but also their credit cards. It is nonsensical. Here is what the experts at CBO said:

> The key point is that the savings to Medicare trust fund . . . would be received by government only once, so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.

By the way, did I mention that at a time when major government programs like Medicare and Medicaid are already on a path to fiscal insolvency, it is interesting to note that more than half of the newly covered lives, 16 million out of the 32 million, are simply being pushed into the Medicaid Program. And if anyone thinks that States, that are facing more than $200 billion in deficits, will not be left holding the bag in the future, then I have a bridge to sell to you.

I have said all along that this is not a fight between Republicans and Democrats, but a fight between the Democrats and a majority of Americans who did not want this bill. In townhall after townhall and poll after poll and election after election, Americans begged Washington to listen to their voices. But Washington ignored them and used every means necessary—from backroom deals to procedural trickery—to get this bill passed.

We need to remember the real implications of these policies—not simply in terms of political legacies and ideological holy grails—but in terms of its impact on the future of our children and grandchildren. We need to ensure that they have the same opportunities to prosper that we have all been blessed with.

I would now like to speak for a few minutes about a motion to commit that I will be offering. My motion to commit states that if the Actuary of the Department of Health and Human Services certifies that 1 million Medicare Advantage beneficiaries lose their coverage or benefits, the cuts to the Medicare Advantage program will not go into effect. It is that simple.

It is important to point out that the bill the President signed into law yesterday would slash $120 billion from the Medicare Advantage program. This reconciliation bill would cut the program by an additional $66 billion for a grand total of $202 billion.

Before the health care reform bill was signed into law, CBO projected that Medicare Advantage enrollment would have increased from 10.9 million in 2010 to 13.9 million in 2019. Now, Medicare Advantage enrollment will be 4.8 million less in 2019 due to the passage of the new health bill or almost 2 million less than today.

CBO also projected that rebates for additional benefits and reduced cost-sharing offered through Medicare Advantage would be reduced by 50 percent from $135 per member per month to $67 per member per month in 2019. These lost benefits include lower premiums, lower copayments, and lower deductibles. It will also impact everything from hearing aids to dental and vision benefits. Most importantly, it would violate President Obama's own pledge ''if you like what you have, you may keep it.''

Medicare Advantage works. Every Medicare beneficiary has access to a Medicare Advantage plan. Almost 90 percent of Medicare beneficiaries participating in the program are satisfied with their health coverage. It is time for us to stand up for more than 10 million seniors and ensure that this program is not used as a piggy-bank to finance Washington's big government plans.

I appreciate my colleagues allowing me to go maybe a minute longer than I should have, but I urge my colleagues to support my motion to commit this bill.

The PRESIDING OFFICER. Who yields time? The Senator from Montana.

Mr. BAUCUS. Mr. President, have Republicans used up their time?

The PRESIDING OFFICER. The Republicans have 1 minute remaining.

Mr. BAUCUS. I don't mean to be picky, but I assume they will yield back that minute.

Mr. HATCH. I will yield back the minute.

Mr. BAUCUS. I will yield 15 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, this is indeed a great day because we are passing real health care reform for American families, for American workers, for American small business, for seniors, and our communities. Health care reform will save lives. No longer will dreams and lives be endangered because people lost their health care insurance when they got sick, lost a job or had an accident.

I listened to the other side which says they listen to the people. You heard the old saying, ''Men are from Mars, women are from Venus.'' I think that party is from Mars and we are from planet Earth. I think they have been out in orbit. The planet Earth that I am on tells me to pass health insurance reform.

One of the reasons I am voting for this bill, the main reason I am voting for this bill, is the stories I heard from my constituents in Maryland—roundtables, townhalls, hearings, lots of letters, phone calls, e-mails. They told me about the situation in their lives, where they were terrified that one big health care incident could lead them into bankruptcy. They were terrified that if they had changed a job to one in our new high-tech communities that would have offered great opportunity for them—they didn't take it because they were not going to have health insurance.

When I listen to people, I think about the lady in Cumberland who works full time, but her employer does not provide health insurance and she is terrified that she is one sickness away from a catastrophic situation, or from Karen, in Kensington, whose father had to quit work because he had Crohn's disease. He was making payments on his insurance. He was two payments short, and they canceled his insurance. It took him 6 months to try to get it back. He lost his coverage, and he was only 59 years old when he passed away.

Then there were the breast cancer survivors, the wonderful women and the men they love who are out there raising money for the cure. But even in a prosperous community such as Annapolis, a woman told me how she lost her job and with it her family's health insurance, and when her insurance ran out, she was terrified she would lose her cancer treatment.

Walking around the diners—and I love diners. I see myself as a diner Democrat. In every diner it is usually multigenerational people. What do they tell me? Barb, don't forget the old people. Senator Barb, no matter what, keep Medicare stable. If you are 50 years old, you are terrified your parents can lose their Medicare and it is going to fall on you. The sandwiches they are eating are eaten by the sandwich generation, worried about the oldtimers' health care, worried about keeping their own, and then trying to figure out how they were going to pay for college. Medicare has multigenerational implications.

This is why in this bill I am so proud of the fact that we are going to stabilize Medicare for another 10 years and do very important reforms in Medicare.

I am also pleased to respond to the people who said no matter what, make health care available and affordable. For every parent who has ever worried about covering a child with a chronic illness, whether autism or cerebral palsy or juvenile diabetes, they will always be able to get health insurance. The small business owner, such as my own father who once had a grocery store or my grandmother who had the best bakery shop, worried about how they were going to provide individual

health care for themselves—this generation will not have to worry about that.

This bill is an exceptional one. We save Medicare, expand its solvency for another nearly a decade. We end the punitive practices of insurance companies. We expand uniform access, and we pay for it with an emphasis on wellness and quality, saying goodbye to quantity medicine and emphasizing quality medicine; goodbye to volume medicine and getting value for our dollar.

For our seniors, one of the most important things we will do is close that doughnut hole. The doughnut hole has been hard to swallow ever since this bill was passed. We are going to provide a $250 rebate for seniors who hit the gap in the prescription drug benefit and also offer a better discount on prescription drugs.

I am also very excited and honored because of the role I played in making sure we ended the punitive practices of insurance companies toward women. For too long, in too many ways, they treated simply being a woman as a preexisting condition. First of all, they charged us 30 percent to 40 percent more just simply to be able to get insurance. Then they would have the punitive practices of denying us health insurance for a preexisting condition. In eight States, domestic violence was viewed as a preexisting condition. You talk about being abused—you were abused by your husband, then you were abused by your insurance company. We are not going to be battered anymore by these companies. We ended that in this bill.

Then there was the hearing that shocked and chilled me, a hearing on gender discrimination in insurance. A woman told a compelling story, Peggy from Colorado, that after she had a C-section and a premature baby, the costs were high. She lost her health insurance and when she went to apply they told her in order to get health insurance, because she had a premature baby, because she had a C-section, they would not give her health insurance unless she was sterilized.

I couldn't believe it. That is what fascist countries do. That is what authoritarian regimes do. It was not the Taliban in Afghanistan, it was an insurance company in Colorado. We took up that fight and ended those abusive practices in this bill. Never again will a woman be able to be denied health insurance because of any preexisting condition. We ended gender discrimination in charging women more.

But as the debate went forward, they wanted to take the mammograms away from us and they didn't want to put mammogram and preventive services for women in the bill. They said it costs too much money.

I didn't want to hear that. I asked the women to suit up and come to the floor and we offered an amendment. The good men of the Senate also joined us. Many remember we wore pink that day. Today we are in the pink as well. We offered our amendment to ensure preventive services for women so that if your doctor says you need a mammogram, you are going to get one. If you need screening for cervical cancer or a Pap smear, you are going to get one and you are not going to have to pay a copay and a deductible. But like the old song ''Bread and Roses,'' we fight not only for women, but we fight for men too. Because for us it is not gender, it is about the agenda, and the biggest agenda is to make sure we provide health care to as many Americans as we can in the most affordable way, with value, quality, and prevention as their underpinnings.

We were able to make significant changes in this bill. But affordability is an issue. I believe we dealt with that by emphasizing quality. At Senator Kennedy's request, I led the quality task force. Because of proven ways that we are going to be able to offer in these initiatives, we are going to be able to increase the affordability of this bill to make people healthier. We want to prevent disease and manage chronic disease. By the emphasis on the management of chronic disease, we are going to save lives and save money.

First of all, we are getting more value for the dollar. Yes, we will be looking at comparative effectiveness, so when you go for a treatment or you buy a drug, you know we are getting value for the dollar.

The other is, we are going to emphasize the reduction of medical errors and also medical infections in hospitals by introducing quality initiatives that reward hospitals for being able to do that. But I also listen to the providers. I represent iconic international institutions such as Johns Hopkins medical institution and the University of Maryland.

I listen to my primary care doctors as well. They said: Senator BARB, please reduce the hassle factor; too much paperwork and not enough time to be with patients; too many contradictory rules from the insurance companies and not enough of a clear path on what we can do to be able to help people.

So we made sure we are going to save money by reducing the hassle factor by simplifying administrative costs, by emphasizing medical health information technology. We are going to promote evidence-based medicine through this comparative effectiveness research. We are going to also reward, following the recommendations of the Finance Committee, the encouragement of medical homes in order to be able to manage chronic disease.

These are the many reforms that are in this bill and that I am very proud of. I am also, as the daughter of a small business owner, excited about how we are going to be able to help small business be able to provide health care to their employees. The fact that we are going to offer tax breaks for small business and be able to have health exchanges where they can buy those health care policies at a better cost is indeed important.

So, again, the other party might be Mars, but I am glad my feet were planted in planet Earth, by listening to the people I represent, by listening to their concerns and then listening to the excellent ideas that came from both the people themselves and, I must say, the people who are the providers who could help us lead the way.

I am going to vote for this bill. I know there is much to reform in it in the years ahead. But this is more than a beginning, this is a leap into the future. It is a leap we can take with confidence that when this bill passes with reconciliation, we will have won a major historic advance for the American people.

Our job is about creating opportunity and opportunity to have health care is one of the greatest benefits we can provide.

I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that at the conclusion of the half hour under the majority's control, at about roughly 11:21, the Republicans control the next half hour and the majority control the half hour after that, starting at about 11:51.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I would like to take a couple moments to speak on two amendments, one offered by, I think, Senator HATCH, with respect to Medicare Advantage. Off the topic, it is important to remember that health care reform will reduce excessive overpayments to Medicare Advantage plans, while at the same time rewarding high-quality, efficient plans for providing care to seniors.

Medicare Advantage plans that achieve high-quality rankings under this legislation, let's say, for regular checkups for blood pressure, diabetes, will receive an increase in payments. That is very important because, today, Medicare Advantage plans are paid the same amount regardless of the quality of care they provide.

For the first time, under this legislation, payments to plans would be based on performance. I think that is something all seniors would prefer. That makes this Medicare Advantage plan more fair, more reasonable. This will enable plans to participate everywhere in the country, both urban and rural, while eliminating overpayments that plans receive today.

According to MedPAC—MedPAC is that bipartisan commission that advises Congress on Medicare payments—that organization says Medicare Advantage plans are paid 13 percent more than traditional fee-for-service plans, on average, and in some parts of the country overpayment is as high as 20 percent. They strongly recommend that we reduce that overpayment because it causes great inefficiencies.

I might also say that, today, because of the overpayments, all seniors on

Medicare—I am talking now especially about seniors who take fee for service—all seniors on Medicare pay for these overpayments, even if they are not in Medicare Advantage plans. How? Well, it is basically because every senior pays $3 more per month in Part B premiums, that totals about $80, on average. So seniors in traditional fee for service are paying for the overpayments for Medicare Advantage plans.

Medicare Advantage overpayments drain resources for the Medicare trust fund. If they are overpaid, that means they are draining excessive resources from the Medicare trust fund. In fact, the government estimates that Medicare Advantage overpayments speed up insolvency of the Medicare trust fund by about 18 months.

After that, there is no evidence that overpayments to Medicare Advantage plans—do not forget these are private insurance plans—even though they say Medicare, they are private insurance plans. There is no evidence that overpayments to them lead to better quality for Medicare beneficiaries.

In fact, seniors can end up spending more out-of-pocket dollars under Medicare Advantage plans than under traditional Medicare, even if they have certain conditions. The bill eliminates these overpayments by decreasing the statutory rates in place today and giving quality performance payment increases to high-ranking plans. We are paying more than we do today to high-ranking plans.

No senior in Medicare Advantage will lose access to any of their Medicare benefits under this proposal. We hear all these false claims across the aisle that these cuts, which cause more efficiency, prevent waste, prevent overpayments, are going to cut beneficiaries, Medicare Advantage beneficiaries' payments. That is not true. It is misleading.

Plans will not be allowed to lower or drop their basic Medicare benefits that seniors are entitled to under the Medicare Program. So there are no cuts in basic Medicare benefits. In fact, they are guaranteed. The reforms in this bill will ensure that the dollars for the Medicare trust fund go toward improving the quality of care for seniors, rather than to support the operations of private insurers. I think that is something the vast majority of seniors would prefer. I wish to make that clear because some of the statements made on the other side of the aisle are quite misleading, which leads me to another point.

Americans probably are a little confused about what is in health care reform because they hear all kinds of claims, both sides. Well, now health care reform has passed. The President signed the bill yesterday. This is sort of to help, a fixer-upper around the edges a little bit. Americans can look for themselves as to who is telling the truth. They will want to look more closely than they have in the past because now it is law. Now it affects people.

Some people are going to ask: Gee, how does it affect me? I better find out. When people start to find out, they are going to learn—I say this somewhat presumptuously, but I believe it very strongly—they are going to find out that those who are claiming all the bad things that are going to happen, all the bad things about this bill, are basically not true.

They are also going to start to realize that all the good things in this bill, that a lot of proponents have been mentioning, from the President on down, they are pretty much true, the good things are pretty much true. I think once people start thinking closely, separating the wheat from the chaff, they will start to realize that not only are the Medicare Advantage charges false, but a lot of the other charges that some make about why the bill is so bad are also false. Again, I say, somewhat presumptuously, the prevention provisions, I think are very good and help seniors, are basically accurate.

One small, final point. The Senator from Florida offered an amendment basically requiring all Members of Congress to enroll in Medicaid. Now I ask you, that clearly is not a serious amendment. Medicaid is a very vital program for vulnerable Americans. It should be treated very seriously and should not be used for political games.

I now yield the remainder of our time in this half hour to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. First, I wish to begin by recognizing the extraordinary leadership of majority leader HARRY REID, Chairman BAUCUS, Chairman DODD, and Chairman HARKIN to get us to this point.

Commonsense and cost-effective health care reform is now the law of the land. The question before the Senate now is whether we will make some important improvements to that reform or whether we will respond to the wishes of the insurance industry and others who want to preserve a broken status quo of higher premiums and dwindling coverage for middle-class families.

Yesterday, President Obama signed into law a health insurance reform bill that will cut the deficit by $143 billion over the next 10 years, ensure that health insurance companies actually provide Americans with the coverage that they pay for, and preserve Medicare for our senior citizens. That is no small achievement, and it would be a tragedy if the other side of the aisle persists in its effort to defeat health care reform by seeking to delay and upend the package of improvements in the bill that we are now debating.

It sometimes gets lost in the heated rhetoric of the other side, but under the status quo, the healthy are faced with ever-increasing costs and the ill are denied care, dropped from coverage, and prevented from purchasing coverage. The new health insurance reforms will provide relief for every American. Indeed, under the law just signed by President Obama, these five reforms will take place by the fall of next year:

No child will be denied coverage because of a preexisting condition.

Small businesses will receive a 35-percent tax credit to purchase insurance for their employees.

Seniors on Medicare who confront the doughnut hole will receive additional assistance.

Health insurers will be required to spend more of their premium revenues on clinical services, with less going to administrative costs and profits, or else they must pay a rebate to policy holders.

And our State's Community Health Centers will receive a boost in Federal resources.

Rhode Islanders will particularly welcome this relief. Just last week, Rhode Islanders learned that health insurance premiums in the State will go up 10 percent this year. In the same week, they also received news that as many as 21 percent of individuals in the State will be without insurance sometime during this year. This is double the rate of uninsured just 10 years ago.

In Rhode Island, these two headlines, coupled with an unemployment rate of nearly 13 percent, have caused a perfect storm.

As the economy took jobs away from Rhode Islanders, it also took away their health insurance. The healthy hoped not to get sick, the sick started showing up in hospital emergency rooms, and those who still had access to insurance stopped being able to afford it.

Hospitals in Rhode Island can no longer shoulder the burden of the uninsured. Community health centers in Rhode Island can no longer shoulder the burden of the uninsured. Indeed, the economy can no longer shoulder the burden of the uninsured.

Today we are considering a bill that makes further improvements to the health insurance reform law. Indeed, these are changes that Americans have consistently said they want, and that is why we should support this bill. It is also why I intend to oppose the legislative maneuvers from the other side of the aisle. They are interested in overturning the reform of our health care system, reforms which have replaced the costly status quo with a system based on more competitive markets. They are in favor of a system where the whim of insurance companies rule. They are in favor of a health care system in which costs continue to rise at astronomical rates each year for families and for businesses.

It may be politically heartening for the other side to try and slow down reform through a series of repetitive amendments, but I think Rhode Islanders and all Americans want us to pass the bill because it contains straightforward proposals.

First, this reconciliation bill, as it is known, would eliminate the so-called Corn-Husker kickback, which would have created an entirely inappropriate Medicaid reimbursement system exclusively for one State. Gone too are other provisions that would have unfairly supported some States and not others.

Second, this bill begins the process of closing the Medicare prescription drug coverage gap, also known as the doughnut hole, which requires seniors to pay more for their medications than they ordinarily would. This year seniors would receive $250 when they enter the doughnut hole and pay less for drugs they purchase once they enter this coverage gap.

Third, at a time when so many of us are worried about government spending, this bill does more to reduce the budget deficit so that we can save up to $1.3 trillion in the next two decades. Those are real savings. I find it ironic that some on the other side oppose them.

Fourth, the bill makes sure the so-called Cadillac tax, which was intended to affect the most expensive health care plans, is reduced by 80 percent so that it hits its intended targets, not middle-class families.

Fifth, the bill recognizes that we should do even more to help struggling families afford health insurance, and so it provides new tax breaks to help make coverage more affordable.

As I said, in the next few days my colleagues on the other side of the aisle are expected to file and attempt to offer numerous amendments to this bill. These are tactics that are purely dilatory. That is, again, another reason I will oppose the amendments. Some of these amendments may seem as though they are common sense, but each one is designed for the purpose of derailing this legislation, of sending it back to the House, of undercutting the most significant reform of health care in the last several decades.

But there is another aspect to this legislation which is vitally important; that is, the improvement to the student support system for higher education. It is the dream of every parent that their child will have a better life, and a big part of that dream is that they will have the opportunity to go on to college or even an advanced degree. This bill ends the student aid system that gives away billions of Federal subsidies to private banks, including some that helped create the 2008 financial meltdown, and instead puts those taxpayer dollars directly into the hands of students to pay for their education.

During this economic downturn, paying for college has become all the more difficult for many families in Rhode Island and across the Nation. Like health care, one of the top concerns of families as they sit around their kitchen tables during these difficult times is how they will pay for their child's education. The key to ensuring our Nation's economic stability and progress is also providing access to education. It is the engine that moves people forward. It is what expands our capacity and our capabilities in a complex world.

Now we have the opportunity so that we can, in fact, provide additional assistance through Pell grants, and we can do it by saving money from bank subsidies and reinvesting that in Pell grants. Approximately $42 billion will be freed up; over $35 billion will be committed to Pell grants. It will be expanded to additional recipients, and the maximum grant will increase to nearly $6,000. We will also provide in Rhode Island $7.5 million for information so that families and students can locate the best arrangements for their college education, for their financial aid. It will also invest $2 billion in community colleges, which have become a central part of our educational system, particularly for those people who are transitioning into the workforce or through the workforce.

One final point: It is particularly fitting that we are investing in the Pell grant, named after my predecessor Senator Claiborne Pell. His vision to give people the opportunity to higher education and then to stand back and watch them do great things has been legitimized and vindicated over 30 years. I don't think Senator Pell foresaw the Internet. I don't know how much he used it even when it arrived. But he knew if we gave people the skills and talents, they would do great things. They have done great things.

With this legislation, they will do even more.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. How much time does the majority have on their half hour?

The PRESIDING OFFICER. The time of the majority has expired.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, a couple comments need to be responded to because they are so patently inconsistent with the facts that they should be clearly rejected. It is almost as if somebody spent too much time at the movie ''Alice in Wonderland.'' The idea that by their own score, when you cut Medicare by $521 billion—$½ trillion cut out of Medicare by their own score, which is inaccurate, of course, because it doesn't count the full 10 years—if you count the full 10 years, it is $1 trillion taken out of Medicare—the idea that seniors are not going to be affected by that type of a cut is absurd on its face.

The claim is, we don't affect senior benefits. That is nice. That is like telling somebody they can have a car, but there is no engine in it. I mean, the simple fact is, when you cut the providers of seniors by as much as this bill cuts them, clearly it is going to be harder for a senior citizen to see a provider, a doctor, a hospital group. Or when you reduce the spending on Medicare Advantage, which is an insurance program that many seniors appreciate—CBO scores the reduction as being so large that over 11 million seniors will be thrown off that system—that affects seniors.

If they genuinely believe their language, ''we don't do anything about Medicare; we don't do anything about seniors,'' even though the score says they cut Medicare by $500 billion, their own score, and the CBO has said over 11 million people will be knocked off of Medicare Advantage—if they believe that, if they believe their language, then they have to vote for my amendment. They have to vote for my amendment which makes it clear that we protect Medicare.

Then there was some other comment made that somebody was going to vote against our amendments, not because they don't make sense but because they are dilatory. This is from a leadership on the other side of the aisle that produced the largest piece of social engineering in our history: 2,500 pages, $2.6 trillion of spending, $1 trillion of cuts in Medicare when fully implemented. They produced that bill in a closed room behind a secret door somewhere on that side of the Capitol, never open to the public, brought it to the floor of the Senate on a Saturday afternoon, filled up the tree, wouldn't allow any amendments, and within 3 days forced us to vote on it on Christmas Eve. Then they took it over to the House, where they rewrote this trailer bill, again, in a secret room, behind a closed door, and brought that bill to the floor and didn't allow anybody to amend that. But amendments are dilatory.

Why have an opposition party? Maybe we should just go with the Cuban system. That seems to be the attitude of the other side of the aisle. The American people are an unfortunate inconvenience. The fact that they have elected a Republican membership to this Senate and to the House, they are an unfortunate inconvenience that should be ignored and not allowed to participate in the process.

When they come up with ideas such as protecting the Medicare system or such as taking out the sweetheart deals or such as suggesting that the President and his people and the staff of the majority leader should be under the laws we are about to pass or suggest that we should live by the terms of the rhetoric which is, if your premiums go up, you won't be impacted by this bill, or that says that there won't be any taxes on people under $200,000 of income, amendments which just fulfill the statements of the other side of the aisle on issues—they are going to keep the bill clean, they are not going to tax people under $200,000 of incomes, people's premiums won't go up, Medicare won't be affected, and everybody will be subject to this new law of the land, including the President of the United States and his people and the staff of the majority leader—when we offer amendments like that, they are dilatory. They are an inconvenience. They

should not be allowed. They should not be voted on, not because they don't make sense but get rid of them; they are the opposition.

They are the American people speaking through their elected representatives and they ought to have a voice and they ought to be voted on and they ought to be given a vote based on the substance of the amendments, not on the fact that the other side of the aisle doesn't like opposition.

It is so arrogant, this attitude which pervades Washington now that says: The American people, we know better than you do how to live your lives. Why do you get in our way? We in Washington know how you should live. Just stand back. Let us make your decisions as to what you should do with your life, especially relative to health care. We will do a much better job. Certainly, don't countenance any opposition. Don't countenance any dissent, and, certainly, don't hold us to our word, for example, when we say people with incomes under $200,000 won't be taxed or when we say premiums won't go up or when we say everybody will be covered by the bill or when we say Medicare recipients won't be impacted. Don't make us hold to those words by voting on amendments because those amendments are dilatory.

The arrogance is palpable and inexcusable.

Now we will hear from the Senator from Oklahoma who has another amendment that I am sure the other side will say is dilatory and inappropriate, even though it makes a heck of a lot of sense to me.

I yield the floor.

AMENDMENT NO. 3556

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. I thank the Senator from New Hampshire.

As I contemplate what is happening at 62 years of age and looking back through my life, this is undoubtedly the greatest assault on liberty this country has ever had. It is not direct; it is indirect. But it is what the Senator from New Hampshire talked about: we are going to decide for you what you get.

What the American people still don't understand is there are three areas in this bill that in the next 5 years will put the government in charge of everybody's health care—what you can have, what you can't have, and who can give it to you. That is what is coming. So if you are a caregiver or you are a patient, you might think long and hard about the three provisions in this bill that are going to do that: a Medicare advisory commission, the cost-effectiveness comparative effectiveness panel, and the U.S. preventative task force panel. All of those are going to carry the force of law, and it will not just apply to government-run plans. If you have private insurance with your employer today, you are going to be told what treatments you can have because some group of bureaucracies in Washington are going to decide that. That is what is in this bill.

The Senator from New Hampshire mentioned several claims that have been made.

I ask unanimous consent to temporarily set aside the pending motions and amendments so I may offer an amendment which is at the desk, No. 3556.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 3556.

Mr. COBURN. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To reduce the cost of providing federally funded prescription drugs by eliminating fraudulent payments and prohibiting coverage of Viagra for child molesters and rapists and for drugs intended to induce abortion)

At the end of subtitle D of title I, add the following:

SEC. 1306. REDUCING HEALTH CARE COSTS BY ELIMINATING PAYMENTS FOR FRAUDULENT CLAIMS AND PROHIBITING COVERAGE FOR ABORTION DRUGS AND ERECTILE DYSFUNCTION DRUGS FOR RAPISTS AND CHILD MOLESTERS.

(a) ELIMINATING FRAUDULENT PAYMENTS FOR PRESCRIPTION DRUGS.—The Secretary shall establish a fraud prevention system and issue guidance to—

(1) prevent the processing of claims of prescribing providers and dispensing pharmacies debarred from Federal contracts or excluded from the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) or the Medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.);

(2) ensure that drug utilization reviews and restricted recipient program requirements adequately identify and prevent doctor shopping and other abuses of controlled substances;

(3) develop a claims processing system to identify duplicate enrollments and deaths of Medicaid beneficiaries and prevent the approval of fraudulent claims; and

(4) develop a claims processing systems to identify deaths of Medicaid providers and prevent the approval of fraudulent claims filed using the identity of such providers.

(b) PROHIBITING COVERAGE OF CERTAIN PRESCRIPTION DRUGS.—

(1) IN GENERAL.—Health programs administered by the Federal Government and American Health Benefit Exchanges (as described in section 1311 of the Patient Protection and Affordable Care Act) shall not provide coverage or reimbursement for—

(A) prescription drugs to treat erectile dysfunction for individuals convicted of child molestation, rape, or other forms of sexual assault; or

(B) drugs prescribed with the intent of inducing an abortion for reasons other than as described in paragraph (2).

(2) EXCEPTIONS.—The limitation under paragraph (1)(B) shall not apply to an abortion—

(A) in the case where a woman suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself; or

(B) if the pregnancy is the result of an act of forcible rape or incest.

Mr. COBURN. This is a constructive amendment that saves millions and millions of dollars in Medicaid. The fraud in Medicaid prescriptions is out of this world. It can be fixed. This amendment will prohibit prescriptions for recreational drugs for rapists and child molesters. Nobody can disagree with that. It is not in the bill. It is the current state. But if this bill goes through without this amendment, your tax dollars are going to be paying for Viagra for child molesters. That is what is going to happen. There is an Executive order that this will override. The bill overrides the Executive order. So there is no prohibition in the bill for this at this time.

A Government Accountability Office audit of Medicaid found 65,000 instances of improper prescriptions costing $65 million over the last 2 years, including thousands of prescriptions written for dead patients by people prescribing and posing as doctors. The audit focused on 10 types of frequently abused prescription drugs in just 5 States, which means this audit, which is just over 5 States, multiply by at least 10, and you get $650 million worth of fraud in prescriptions in Medicaid alone. We are not going to address that.

Sixty-five doctors or pharmacists were banned from Medicaid for writing or filling prescriptions or illegally selling drugs—but just in those five States.

About 1,800 prescriptions were written for dead patients and 1,200 prescriptions were ''written'' by dead doctors—just in those five States.

This amendment would direct the Centers for Medicare and Medicaid Services to enact the GAO recommendations to prevent and eliminate these fraudulent prescriptions. Specifically, it would direct CMS to establish a fraud prevention system for the Medicaid Program and issue guidance for States to prevent the processing of claims of all prescribing providers and dispensing pharmacies debarred from Federal contracts or excluded from the Medicare and Medicaid programs; ensure that drug utilization review and restricted recipient program requirements adequately identify and prevent doctor ''shopping'' and other abuses of controlled substances; develop a claims processing system to identify both duplicate enrollments and deaths of Medicaid beneficiaries and prevent the approval of fraudulent claims.

For years, the Federal Government had required States to provide prescriptions for Viagra and other impotence drugs to Medicaid patients, including to convicted sex offenders, child molesters, and rapists. States had provided the coverage based on a 1998 letter from the Clinton administration. As a result of that, an Executive order was issued in 2005, which this bill, if

unamended, will reverse. Mr. President, 800 convicted sex offenders in 14 States received Medicaid-funded prescription drugs for erectile dysfunction. That is according to a 2005 survey.

The predators' victims have been as young as 2 years old. So we have convicted sex offenders, rapists, and child molesters who were taking Federal tax dollars and buying a drug so they can act again.

In Florida, 218 cases; New York, 198 cases; Texas, 191 cases, and it goes down the list.

This amendment would prohibit the new health care exchanges from providing coverage of ED drugs to convicted child molesters and convicted rapists. It is pretty simple.

The claims that are made on this bill are outlandish. As somebody who has practiced medicine for 27 years, 50 percent of my patients were Medicaid patients. What you are going to do if you do not fix some of the things in this bill is destroy the best doctor-patient relationships in the world. That is what you are going to do.

You are going to put 16 million people into a failing Medicaid system that the States cannot afford. Almost every State is cutting Medicaid reimbursement. At this time, only 40 percent of the doctors in the specialties will see Medicaid patients. It is going to go to 20 percent. So we are going to put 16 million people in a system, and then they are not going to be able to find a doctor. Because of the costs, in my own State, we are going to have an 11-percent net reduction in Medicaid reimbursements, which is only 75 percent of Medicare.

What do you think is going to happen in all the States in the country when the Medicaid reimbursement goes down and we add 16 million new people to Medicaid? You are going to call it care. You are going to rub your shoulder, rub that medal on your shoulder, and say: Oh, we fixed health care. You are going to promise them they are going to have care, but they are not going to have care. They are going to have a card, but they will have no care. We are going to have Indian Health Service-type care in Medicaid because nobody is going to be there to care for them.

The claims under this bill keep me sleepless at night—not because of Washington but because of those 10,000 Medicaid patients I have taken care of through my career for whom I know you are going to destroy what care is left for them. You can claim otherwise, but the facts are going to prove you wrong. We are seeing it in every State in the country right now—the cuts to Medicaid reimbursements.

So at least you ought to help save $650 million a year by getting rid of fraudulent prescriptions, eliminating prescriptions for convicted child molesters for erectile dysfunction, and recreational uses with drugs such as Viagra. The American people do not want to pay for that.

To vote against this amendment, to not fix something that is very obvious, is criminal—it is not just not right, it is an active aid to help those who would hurt our children.

I yield to the minority whip.

Mr. KYL. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I would say, we are fortunate to have a real doctor, a physician, Dr. Tom Coburn of Oklahoma, as one of our colleagues in the Senate to talk about the real impact of legislation like this as he sees it when he treats his patients. I think his words deserve a lot of attention.

I just want to briefly address this morning a couple of the claims my Democratic colleagues are making about this new legislation, claims that are simply false.

The first one: There is a big tax cut. One of my colleagues said this is the biggest tax cut we have ever had. There is no tax cut for taxpayers in this bill. What they are touting as a tax cut is, rather, a direct payment to insurance companies. I find it very odd that is called a tax cut. When I think of a tax cut, I think of money remaining in the pockets of taxpayers so they do not have to pay taxes they have been paying in the past. That is not what is in this bill.

What the bill does is to provide a subsidy to insurance companies to dispense government-mandated insurance. It is not a tax cut for taxpayers. Instead, most of the so-called tax relief goes directly to the insurance companies. It never touches—you never touch the money—it never touches an American family's pocket.

These premium subsidies are delivered straight from the U.S. Treasury to help insurance companies, as I said, to purchase this government-mandated, government-approved insurance. They are not extra dollars in people's pockets, as the chairman of the Finance Committee argued. They are, rather, advanceable, refundable tax credits, which is code for a new tax entitlement. In fact, that is exactly the way it is recorded in the Federal budget. It is recorded as a spending program, the reason being that the people receiving these so-called refundable credits paid very little if any taxes. These are folks who do not pay taxes, so they get what is called a refundable tax credit. But even then the money goes directly to the insurance company, not to them. I always thought you had to pay taxes to get a tax cut, but not in the rubric of this legislation.

According to the Joint Committee on Taxation, only about 8 percent of all taxpayers making under $200,000 a year would actually benefit from this government subsidy for health insurance. The remaining 92 percent would receive no tax benefit under the bill.

I have to say, when we are talking about tax cuts, we have to at least put in a little word about the tax increases in the bill because that is where the bill focuses, on taxes. It taxes many of those who have health insurance and taxes people if they do not have health insurance.

The taxes in the bill hit families. They hit seniors and the chronically ill, small businesses, those who have flexible spending accounts, and those who use medical devices. All of those things create a tax people pay. The vast majority of the people who pay these taxes are not high earners. As the Congressional Budget Office has said, whenever there is a tax on some other entity that delivers health services, that tax flows directly through to the taxpayers in virtually the same amount of money.

In fact, in order to collect all of these taxes, and especially the tax that is imposed on people if they do not buy this insurance, the Internal Revenue Service estimates it is going to have to have between $5 billion and $10 billion more just in order to collect the taxes. It has been estimated this would require 16,500 new IRS agents. Welcome to your friendly new health care bill.

The second aspect my colleagues have been talking a lot about in the last 48 hours: The elimination of the problem of preexisting conditions in acquiring health insurance. The implication is that Republicans have not supported help for people who have preexisting conditions. That is not true. We have made that point clear. We made that point clear in the meeting we had with the President at Blair House. The argument is about the best way to do it.

As you will see in just a moment, it turns out this bill has not done it very well. Republicans have suggested there are a lot of different ways to get to this problem—State reforms, risk pools, more competition, some subsidization. All of these things can help us with this problem. But for all of the Democrats' central planning in this bill, it looks as though the problems are already arising as a result of their specific provision to deal with this problem.

According to a brand new Associated Press story of March 24, President Obama's claims about preexisting coverage for children are not what they seem. The article notes that ''the letter of the law''—which Democrats took upon themselves to write behind closed doors—''provided a less-than-complete guarantee that kids with health problems would not be shut out of coverage.''

In your rush to do these things—behind closed doors, without proper vetting, always voting no on any attempts to correct it—you end up with problems like this, and they are going to have to somehow go back and try to fix this. If this blunder is discovered on the first day this law takes effect, how many more errors will be discovered in the next days and weeks, as people pour over the 2,733 pages of this new health care law, and the 150 pages of the reconciliation bill that is on the floor right now?

If you cannot draft a bill properly to protect children with preexisting conditions—which is a centerpiece of the bill's so-called immediate deliverables—then how are you going to be able to successfully make one-sixth of the economy work through this new government-operated system?

Finally, I have talked about two things our Democratic friends are crowing about, neither one of which, it turns out, I think are worth crowing about. How about the things they are not talking about, the things Americans are very concerned about?

Democrats love to talk about people who are allegedly helped by the legislation. How about those who are hurt by the bill? How about talking about seniors whose care is going to be jeopardized as a result of this bill? Seniors in my State of Arizona are very worried about the Medicare cuts. There are over $½ trillion in Medicare cuts in this bill.

Well, our Democratic friends do not like to talk about that. But it is a reality. It is in the bill. The reconciliation bill slashes more than $½ trillion from Medicare and contains a whopping $202 billion reduction in Medicare Advantage. That is more than in the bill the Senate passed last December. But you do not hear about that. Medicare Advantage beneficiaries in my State like the health care they have right now, and it is simply not true if they like their health care they get to keep it. It is false. This bill takes health care benefits away from seniors who are on Medicare Advantage. That is the truth. It may be an inconvenient truth for our colleagues who like to stress what they think is good about the bill but conveniently ignore things that are going to hurt their constituents and certainly going to hurt my constituents.

My senior citizens in Arizona do not want the government taking away their health care, and they are very concerned as a result. A constituent from Tucson—I will just close with this—wrote me a very short, a very direct letter, but it summarizes the point a lot of people feel.

I am a senior citizen, age 83. If I lose my Medicare Advantage coverage, I'll also lose my primary care physician of 18 years because he does not accept Medicare Direct. Senator Kyl, do not let them take away my Medicare Advantage.

Well, all of us know physicians who are no longer taking new Medicare patients. They cannot afford to because we do not pay them enough. Mayo Clinic in Arizona has already said it is not going to accept any more Medicare patients at several of its facilities in the Phoenix metropolitan area.

This health care bill is asking a lot of the American people, a lot in terms of tax collection, and a lot in terms of future debt that our children and grandchildren are going to have to pay.

But just one group that ought to be very concerned—and is—are our senior citizens who face nearly $½ trillion in Medicare cuts. Taxes and premiums are going to be increased on all Americans. Small businesses will be hit with a litany of onerous new taxes and mandates and regulations. Probably worst of all from my perspective, just as these costs inevitably escalate, as time goes on, just as in the European countries that have had to deal with these same kind of health care issues, this legislation will ultimately lead to the rationing of health care. That is the cruelest result of all.

I ask unanimous consent to have printed in the RECORD at this point an op-ed piece by Mr. Bob Robb who writes for the Arizona Republic. It is dated March 24. The last two sentences of this op-ed I think summarize the point I made very well. He says:

But it is impossible to treat health care as a public good without rate regulation and rationing. And those are the inevitable next steps down the health care road the Democrats have taken the country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Arizona Republic, Mar. 24, 2010]

(By Robert Robb)

Democrats tend to discount the influence of economic incentives on human behavior. They had better hope they are right because the incentives in the health-care bill point toward an explosion in costs.

The health-care bill is built upon a fundamental tradeoff. Health-insurance companies will be treated as public utilities, having to take all customers irrespective of health status with sharp limitations on pricing and underwriting. To pay for this increase in costs, everyone will be required to purchase health insurance.

This is an attempt to force the young and healthy to subsidize the health care of the acutely or chronically sick through the premium mechanism. But, as finally passed, the incentives and timing are badly misaligned.

The basic problem is that the penalty for not purchasing insurance is substantially less than the cost of the insurance. Even with the generous subsidies the bill provides, young singles making more than $25,000 a year will be money ahead paying the penalty rather than buying insurance.

Doing so would be risk-free for them. If necessary, they can purchase insurance after they get sick and know that they need it. The implementation timetable for the bill accentuates the misaligned incentives.

Insurance companies are saddled with additional costs right away.

They will have to accept children with preexisting conditions and carry children on their parents' policies up to age 26. They can't impose lifetime benefit limits. Any new policies have to cover preventive services without co-pays or deductibles. But the individual mandate, the source of new revenue to cover the additional costs, doesn't kick in until 2014.

Moreover, the penalties start very low, only $95 in 2014, while the requirement to accept all comers irrespective of pre-existing conditions applies fully that year. So, the additional costs are added full bore, while the additional revenue is phased in slowly.

This misalignment of incentives in the individual market is compounded by a similar misalignment in the group market.

The penalty for employers (with more than 50 employees) not providing health insurance is $2,000 per employee. Employers pay on average two to four times that to provide health insurance.

Employers do it now to compete for employees, since the current individual market isn't an attractive alternative. But, under the bill, the federal government is setting up and heavily subsidizing an individual market with generous benefits.

So, the incentive will be for employers to drop health-insurance coverage, pay the fine and allow their employees to go shopping in the subsidized exchanges.

The Congressional Budget Office estimates that 8 million to 9 million Americans will lose employer-provided health insurance. I think that's a gross underestimate.

Moving people into the individual market could be a good thing for cost control, if individual health insurance operated like other individual insurance products, where people pick up the cost of small stuff and insure against big stuff. But the individual market mandated by the bill requires first-dollar coverage and sharply limits deductibles and co-pays.

So, the bill gives incentives to move people into an individual market with even less cost-control incentives than the existing system, where at least employers worry about the final tab. It also gives many people an incentive not to participate in the new system until they are actually sick.

If incentives matter, there are likely to be sharp insurance-rate increases and insurance-company bankruptcies.

Contrary to the rhetoric on the right, it is possible to treat health care as a public good without being a socialist country. And it is possible to treat health care as a public good without having it delivered through government agencies.

But it is impossible to treat health care as a public good without rate regulation and rationing. And those are the inevitable next steps down the health-care road the Democrats have taken the country.

Mr. KYL. Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3608

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to temporarily set aside the pending motions and amendments so that I may offer an amendment which is at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Mr. ENZI, Mr. COBURN, Mr. BURR, and Mr. BROWN of Massachusetts, proposes an amendment numbered 3608.

Mrs. HUTCHISON. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To protect the right of States to opt out of a Federal health care takeover)

At the end of section 1002, insert the following:

(c) RIGHT OF STATES TO OPT OUT OF FEDERAL HEALTH CARE TAKEOVER.—Section 1321(d) of the Patient Protection and Affordable Care Act is amended—

(1) by striking ''Nothing'' and inserting:

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing''; and

(2) by adding at the end the following:

''(2) EXCEPTION FOR OPT OUT OF HEALTH CARE REFORM.—The provisions of, and the

amendments made by, this Act shall not preempt any State law enacted after the date of enactment of this Act that exempts the State from such provisions or amendments, including, but not limited to, provisions and amendments relating to the individual mandate, the employer mandate, taxes on prescription drugs, taxes on medical devices, taxes on high value health plans, Medicare cuts, and the unfunded expansion of Medicaid.''.

Mrs. HUTCHISON. Mr. President, the amendment I offer today is to allow States to opt out of this health care bill. If ever there was an encroachment on the tenth amendment, this bill is it.

We are hearing from State leaders all across the country asking Congress to abandon this bill. It is an unconstitutional preemption of State innovation, State prerogative, and States rights they are guaranteed in the Constitution by the tenth amendment. Thirteen States have now filed suit against this legislation because the leaders in those States know the detrimental impact this broad, one-size-fits-all solution will have on their unique situations. States are the most well equipped to design and approve governmental programs to address the needs of their citizens. My amendment would restore the tenth amendment rights reserved for the States by allowing State legislatures to pass legislation that would allow them to opt out of this bill and the Federal takeover of their health care system with its mandates, many of which are unfunded.

Let's walk through the harmful provisions in this bill from which the States could opt out.

Taxes, the job-killing taxes. The bill imposes 10 years of taxes, about $½ trillion, on individuals and businesses as well as pharmaceutical companies, insurance companies, and medical device manufacturers. Some of these taxes will start almost immediately. More than $100 billion in taxes on prescription drug companies, medical device manufacturers, and insurance companies will begin to take effect before the actual supposed benefits of this bill would come into play. Studies show these taxes will be passed on to consumers. There is no doubt about it. Of course they are going to be passed on to consumers. They are going to be collected for years before there are any supposed benefits. Then there are the taxes on those who can't afford insurance: the higher of $695 per individual or 2.5 percent of household income. Employers will be hit with new taxes. The penalty could be as high as $2,000 or $3,000 per employee.

What is this going to do to the small businesses of our country, which create 70 percent of the jobs? At a time when families are struggling, at a time when our businesses are struggling, at a time when our economy is at an all-time low—not all-time low, but almost all-time low; certainly bad—businesses aren't hiring. Why aren't they hiring? They aren't because they have a fear of the future. They don't know what to expect going forward. They are not going to start hiring people until there is a comfort level that the economy has stabilized and that we are in a real recovery mode. Yet, when people feel that way and when small businesses feel that way, what is the biggest deterrent to them being able to say, OK, things are getting better and I can hire new people? More taxes and more mandates and more burdens. That is what is going to keep them from taking that leap to hire more people. So it is like a revolving situation we are not going to get out of as long as we are continuing to put on more taxes, more expenses, and more mandates.

We know premiums are going to go up. Premiums are already going up. Our purpose in this bill should be to bring premiums down by lowering the cost of health care, not by increasing the cost. That is so counterintuitive. It could only be thought of in Washington, DC.

Cuts to Medicare. The Senate bill includes over $½ trillion in cuts to Medicare. About $135 billion of those are in cuts to hospitals.

Mr. President, in conclusion, the Medicare Program is unsustainable. The Chief Actuary of Medicare has said that as much as 20 percent of Medicare's providers will either go out of business or will stop seeing Medicare beneficiaries.

Millions of seniors, including those who have chosen Medicare Advantage, will lose the coverage they now enjoy. Medicare is being used as a piggy bank and it needs every penny that has been deposited.

We cannot pay for reform on the backs of our seniors. Cuts to hospitals will threaten access to care for seniors in our States.

Third, this bill imposes on States an unfunded mandate to expand the Medicaid Program. Putting millions of individuals in to Medicaid is a fast way to quickly reduce the number of uninsured.

Yet by doing so, the Federal Government is sending a very large check to the States, $20 billion to be exact, with a note that says ''We decide—you pay.''

At a time when so many States are struggling to balance their budgets, pay their teachers, improve transportation, maintain services, this bill imposes more costs.

How much more are we going to ask of our States?

States are in the best position to determine what is right for their citizens. Yet this bill will take away their right to innovate and determine fiscally responsible and effective ways to offer affordable health insurance coverage.

In big government style, this bill manipulates that idea into a one-size-fits all solution for every single State.

Plus, states should have the option of implementing tort reform as we have done in Texas. Yet under this bill States are actually punished for implementing tort reform. Tort reform is essential to bring down the cost of health care. This bill stiffles the ability to achieve this commonsense option.

Why not level the playing field for taxpayers by offering tax incentives to encourage the purchase of health insurance at the State level. Let citizens in each State decide which health insurance plan best fits their needs—a decision that should be free from interference by the Federal Government.

Senator DEMINT and I have a bill which would offer a voucher of $2,000 to individuals and $5,000 to families so they can purchase health insurance that is portable and not tied to their employer.

These are the right steps to achieving reform and these steps empower the States rather than violate their rights and impose a heavy handed Federal approach to reform.

I urge my colleagues to support this amendment which is cosponsored by Senators ENZI, COBURN, BURR and BROWN of Massachusetts.

The bottom line is I hope my colleagues will vote to support the States rights so that we will be able to address high unemployment as well as high uninsured rates in a way that will lower the costs and give more options.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I now wish to yield to the Senator from New York.

I have already said we are going to divide the time in half-hour segments back and forth.

I yield 10 minutes to the Senator from New York, Mr. SCHUMER.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank the chairman of the Finance Committee, on which I am proud to serve, for yielding time, as well as for the great work he has done. I wish to commend Senators DODD and HARKIN for the great work they have done in the HELP Committee and all the members of the HELP Committee, as well as the Finance Committee and, of course, Majority Leader REID, who has been as solid as a rock and steadfast in his own quiet way. He is more responsible for this bill passing than just about anybody else. So I thank our leadership for that.

I rise today to talk about this historic accomplishment of health care reform. I congratulate all of my colleagues for their hard work and dedication. I congratulate the President. He, too, was like a rock. He never budged. The day after the Massachusetts election, when so many others were saying we can't get this done and to trim back, he was steadfast. I saw him and his steadfastness. His internal gyroscope got us over the goal line.

I wish to address where the future is in this bill in terms of average Americans. We all know the American people are still trying to digest the health care legislation we have just passed. That is understandable. It is a large and complex piece of legislation and, of course, there has been a tremendous

amount of misinformation out there about what it does and what it does not do. To tell the average American that this is truly historic legislation doesn't get to them. They want to know how it is going to affect them.

I fervently believe that the more the American people learn about this bill, the more they will like it. I believe this for two reasons. First: People very quickly come to see that the myths and lies that some have put forward about this bill will not come true, because they are not in reality, and now we are in reality—we are in health care reality—because the first part of the bill has passed, the major part, and we will pass the second.

Second: There are so many good things in this bill that people like and need. As people learn the truth as to what those things are, many of which will improve their lives—some immediately and some in a few years—I am confident they will not only like health care reform but embrace it. When the crime bill was passed in 1994, at first the same thing happened. There was a parade of horribles. But over the years, we saw that it reduced crime and made America a better place, and it became a very popular piece of legislation. I believe the same thing will occur with this health care bill.

So today I wish to take the rest of my time to describe to average Americans how this bill will affect them. The No. 1 group, the largest group of average Americans, is those who are covered by their employer plan. First, you will keep your coverage. For people who have been scared into thinking they might lose their health coverage or have the government telling them what to do or what treatments they could or could not receive, they are going to discover there is very little change for them. I had a firefighter employed by the city of New York on Long Island last week say to me: Don't pass the bill. I will lose my benefits. That firefighter will see his benefits will stay as good and as strong as they are now. In fact, it will get better for those folks who are already covered, because premiums to their employer won't go up and up and up, and their employer will not continue to ask them, as they have now, to pay so much more and to get so much less back.

We cannot claim premiums won't go up at all, but we know they will go up much less. The likelihood of the employer calling a person, the average person, a worker in their company and saying: Jim, Mary, you are a great worker. I love you. I want you to stay in my company, but I am eliminating your health care benefits or I am greatly cutting them back, will be greatly reduced over the years as this bill becomes law and works its way.

Beneficiaries, those on private health care, won't pay higher Medicare taxes. Their benefits will not change. Their choice of doctors will not change. They will be much better off, and they will learn that.

Second: To small business owners who are trying to do the right thing and provide health insurance coverage to their workers and now find that costs are increasing, which makes it more and more difficult every year to keep those employees on health care, they are going to find this year that there is a generous tax credit to make it more affordable to provide coverage for their employees. The average small businessperson is going to like this bill because the average small business owner wants their employees to have good health care coverage, but they can't do it alone. Now they are going to get some help.

What about to the small business owner who aches because he or she can't supply insurance because the employee has a preexisting condition or just because it is too expensive? They are going to find they will now be able to provide insurance for those folks.

What about all of those families with kids who are now in college and they worry, once the kid gets out of college, they are not going to have health care? They are going to find that they are covered up until their 26th birthday on their parents' plan. They have to be. That is going to start this year. What a relief to millions of American families and millions of American students. I know this personally. My daughter is graduating from law school. When the bill passed at 1 a.m., she called me. She was watching when the House bill passed and said: Dad, I have been worried what I am going to do about health insurance next year. She is out in the job market. Now I don't have to worry. That phone call will be repeated by hundreds of thousands and millions of students to their parents in the next while. So it is great for them.

What about retirees who are not yet eligible for Medicare, the person who fears that because they don't have their job or they are retiring at age 60 or 62, 61, what are they going to do? This bill will provide more assistance to bring down premiums. It will provide more choices to these retirees who right now have either no health insurance or a policy that is so expensive they can't afford it.

What about average Americans who worry because say they have early stages of diabetes and their health care doesn't cover prevention? Average American families—and I see the Senator from Iowa is here, who has been a leader in the fight for prevention—will now get prevention in their benefits. For the average American who has recently gotten sick or who might in the future, they don't have to worry that their insurance company will take away their benefits. They will not be able to do that the way they do now. We won't have to hear stories anymore of health insurers looking for any excuse to cut sick people off from their insurance.

What about those tens of millions on Medicare who, again, have been scared and worried that Medicare will change? Yes, Medicare will change. It will get stronger and still preserve the exact same benefit to every person on Medicare.

Before this bill was signed into law, Medicare was going to go broke in 7 years. It has been given an extra decade. That should be a huge load off the shoulders of people who worry about Medicare.

In addition, the doughnut hole will be closed, so all those Medicare recipients on prescription drugs will get relief—more relief.

For the average senior citizen, as they learn about this bill, they are going to like this bill. They are going to say this was a great thing. It kept Medicare as is, surviving much longer than previously predicted. If we had done nothing and Medicare was about to go broke, guess who would have paid the price. Those senior citizens on it.

What about young women looking for health insurance? Health reform means she will not be charged a premium 150 percent more than a young man's. Health reform ends that gender discrimination.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SCHUMER. Mr. President, in conclusion, I will just say this: In November, this bill will be a positive—a strong positive for those who supported it. Those who were in favor of it will benefit. Those who opposed it will come to regret their opposition as America learns about what is in and what is not in this bill. It is not just a triumph for history; it is a triumph for the average American.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield to the chairman of the HELP Committee—I yield to another distinguished chairman, this one not of the HELP Committee but the Energy Committee, Senator BINGAMAN.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I thank my friend and chairman of the Finance Committee, Senator BAUCUS. I congratulate him on his leadership on this issue for many months.

I rise in strong support of the reconciliation bill that is before us. It is a historic time for our Nation. I am very glad that after decades of effort, national health reform has become law and that we are considering this set of changes to the law through this reconciliation bill.

There is considerable confusion about what health reform, in fact, will accomplish. It is not surprising that there is confusion when one considers all of the nefarious charges that have been made and claims of nefarious provisions within the legislation. I am glad to see that most Americans, according to polling, believe the actual provisions that are described to them that are contained in the bill are meritorious and deserve support.

Simply stated, the law has four main goals. It reforms health insurance markets to ensure Americans have access

to affordable care that meets their needs. Second, the bill improves the efficiency and quality of health care and does it in a way that helps contain rapidly rising costs. Third, the bill improves access to primary care and preventive services. Fourth, the bill significantly reduces the Federal deficit over the coming decades.

I think we need to focus on what the effect of the legislation will be on particular individuals and families in our States.

I look at our circumstance in New Mexico, which I am proud to represent. Let me pick out a few examples.

First, there are families there who are very happy with their current coverage. For these folks, reform ensures they can keep that coverage. They do not have to purchase any new coverage offered through health insurance exchanges. The reform will help protect their coverage and introduces important policies to put downward pressure on the cost of premiums, requirements that the coverage continue to be meaningful, and significant improvements in the overall quality of and their access to health care.

Small business owners or the people who work for small businesses—a third of the people in my home State fall into that category. For those who do offer coverage, we know that without reform, they have difficulty affording and keeping meaningful and affordable coverage for their employees. Premiums are rising quickly. These costs threaten the financial stability of these small businesses.

CBO tells us that for small businesses, the impact of reform will be very significant. First, the businesses would have the option to come to the new health insurance exchanges and would have a guaranteed source of meaningful coverage for themselves and their employees. In addition, these small businesses may qualify for tax credits for up to 50 percent of the cost of coverage. For businesses receiving tax credits, their employees' premiums would decrease by 8 to 11 percent compared to their costs under current law. Small businesses and their employees do well.

What about individuals purchasing coverage in the individual market? This is particularly important in my home State, for over half of the workers in my State are not offered employer-sponsored coverage. We have the highest percentage of workers without coverage of any State in the Union.

Like small businesses, individuals today have great difficulty in navigating insurance policies, securing affordable and meaningful coverage. This reform will provide these individuals with the options to come to new health insurance exchanges and have a guaranteed source of meaningful coverage for themselves and their families. The Congressional Budget Office predicts that the subsidies enrollees would pay would reduce the premiums they otherwise would have to pay by 50 to 60 percent.

Among higher income enrollees in the individual market who would not receive new subsidies—only about one-fifth of new enrollees—average premiums would increase by 10 to 13 percent.

This is consistent with estimates of the impact in my home State of New Mexico, where average families may see a decrease in premiums of as much as 60 percent as compared to the premiums they would pay without reform. In addition, about two-thirds of New Mexicans could potentially qualify for subsidies or Medicaid.

This reconciliation bill also contains important provisions to help Americans obtain a quality education. The higher education provisions of this bill will help put college within reach for more Americans. By eliminating subsidies to private student lenders, the bill supports large Pell grant increases for low-income college students, grants to States to help low-income students enter and succeed in college, and major new investments in minority-serving colleges and universities. And it does this without raising taxes; in fact, the CBO estimates that these student loan reforms will reduce the deficit by over $10 billion over 10 years.

In challenging economic times, we can no longer afford to subsidize private lenders at the expense of college students and their families. In my home State of New Mexico, this bill will provide almost $240 million in new Pell grant funding and an estimated $95 million for Hispanic-serving institutions and tribal colleges over the next 10 years. In supporting economically disadvantaged college students through this bill, we help them to achieve the American dream. We also strengthen our economy by ensuring that we continue to have the smartest, most competitive workforce in the world.

It is clear that the legislation before us and the new health reform law signed by President Obama yesterday are important steps forward for our country. Once we get beyond the rhetoric and discuss the specific reforms in this legislation—it becomes clear that this bill is vital to our Nation. It protects the aspects of our health care system that are working well while fixing those things that are broken including outlawing the nefarious games that health insurance companies play. It improves health care quality and it reduces costs; reforms the student loan system and expands important programs to help all America's children access a higher education—and it does all this while substantially reducing the Federal deficit.

I hope we can join our colleagues in the House and move swiftly to pass this reconciliation bill.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BINGAMAN. Mr. President, I will conclude by complimenting my other committee chair who is on the Senate floor, Senator HARKIN, who has worked tirelessly to get this legislation through the HELP Committee. He deserves great credit for his leadership on this bill, as does Senator BAUCUS.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, that is a good introduction to the next speaker, the distinguished chairman of the HELP Committee, Senator HARKIN.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I thank my friend from New Mexico for his kind words, and I thank him for the great work he did on getting us to this point.

I have a limited amount of time. I want to respond to the motion to commit made by the Senator from Tennessee yesterday that would reduce our investment in Pell grants and replace them with lower student interest rates.

We all want lower student interest rates. I am, quite frankly, surprised. I do not remember my colleague from Tennessee or other colleagues on that side of the aisle raising much cane around here when the private bankers and Sallie Mae were charging students over 20 percent interest. I did not hear a peep out of the other side.

We have capped all of those interest rates now, and we are changing this program to a direct loan program to get the middlemen out. By cutting out the middlemen, by cutting out the huge subsidies to the bankers, we are able to save over $61 billion over the next 10 years, which we are using, again, to put into the Pell Grant Program to help our students.

I said yesterday, and I repeat, think about the present status quo with this indirect guaranteed student loan program. Think about how bizarre it really is. The Federal Government pays fees to private banks to make entirely risk-free loans using taxpayer dollars. The loans, which are already guaranteed by the Federal Government, are then sold back to the Federal Government. The banks then pocket tens of billions of dollars, taxpayers' dollars, in fees and easy profits at absolutely no risk to them whatsoever. This has been going on for far too long. What this bill does is it ends that. It takes all those savings that otherwise would go to Sallie Mae and to the bankers and puts them into Pell grants.

While I would agree that our students have too much debt—way too much debt; 73 percent of 4-year college graduates in my State of Iowa graduated with debt that averaged over $28,000. The national average is $23,200 for a student graduating from college. My Iowa students have the second highest debt loads in the Nation. We are taking charge of that.

Three years ago, in the College Cost Reduction and Access Act of 2007, we created the Income-Based Repayment program. What that bill said is that a borrower's payment would be capped at 15 percent of their net income after adjustments are made for living expenses

and provided total loan forgiveness after 25 years. We targeted that assistance to people who had the most difficult time repaying their loan.

More can be done. Here is what we did in this bill. Starting in 2014, a new borrower's monthly payment will be capped at 10 percent of their net income. They will be eligible for total loan forgiveness after 20 years. This is going to make college much more affordable for students even after they graduate.

If my friend from Tennessee wants to look at ways of reducing interest rates, I am all for it. Some of the biggest users of credit cards are kids in college, and look what they are being charged under credit cards—well over 20 percent, 30 percent sometimes on their credit cards. And they need that for immediate needs. If you are a parent with a kid in college, you know what I am talking about.

If you really want to help students, how about capping the interest rates they can charge on credit cards. I advocated that 20 years ago. We cap it at 12, 15 percent. They cannot charge any more than that. But I do not hear my friend from the other side talking about that. That would do more to help our students than just about anything else.

Three years ago when we cut the interest rates on student loans, we were criticized by the Republicans for not doing enough to increase Pell grants. Now we are being criticized for doing too much on Pell grants and not enough on interest rates for students. We see what this is. It is just another attempt to try to kill this reconciliation bill. That is all it is. Of course I am for lower interest rates. Who wouldn't be? Of course we are all for making the interest rates lower. When this reconciliation bill is through, I intend to come to the floor on some bill that probably will be coming up—maybe a financial bill or something like that—and I will be proposing at that time that we have lower interest rates. I ask my friend from Tennessee to join us in that effort at that time. But now is not the time and this is not the bill on which to do this.

We have to get our reconciliation bill through. Every amendment being offered by the Republicans is no more than an attempt to stop and kill this reconciliation bill, and we cannot allow that to happen.

We are going to have an education bill this year. We are going to have an elementary and secondary education bill I hope sometime this year. Higher Education Act changes are in this reconciliation bill. We are going to make sure the students have the money to go to college and Pell grants for the lowest income students. And, yes, we have capped interest rates at 6.8 percent. Could they be lower? I invite my friend, when we have another bill up that addresses this, let's see if we can get lower interest rates. I would be glad to work on that issue at that time. But right now, let's put the savings, the $61 billion that we are saving—let's do what this bill does: put it into better Pell grants so the kids can get into college in the first place.

We also put $2.5 billion into something we have neglected for far too long; that is, our Historically Black Colleges and Universities and other Minority-serving Institutions. So a big chunk of that money goes in there so they can also get a good education.

So this bill was carefully crafted. We put the money in there in the Pell grants. Let's keep them there and let's address the issue of the interest rates later on. I invite my Republican friends to join with us in doing that, especially on credit cards when that issue comes up down the pike.

Again, I urge my colleagues, when the vote comes up, to defeat the Alexander motion to commit and to keep the money in there for Pell grants.

I yield floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I wish to say a few words about how much this underlying legislation helps small business. We hear a lot of claims to the contrary, and I wish to set the record straight.

Essentially, small business people in America today spend about 18 percent more than the large businesses for the same health care coverage. Why is that? Because of high broker fees—small businesses have to buy insurance through brokers—because administrative costs are higher for them compared to big businesses, and adverse selection hurts them much more than big business. There are a lot of reasons why small businesses pay 18 percent more for health care than big business.

This legislation contains $37 billion in small business tax credits—$37 billion in small business tax credits—most of which go into effect this year, not later but this year, tax credits for a businessperson who wants to offer health insurance for his or her employees. Add to that insurance reforms, which are very much going to help small business. What are they? Preventing insurance companies from discriminating against small employees based on preexisting conditions, preventing discrimination on the basis of older or sicker employees, discrimination based on the size of the plan or discrimination against those whose employees work in dangerous industries.

All these insurance reforms are going to help small business. I might say the Congressional Budget Office also estimates the Senate bill will lower premium costs by nearly 7 percent for small businesses—lower premium costs, not increase them, as has been suggested, but lower premium costs for small business.

The bill also provides for State-based exchanges. That is going to help small business because that will require more competition among insurance companies. That will help give better rates and better quality insurance to small businesses.

I might say this as well. The legislation exempts small businesses—that is a business with 50 or fewer employees—from the requirement that employers that do not sponsor health care insurance pay a fee for their employees receiving premium tax credits. That is an exemption for small businesses with fewer than 50 employees from paying any penalty if they do not provide insurance.

So I wished to make it very clear that this bill very much helps small business—and I repeat—with $37 billion in small business tax credits, along with the other reasons I gave.

Mr. Chairman, how much time remains?

The PRESIDING OFFICER. There is 1½ minutes remaining.

Mr. BAUCUS. Mr. President, I don't know if Senator MCCASKILL is in the Chamber. I doubt she wants to take 1½ minutes. If not, I will yield back the 1½ minutes.

I understand Senator MCCASKILL is here now and wishes to speak, so I will try to find a way to squeeze in as much time as I can.

You are on.

The PRESIDING OFFICER. The Senator from Missouri is recognized, and she has 1 minute.

Mrs. MCCASKILL. Mr. President, I am confused about why the hearing we had scheduled this afternoon cannot go forward. The subject matter of this hearing is oversight of the contract that is engaged in police training in Afghanistan in the Subcommittee on Contracting Oversight. This is a hearing that is getting to the heart of the matter; that we have a real problem with the mission part in Afghanistan on police training because of problems with these contracts—problems with oversight at the State Department.

We have now canceled the hearing because we have been told we can't have it. The witness from the State Department has been canceled, the witness from the Defense Department has been canceled, and the inspectors general who were coming to testify about a GAO report that just came out last week that was damning in its criticism in the oversight of these contracts.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. MCCASKILL. I don't get it.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, is there an order providing for the next half hour?

The PRESIDING OFFICER. There is not.

Mr. BAUCUS. I ask unanimous consent that the Republican side control the next half hour and that the majority control the half hour following that.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object, that would be a half hour off, so

we should have the half hour after that because you got the first half hour.

Mr. BAUCUS. We won't worry about that yet.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GREGG. Mr. President, the Senator from Maine is about to take the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I wish to thank the Senator from New Hampshire very much for his leadership and for consideration of the time today.

As consideration of health care reform draws to a close in the Senate with the pending reconciliation bill, I cannot help but arrive at this moment with a sense of profound disappointment in considering what might have been, rather than what has actually occurred with respect to one of the foremost domestic matters of our time.

As I stated as a member of the Senate Finance Committee at the conclusion of our markup of health reform legislation last October, this is one of the most complex set of issues ever placed before us. At the same time, I have said the reality that crafting the right approach is arduous in no way obviates our responsibility to make it happen, given the enormous implications of reordering more than $33 trillion in health care expenditures over the next 10 years, representing one-sixth of our economy and affecting every American.

Well, if there is one thing I have learned, it is that the only way to allay people's fears is by systematically working through the concerns, the issues, and the policy alternatives from all sides. When we hear proponents portraying the passage of health care reform as the equivalent of landmark legislation of the past, what they fail to note is, those efforts were all bipartisan. Regrettably, part of the history we made this week is that, for the first time, a truly watershed bill became law purely along partisan lines.

As I mentioned on the floor last November, it is almost impossible to imagine how transformational legislation over the last nearly 100 years, such as Social Security, Medicare, and civil rights could have been as strongly woven into the fabric of our Nation had they forsaken bipartisanship.

We could have extended that bipartisan legacy. The majority had 60 votes for health care reform, so they had a choice. They could have worked collaboratively to develop a more balanced, effective, and credible approach that—even if it ultimately failed to attract many Republican votes—could have resulted in legislation more widely embraced by the American people because, in the final analysis, no one party or person has a monopoly on good ideas.

That is precisely the reality that originally brought six of us together in the Senate Finance Committee in the so-called Gang of 6, to the credit of Chairman BAUCUS, who convened a meeting last summer, along with Ranking Member GRASSLEY, and that the chairman and ranking member referenced earlier in the debate on the floor. I commend them for what was the only bipartisan effort in any committee of the House and Senate. Certainly, that has been true and indicative of their collaborative, cooperative relationship. As the chairman pointed out, we met 31 times, week after week, for over 4 months, to debate policy and not politics because we were attempting to reach bipartisan consensus on reform legislation.

While we ultimately did not reach an agreement, given our discussions were ended prematurely by an artificially imposed deadline, our efforts did, in many ways, form the foundation for the subsequent Finance Committee legislation that, while far from perfect, produced bipartisan reforms, including banning the egregious practices by the insurance companies that have been discussed so often. We tried to navigate the ideologies on both ends of the political spectrum.

At the same time, as I stated at the conclusion of the Finance Committee markup, the issue of affordability remained one of my paramount concerns. I further expressed that we could not create vast, new bureaucracies and governmental intrusions. Finally, I said my vote to report the bill out of the committee was to continue to work to improve the legislation and, therefore, it would be imperative moving forward that the majority in the Senate give deference to the scope and the complexity of this issue, earn broader support, and resist the impulse to retreat into partisanship.

Yet regrettably, since the Finance Committee vote on October 13, the wheels essentially came off. The process went behind closed doors, with only one party represented. Long gone was the transparency of the Finance Committee debate, and what came to the Senate floor was a 2,400-page bill—900 pages longer than the Finance Committee bill—that we were forced to complete by Christmas Day, after a mere 21 days on the floor. In looking at a relative equivalence in terms of benchmark legislation, the Senate debated the Civil Rights Act of 1964 for 57 days. In the FAA bill that we just considered—that we just voted on this past Monday—we disposed of 45 amendments. That is 17 more than we addressed in the amendment process on health care reform legislation in December. What exactly were people afraid of?

Think what we could have been celebrating today if we would have had the open amendment process we had been promised or even if we had had, as I urged, that bipartisan summit last October instead of just last month. If it was a good idea now, it would have been a good idea then. Imagine if everyone had the opportunity to sit down with the actual legislative language and work through all the issues, determining what works and what doesn't work. We could have crafted a better product. But now we will never know. We could have, instead, developed something practical, rolled out in phases—something all the more critical, given we are already in treacherous economic and fiscal waters.

It is not as though we lacked the time. After all, the major provisions of this initiative do not even take effect until 2014. In fact, CBO has said that with the majority of the reform measures not scheduled to commence until then—4 years from now, by year 2013—there will still be 50 million uninsured Americans, exactly the same number as today.

There are those who will argue that the Senate-passed legislation was basically the same bill that emerged from the Finance Committee. But the facts tell a story of a different bill that, far from improving upon the finance measure, as I had indicated would be critical, instead went precisely in the opposite direction from what Americans wanted—with greater bureaucracy, more taxes, and ill-conceived measures that will cost our Nation jobs rather than help to create them.

Look at this chart, with respect to the employer mandate, to cite some examples. Something of critical importance to me, as ranking member of the Senate Small Business Committee, the Finance Committee proposal contained no employer mandate per se, forcing firms to offer health insurance. Rather, it specified that if a firm chose not to offer insurance and any of its workers received subsidized coverage in the exchange, the firm would pay a penalty equal to the lesser of an average credit amount that the employee received in the exchange or a flat $400 fee for all its workers.

While I would have preferred a zero penalty, the Senate-passed bill actually got worse, as you can see with this chart. First, penalties nearly doubled from those in the Finance Committee package to $750 per employee. Then it greatly expanded the instances in which penalties would be applied, requiring employers with more than 50 full-time employees who don't at least offer coverage and have even one full-time employee receiving a subsidy through the exchange to pay $750 for each of its full-time workers.

Under the reconciliation package that is pending before the Senate, firms with more than 50 workers would have to pay $2,000 per employee with just the first 30 employees exempted. That is a 167-percent increase over the $750 in the bill that was just signed into law. So we have gone from $400 to $750 and now to $2,000.

If that is not enough, part-time workers and seasonal workers will now be counted in determining whether the mandate will apply. That will be devastating. It will be devastating to

small firms, middle-sized firms, restaurants, retailers, and seasonal industries, such as those in my State of Maine, that will be subject to this mandate, which now produces $52 billion in revenue, up from the $27 billion in the bill that just became law.

Exactly how is this going to help our Nation's greatest job generators—our small businesses—that we are depending on to lead us out of this downturn?

Now let's look at the Medicare taxes, the second chart. The finance bill did not contain any form of Medicare taxes. We did not increase Medicare taxes. The Senate bill that just now became law, signed by the President yesterday, included $87 billion in Medicare taxes. That disproportionately affects small businesses because they apply to the income those businesses would normally reinvest.

Plain and simple, this .9 percentage point increase in Medicare payroll taxes is a job killer as it essentially takes away 1 additional percentage point of capital from the very small business owners we are depending on to create jobs, who are more than likely to employ between 20 and 250 employees, all at a moment when we should be looking for ways to help bring capital into small businesses.

If that were not bad enough, here we have reconciliation that is pending before the Senate that compounds the mistake with a 3.8-percent Medicare tax that is unprecedented because it is imposing a payroll tax on investment income. When combined with a capital gains tax increase the majority is planning for the end of this year, this 3.8 percent tax will raise the capital gains tax rate to an astonishing 23.8 percent, which is a 67-percent increase in taxes on investment during these precarious times.

Taken together, it is a grand total of $210 billion in Medicare taxes. So we went from the Finance Committee at zero to the Senate-passed bill that became law yesterday at $87 billion, and now in the bill pending before the Senate, we have a grand total of $210 billion in Medicare taxes.

It is a hidden tax, by the way. It is not indexed for inflation, so it will be similar to the alternative minimum tax that is going to continue to ensnare more and more people in this tax. It is a major tax increase on individuals, small businesses, on capital, at a time when we desperately need that capital to be reinvested to create more jobs.

Again, we have gone from zero to $210 billion in new taxes in Medicare. Do we seriously believe this is the time we should be instituting these breathtaking and job-killing increases, not to mention the unprecedented shift because not one dollar gets reinvested in Medicare—not one dollar—not to mention it does not address the physician problem with a 21-percent reduction in provider reimbursement that we have to extend this week for another month because it is a month-to-month problem. We need a 10-year fix. That will be over $200 billion but, rather, we are taxing it for other purposes rather than into Medicare. But unfortunately, that's what becomes of a broken process.

Look at what two of the largest organizations representing small business in America stated upon passage of the finance bill. The National Federation of Independent Business said at the time the finance bill passed on October 13:

> NFIB appreciates the many provisions in this package that reflect small businesses' needs, which are rooted in approaches that aim to lower costs, increasing coverage options, and provide real competition in the private marketplace.

Fast forward to the Senate-passed bill in December that now became law as a result of the President signing it yesterday. Now what does NFIB, the National Federation of Independent Business, have to say?

> The impact from these new taxes, a rich benefit package that is more costly than what they can afford today . . . [and] a hard employer mandate—

The one I referred to earlier—

> equals disaster for small businesses.

On March 21, they said:

> We couldn't have been clearer how damaging this bill will be to America's small businesses and the economic recovery of this country.

Particularly in these precarious economic times, shouldn't that make us all deeply concerned?

Now consider what the National Small Business Association released this weekend. I have that on a chart as well.

> We have continued to work positively for needed changes . . . but it is now clear that most of these recommendations have not been accepted. . . .We understand that it is impossible to create a significant reform such as this one without some objections from nearly every constituency. But our objections to this bill go beyond those reasonable expectations. Congress can do better.

To which I add, I could not agree more. They say they oppose the health care reform bill with regret but they base it on all the significant issues that have been incorporated in this legislation that will be damaging to small businesses. I could not agree more.

Furthermore, I am deeply troubled by the manner in which the Medicare tax increases in this bill are to be utilized—$210 billion. According to CBO, and this is their exact words:

> To describe the full amount of the [Medicare] trust fund savings as both improving the government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double count a large share of those savings and thus overstate the improvement in the government's fiscal position.

So, No. 1, talking about the fact of the reduction of deficit, it is not going to improve that; and No. 2, whether or not it can be plowed back into Medicare, obviously it is not going to affect Medicare's insolvency issue because it is going to go to other purposes and is not intended for the Medicare trust fund. How are we going to strengthen Medicare when these new tax dollars are being diverted from their original intended purpose of actually paying for Medicare benefits?

Another major difference in the legislation we passed in the Senate Finance Committee on October 13 and in the pending reconciliation bill, is the so-called CLASS Act. While proponents point to estimates that this provision would raise $72 billion over the first 10 years, that savings only occurs as a result of a fiscal shell game of using funds promised to pay beneficiaries later to lower the deficit today. As CBO says, ''The program would pay out far less in benefits than it would receive in premiums over the 10-year budget window,'' raising $70 billion in premiums that will fund benefits outside the window, and as a result, CBO further concluded that ''in the decade following 2029, the CLASS program will begin to increase the deficit.'' Again, this is exactly the wrong direction for America.

Perhaps most disturbingly, we don't even have answers from CBO to many of the most fundamental questions in the minds of Americans, the minds of small businesses—what will be the true impact? Those were questions I posed to CBO on December 3 to which I still don't have the answers. What provisions in the legislation would justify and facilitate premium increases, and to what extent would other provisions limit their outcome? What would go up and what would go down? We need to know what is going to drive up premium costs and what is going to lower premium costs. Indeed, the headline on Tuesday in my home State newspaper the Portland Press Herald was ''Mainers Wait and Wonder: How Will Reform Affect Us?''

That is why I also requested from CBO specific state-by-state analysis of reform's effects on premiums, because while we do have from CBO a national average for premiums, what they would be for minimum credible coverage under the new law, the reality is that cost will vary widely from State to State. That is why I proposed and I asked CBO what the impact would be of opening up the legislation to extend the ''young invincibles'' plan, that catastrophic coverage for young people, to all Americans and extend those subsidies to that coverage as well so everyone at least has one affordable option to purchase health insurance. Why? Because the Federal Government is requiring for the first time that individuals purchase health insurance—that is, first, individual mandates; second, it sets new standards in the plan and the exchanges that could drive up premium costs for certain individuals and small businesses. So shouldn't we have the certainty that affordable choices are available? Yet we do not even have substantiation whether provisions of this reform will make health care costs higher or lower. In fact,

there is actually a presumption in the legislation that costs may well go up.

I find it telling that the excise tax on high-cost insurance in this reconciliation contains a fail-safe provision, referred to as a health cost adjustment percentage, that automatically raises the threshold to higher numbers. That was described in the House Democratic summary of reconciliation. They put it this way:

CBO is wrong in its forecast of the premium inflation rate between now and 2018.

Maine is a high-cost State, regrettably, because it is not a competitive market. We have high-cost plans, along with 16 other States. But given that the bill already provides for thresholds as high as $13,900 for individuals and $36,450 excluding vision and dental benefits before triggering the excise tax, those thresholds are significantly higher than those that were passed in the Senate-passed bill yesterday. Now they will be raised even higher under the pending reconciliation.

The question is, Why exactly would we still require a medical inflation adjusted for 2018, 8 years from now, that raises those thresholds even higher? What does that say about the performance confidence in reining in medical costs as a result of this legislation that was signed into law and the pending reconciliation? It says they simply do not know. The fail-safe automatic increase in the threshold clearly assumes this legislation still may not address runaway costs.

The PRESIDING OFFICER (Mrs. HAGAN). The time of the Senator has expired.

Ms. SNOWE. I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. SNOWE. Madam President, these are the thresholds. Eight years from now—the legislation suggests that because of inflation for medical costs that outpaces inflation two to three times, they are saying that 8 years from now, we will not have controlled medical costs even with the passage of this legislation having taken effect as a result of yesterday. It is precisely because of this uncertainty that I will be offering amendments to address these very issues.

Somehow, the high worth of legislating, of deliberating, of ironing out our differences has been cast aside in favor of either/or propositions when we could have instead risen to the monumental challenge with the best possible solution to strengthen America's health care today and for generations to come. I profoundly regret that this process has provided far too few opportunities to forge legislation that would stand not just the test of our time but for all time. We could have done better and we should have done better.

I yield the floor, and I ask unanimous consent to have printed in the RECORD the NSBA statement of March 19, 2010; the NFIB statement of November 19, 2009; and the Portland Press Herald article of March 23, 2010.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the National Small Business Association, Mar. 19, 2010]

NSBA OPPOSES HEALTH CARE REFORM BILL, WITH REGRET

Despite the extraordinary need of small businesses for health care reform, the National Small Business Association cannot support the reform bill currently pending before Congress. This bill will place significant new pressures on small businesses to both offer and pay for employee health insurance, starting in the earliest stages of reform. However, the provider-level reforms that could contain costs and enable small businesses to afford this commitment will not be fully effective for many years—if at all. We justifiably expect that small companies caught between these twin pressures will see their ability to grow, prosper, and create jobs greatly diminished.

As long-time advocates of fundamental reform of the health care system, we had high hopes for a reform measure that could be more broadly embraced and that we could support. Indeed, the current bill has many positive features that NSBA supports: repair of the dysfunctional individual and small group insurance markets; focus on individual needs and responsibilities, rather than all-encompassing employer mandates; and a start on transforming the delivery system incentives that have driven health care costs to unsustainable levels.

The shortcomings, though, also are significant.

Small business health premiums will continue to increase sharply, as even the Congressional Budget Office has determined.

The legislation does nothing to encourage cost-conscious consumer behavior, aside from the unnecessarily blunt ''Cadillac tax,'' which will not begin to have an effect until at least 2018, and which is insufficiently transparent and imposes unintended administrative burdens on small businesses.

The previously mentioned delivery system reforms are positive, but are too back-loaded, giving powerful vested interests years to water them down or remove them entirely. Even if implemented, they are not likely to have a significant effect on costs for a decade or more. Malpractice reform, absent from the current legislation, would make these reforms much more effective.

Though currently excluding most small companies, the large increases in ''free-rider fees'' are troubling. If there was once a distinction between an employer mandate and a free-rider provision, it seems to have been lost.

The very large tax increases on both earned and unearned income could have a significant effect on many small business owners and their ability to reinvest in their companies' growth. These increases are in addition to the administration's current budget proposal which calls for significant income tax increases on the same individuals. Together, these taxes will create a steep increase in marginal tax rates on the very entrepreneurs we need to be investing and creating jobs.

NSBA has stood apart from many other business groups during deliberations on health care reform, preferring to be a nonpartisan, thoughtful, and member-driven organization. We have continued to work positively for needed changes to the legislation, but it is now clear that most of those recommendations have not been accepted and that the bill is in its final form. We understand that it is impossible to create a significant reform such as this without some objections from nearly every constituency. But our objections to this bill go beyond those reasonable expectations. Congress can do better. A sense of urgency on cost containment is the place to start.

NFIB STATEMENT: SENATE HEALTH BILL

WASHINGTON, DC, Nov. 19, 2009.—Susan Eckerly, senior vice president of the National Federation of Independent Business, the nation's leading small business association, issued the following statement in reaction to the Patient Protection and Affordable Care Act:

''Small business can't support a proposal that does not address their No. 1 problem: the unsustainable cost of healthcare. With unemployment at a 26-year high and small business owners struggling to simply keep their doors open, this kind of reform is not what we need to encourage small businesses to thrive.

''We oppose the Patient Protection and Affordable Care Act due to the amount of new taxes, the creation of new mandates, and the establishment of new entitlement programs. There is no doubt all these burdens will be paid for on the backs of small business. It's clear to us that, at the end of the day, the costs to small business more than outweigh the benefits they may have realized.

''Small businesses have been clear about their needs in health reform; they have been working for solutions for more than two decades. They have a unique place in this debate because of the exceptional challenges they face. They experience the most volatile premium increases, are the most cost-shifted market, see the most tax increases and have the least competitive marketplace. For all these reasons, they especially need reform, but these reforms can't add to their cost of doing business. The impact from these new taxes, a rich benefit package that is more costly than what they can afford today, a new government entitlement program, and a hard employer mandate equals disaster for small business.

''We are disappointed that, after so many months of discussion, small business could be left with the status quo or something even worse. Unless extreme measures are taken to reverse the course Congress is on, small business will have no choice but to hope for another chance at real reform down the road.

''Congress is running out of opportunities to prove to small business that they are serious about helping our nation's job creators. We are hopeful that a robust bipartisan debate will produce a bill that small businesses see as a solution and not another government burden.''

[From the Portland Press Herald, Mar. 23, 2010]

MAINERS WAIT AND WONDER: HOW WILL REFORM AFFECT US?

(By John Richardson)

Terri Grover of Portland watched from her home Sunday night as Congress finally passed health-care reform legislation.

She didn't realize that her 22–year-old daughter, a senior at Bates College, was glued to the television, too.

''My daughter called from college last night at 10:45 and said, 'They passed it, they passed it! Does that mean I'm going to get insurance?' '' Grover said.

Grover is pretty sure the answer to that question is ''yes.''

The legislation, which still needs to be signed by President Obama and then amended by the U.S. Senate, says dependents will be eligible to stay on their parents' policies until they turn 26.

However, Grover is still nervous about all of the details in the complex reform package, some of which have yet to be finalized.

Some Mainers, including Grover, said Monday that they're excited about the legislation.

Others said they fear that the added costs and regulation will just make matters worse.

All agreed, however, that there is much uncertainty and confusion about how it will ultimately affect their health care costs, their jobs and their businesses.

''We all want to know,'' Barbara Thorso of South Portland said Monday afternoon between bingo games at the city's community center.

Thorso, 87, is president of the Three Score Plus Club, which hosts the weekly gathering.

''We're the general public. This bill is going to cover us,'' Thorso said. ''I would like to have an understanding of what's in the package. I don't have a clue.''

The 10-year, $938 billion bill will eventually extend coverage to 32 million uninsured Americans, prohibit insurance companies from denying coverage to sick people, and create insurance marketplaces, called ''exchanges,'' intended to make coverage more affordable.

Other changes will be more immediate, such as subsidies to help senior citizens pay for drugs and the requirement to let dependent children remain on their parents' health insurance plans until age 26.

''It's really too soon to know how all of this is going to unfold. Some of the provisions of the bill don't go into effect until 2014, and some after that,'' said Katherine Pelletreau, director of the Maine Association of Health Plans, an association of health insurance companies.

''In truth, I'm trying to understand it, to dissect it so we can know what the impacts and (employers') responsibilities are, and that's going to take some time,'' said Dana Connors, president of the Maine State Chamber of Commerce.

''The big question is . . . does it reduce costs or does it add costs?''

Parker Williams of South Portland believes that the legislation will hurt businesses and cost jobs. ''Where are they going to get the money to pay for it?'' said Williams. ''It will take 10 years before it will start to save money.''

Anne LaForgia of South Portland said she has more faith in President Obama.

''Most of the people our age are very concerned,'' said LaForgia, who is 84. ''I'm really hopeful . . . I don't think it will hurt (seniors covered through Medicare). I'm more worried about the younger people.''

Toni Fizell and Sharon Haskell, both of South Portland, could be directly affected by the legislation. Fizell, who is 59, has no health insurance.

Haskell, who is 63, expects that she will be uninsured, too, after her rate goes up in June.

Both are more nervous about the bill than optimistic.

''It's scary to listen to (the debate),'' Fizell said. ''Everybody has to have insurance. . . . How are they going to enforce that?''

The bill will eventually require people to buy insurance or pay fees, and it includes subsidies to help people who can't afford it.

Haskell, who lost her job and her employer insurance last year, said she doesn't expect any help from the legislation before she turns 65 and is eligible for Medicare. ''I'm just going to look for something part time and pray that I stay healthy,'' she said.

Grover, who celebrated on the phone with her daughter, is confident that the legislation will be an improvement, despite all the details.

''Young people will be able to search for the right career for them rather than search for any job that will give them health insurance,'' she said. ''I wish the whole thing went into effect faster.''

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Madam President, how much time remains?

The PRESIDING OFFICER. Nine minutes.

Mr. BURR. Will the Chair please notify me when I am down to 1.

I will also offer an amendment tonight, and the purpose is very clear: it is to protect the health care of our Nation's servicemembers, veterans, and their widows, orphans, and dependents. The problem is, since the debate on health care reform began, our veterans and their families have asked for just one thing: Protect our health care benefit. The President even promised. He said that ''one thing that reform will not change is veterans health care. No one is going to take away your benefits—that is the plain and simple truth.''

Unfortunately, the Patients Protection and Affordable Care Act does not explicitly protect the health care of our Nation's servicemembers, veterans, their widows, orphans, or dependents. Let me explain why.

Under this health care bill, it requires a minimal essential coverage of any health care plan. The requirements for that health care do not clearly include TRICARE, which is the Active-Duty family members of our troops; the VA's spina bifida program for children under our Agent Orange veterans under chapter 18 of title 38; and CHAMPVA, a program run out of the Veterans Administration for spouses and dependent children of veterans who died or are profoundly disabled as a result of military service; and possibly VA's vocational rehabilitation program. As a result, these beneficiaries could be forced to pay additional insurance or to pay punitive fees because the threshold of coverage does not meet the threshold defined in this bill.

Apparently, the authors were so preoccupied with the sweetheart deals and backroom negotiations that they forgot to uphold their promises, they forgot about the policy part of this health care bill.

Both the House and Senate have acknowledged the oversight I am here to correct. As soon as the issue was identified, the House rushed through on Saturday to pass a bill to put a technical correction on the Department of Defense piece. The bill passed with overwhelming support—403 to 0. The problem is, the only piece that the DOD technical corrections piece fixes is, in fact, TRICARE.

It does not fix spina bifida for the children of Agent Orange survivors. It does not fix CHAMPVA, which is the program for spouses, dependent children of veterans who are profoundly disabled as a result of military service.

Now, identical legislation was introduced in the Senate, and some claim, well, we just need to pass that. Well, you need to pass that if, in fact, you do not want to extend CHAMPVA and spina bifida.

I have to commend that Secretaries Shinseki and Gates have tried to alleviate the concerns. I certainly appreciate their reassurances. However, the greatest assurance you can provide is to be unambiguous about the issue. We owe it to our Nation's veterans, to their families, to leave uncertainty outside and to spell it out in the legislation that these items meet the threshold. Therefore those families, those servicemembers, are not obligated in the future for additional penalties and/or fees to participate.

It is time we started to listen to the American people, especially when it relates to our Nation's veterans and their families. My amendment maintains the integrity of the health care system of VA and DOD. It ensures that the authority of the Secretary of the Department of Defense and the Secretary of Veterans' Administration would not be challenged or obstructed by any provision in the Patient Protection and Affordability Care Act.

My amendment will ensure that nothing in the Democrats' health care bill should be construed as affecting benefits provided under TRICARE or any VA health care program.

Finally, my amendment ensures that the minimal essential coverage—key words, ''minimum essential coverage''—under this Democratic health care bill includes TRICARE and all health care provided by the VA.

I think it is important to remind my colleagues that over the weekend the veterans service organizations have expressed their deep concern, and more than one VSO, Veterans of Foreign Wars, said this:

> Bill language is important, and that's why the VFW remains adamant to expeditiously fixing the new law. All of DOD's programs should have been in the original bill, as well as all of Title 38, not just one part of one chapter. This is not playing politics, this is protecting the hard earned health care coverage our veterans, servicemembers, and their families deserve.

Some might come to the Senate floor later and say, well, this is not the appropriate place to fix it. The reconciliation bill has been billed as ''the bill to fix everything'' that is wrong in the original health care bill. That is how it was sold to House Members: Vote for the Senate bill, and we will fix all of those things that you find as problems in the reconciliation bill.

We have before us the reconciliation bill, and some will argue that fixing it for our Nation's veterans, their spouses, their family members, that this is not the appropriate place to do it. I agree. We should have gotten it right the first time. We should not have to have a fix-it bill. But when we do not bring sunlight to it, when we exclude people who are focused on policy, this is what we get. We get a bill that does not fulfill the promise the President made.

Let me just state again exactly what they were. The President said:

> One thing that reform won't change is veterans health care.

He went on to say:

No one is going to take away your benefits, that is plain and simple truth.

Well, if it is plain and simple truth, then this body has no choice tonight but to take my amendment, to pass my amendment, to incorporate it in the health care fix bill, the reconciliation bill, and to make sure that when we finish our business, whether that is tomorrow or the next day, that, in fact, it is very clear in the health care bill who is covered. It is not just TRICARE for Life, it is TRICARE; it is spina bifida for the children of Agent Orange exposure; it is the CHAMPVA program, which covers spouses, children, and the severely disabled of those killed in action.

My hope is that all of my colleagues will see the wisdom in supporting this bill, that they will not look for another avenue to do it in, that they will put it in the fix bill, and they will not leave it up to Secretaries to give us the assurance when we have set up so many outside panels to interpret for the American people what their coverage is going to be in the future.

I think sometimes we can forget the complicated maze this bill creates, where we will actually have nonproviders determining whether your coverage is sufficient that you constructed or that your employer provided for you or that you went out as an independent and bought, and if it does not meet the standard of minimum essential coverage, then you could open——

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. BURR. I thank the Chair.

Then you could be exposed to a fine because a government bureaucrat has determined that the coverage, the health care coverage you bought, that you were given, is not sufficient enough to meet the minimal essential coverage this bill crafted.

Well, very simply, there are veterans around the country who know they have been left out—their spouses, their family members, their kids with disease. Tonight we can assure them they are included by, in the health care fix bill, actually fixing that one piece and making sure that we extend the coverage the President promised and that we owe to these veterans and their families.

When I introduce that bill, I hope all 100 Senators support it like the House has. I thank the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I think the half hour has now turned to our side.

The PRESIDING OFFICER. That is correct.

Mr. BAUCUS. I yield to the Senator from Michigan for a request.

The PRESIDING OFFICER. The Senator from Michigan

REQUEST FOR COMMITTEES TO MEET

Mr. LEVIN. Madam President, I make this request as chairman of the Senate Armed Services Committee. I would note that this unanimous consent request is supported by my ranking member, Senator MCCAIN.

We have three commanders scheduled to testify this afternoon. They have been scheduled for a long time. They have come a long distance. One of them has come from Korea; one of them has come from Hawaii. I would therefore ask unanimous consent that the previously scheduled, currently scheduled hearing of the Committee on Armed Services, be allowed to proceed and that we be authorized to meet during the session of the Senate on Wednesday, March 24, 2010, at 2:30 in open and closed session to receive testimony from ADM Robert Willard, U.S. Navy, Commander U.S. Pacific Command; from GEN Kevin P. Chilton, U.S. Air Force, Commander of the U.S. Strategic Command; and from GEN Walter Sharp, U.S. Army, Commander U.S. Forces Korea, in review of the defense authorization request for fiscal year 2011, and the future years defense programs.

Senator MCCAIN supports this request. I understand it is not likely there will be any votes on the floor until 5:30 this afternoon.

The PRESIDING OFFICER. Is there objection?

Mr. BURR. As a member of the committee, and I side myself with the chair and the ranking member that I have no personal objection to continuing. There is objection on our side of the aisle. Therefore, I would have to object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Montana.

Mr. BAUCUS. Madam President, I yield to the distinguished senior Senator from California, Mrs. FEINSTEIN, 10 minutes.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the distinguished manager of the bill for his work on this which has been prodigious, long, and, I hope, not too exhausting.

I want to speak rather personally about health care reform, why I support the bill that has been signed by the President, why I support the reconciliation bill, and why I will oppose any amendment no matter how good that amendment may appear to be.

I am a doctor's daughter, and I am a former doctor's wife. So I have lived most of my life in a medical family. I have had very good health care. My father, who was chief of surgery at the University of California Medical Center, never operated on anyone he did not make a house call on. He was well respected by his students and a great surgeon.

My husband who died was a neurosurgeon, and his practice was spent in stereotactic surgery with respect to people who had abnormal movements and could not control their movements. So I came to believe that we had the best medical system in the United States of America.

It was only in the last few years that I began to see how much medicine had changed in America. We walked into a doctor's office, and it was not like one secretary in my father's office; it was a bank of files and pressure and lines waiting to be seen. I realized that there were so many people who did not have good health care, who worried about losing their health care, and, in fact, were losing their health care; that this kind of reform suddenly was open to me.

Then I looked at some statistics because I thought, America is spending all of this money, spending nearly 15 percent of our GDP on health care, we must be getting substantial bang for the buck. And here is what I found instead.

According to the World Health Organization, the top health care systems in the world begin with France, No. 1, Italy, and it goes on. The United States is ranked 37.

So let's go on. Infant mortality: I think infant mortality is a good criteria of care because we know with good medical care we save babies. I thought surely America is going to be No. 1 in terms of infant mortality. No, we are No. 22. It is, in fact, Japan at the top with 3 deaths per 1,000 births.

So let's look a little further. Avoidable mortality rate: This is deaths that you can avoid with good medical care. Well, we have great medical institutions. You would expect that we would rank very high. Again, France is No. 1, and the United States is not 2, 3, 4 or 5 but No. 15. And the source of that is the Commonwealth Fund.

Well, I then began to think more deeply about it and to realize that we have all of these people in this country growing who are uncovered. In fact, in California, my State, a State of nearly 40 million people, in the last 2 years, each year the uninsured have gained 1 million people. So over the past 2 years, California has lost insurance for 2 million people, bringing the total of people up to 8 million who have no insurance whatsoever.

Then you see companies, when the people get sick with HIV, with full-blown AIDS, will just simply cancel their policies and throw them out. Then you learn that there is such a thing as a preexisting condition. We all come with certain preexisting conditions, or probably at one time in our life we will have one.

We find there are companies that will not grant insurance if you have a preexisting condition. In my 17 years in the Senate, 18 years in the Senate, we have had numerous people write and say: I have been denied this treatment, or, I have been denied that treatment. Would you please try and help me? And we do. Sometimes we win, and we get a procedure for them that they had been denied by their insurance company. So it is so important to know what this bill will do; that it will essentially cover 32 million or 95 percent of the people of this country with some form of insurance.

When the exchanges are functioning, they will have real choice if they wish it. Their insurance will not be taken away from them. Right away, this year, yesterday, those of us who were at the White House heard the President say that immediate gains will take place. For example, $5 billion for a high-risk pool, helping to provide coverage for those who are uninsured because they have been denied coverage by one of the big medical insurance companies.

Also, children with preexisting conditions can no longer be discriminated against. So the family with the juvenile diabetic who cannot get insurance because the child is a juvenile diabetic will be able to get that insurance.

That is important. We have learned that the notorious doughnut hole which takes place when you spend a certain amount on your pharmaceuticals—there is a hole in the middle at which point there is no help, and each person in that situation would receive $250 to help them through that time.

A child can remain on a parent's policy until the age of 26. These are some of the things that happen right away.

Now, I know people do not like this plan, some of them. But the question comes: Do we keep doing what we are doing, spending more and more of our gross domestic product and not improving our overall performance, not improving our infant mortality, not improving our longevity, the way good practical medicine should?

I wish to talk about one thing that isn't in any bill about which I am very worried. A while ago, I introduced legislation for a medical insurance rate authority. We have about nine very large for-profit medical insurance companies in the United States. As a product of an earlier action, they are the only industry, other than major league baseball, that has an antitrust exemption. What they have been doing is merging and acquiring companies so that they can control markets. In Los Angeles, for example, today two of these companies control 51 percent of all of the premiums. Once you have this market share and control, you can raise premiums with abandon. Earlier this year, a company, a subsidiary of WellPoint, sent out notices to 800,000 Californians and said: We are raising your premiums. Premiums went up 39 percent for those not in a group policy but who held individual policies. Can you imagine getting a notice that your insurance has gone up 40 percent? To add insult to injury, they then said: We may come back in the middle of the year and ask for another.

That company came in. I asked the CEO what her salary was. Nine million a year. And you realize that these companies also have a substantial percentage that they spend on rent of your premium dollar, on the salaries of their executives in the millions of your premium dollar, on transportation, on conventions. Generally this can go to 20 to 30 percent of the premium dollar. We begin to bring it down to 15 percent of the premium dollar.

What is missing and what the President put in the reconciliation bill was my legislation to give the Secretary of Health the ability to see that medical insurance premiums are reasonable and would establish a rate authority of people who have expertise in the arena that she could consult with in levying this authority. That is not in the bill.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mrs. FEINSTEIN. If I might conclude.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. These rate increases go into place May 1. So it is vital that we take some action before May 1, or all throughout the United States there are going to be substantial premium increases.

I yield the floor.

Mr. BAUCUS. Madam President, I yield 10 minutes to the Senator from Virginia, Mr. WEBB.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WEBB. Madam President, being an eternal optimist, I rise to express my hope that once the process of voting over the next 2 days is completed, we can find a way to move forward with our colleagues across the aisle to fix other provisions in this legislation and make it truly the kind of bill they say they wish to see as well. I will support this reconciliation bill. At the same time, as my colleagues on this side of the aisle know well, I worked very hard to narrow and improve this legislation as it was passed last December, including voting, as I recall, eight different times with my Republican colleagues, which didn't make my chairman very happy, on a few occasions to make changes in the bill. In the end I voted in favor of this legislation despite serious misgivings with portions of it, because it does represent a true step forward in terms of quality, accessibility, and affordability of health care for most Americans.

The important point for us to remember today and tomorrow, as we go through the process, is that the bill is now law. The question before us now is how best to implement that law so that the benefits can be put into place and the many detriments I was worried about can be addressed. There are a number of strong points in this bill. Many of my colleagues have laid them out. As we know, insurance companies will be prohibited from denying health care coverage to children with preexisting conditions. Young adults will be able to stay on their parents' insurance plans until they are 26. Uninsured Americans with preexisting conditions will have access to affordable insurance options. Insurance companies won't be able to drop people from coverage when they get sick, and they will be banned from implementing lifetime caps on coverage. Seniors who hit the Medicare Part D doughnut hole gap in coverage will get a $250 check to help with the cost of prescriptions and the doughnut hole will be completely closed by 2020.

Access to insurance over the next couple years will be expanded to 95 percent of Americans. It will implement reforms designed to slow skyrocketing health care costs. Working families will not have to worry about losing health insurance or facing bankruptcy because of a job loss or because of illness. Insurance companies will be required to spend the majority of their money on patient care.

The law will also provide tax credits to help make health insurance available for individuals, expand access to Medicaid, create a regulated marketplace where people can shop for the health insurance plan that best meets their needs, and will prohibit insurance companies from refusing to sell or renew policies due to an individual's health status. These are just some of the positive points of the law.

In fairness—and I understand and appreciate some of the frustration on the other side—there are serious problems in this bill. I don't like the dramatic cuts in Medicare this law proposes. In fact, I voted against them. I share the concerns by my Democratic colleague, Congressman RICK BOUCHER of southwest Virginia, regarding the potential negative impact these cuts could have on rural areas, particularly the population of southwest Virginia. This legislation proposes to cut approximately $450 billion from Medicare spending over the next 10 years at a time when Medicare is already mired in debt and, as we know, a bow wave of baby boomers is going to start hitting the Medicare system immediately. Medicare Advantage, which provides better benefits than traditional Medicare, is a valuable tool in rural and underserved areas, and that may decrease. This law does little to address the historic disparity in Medicare funding between urban and rural areas.

I am also concerned about the cost and spending projections of this legislation. There is a great deal of debate going on right now about the real cost of this bill. Former CBO Director Douglas Holtz-Eakin estimated, in an article in the New York Times recently, that the bill may increase the Federal deficit by $562 billion over 10 years because of some of these areas I discussed. The official score maintains that the bill would lower the deficit by $143 billion over that same period, but it includes a number of unlikely assumptions, Medicare being one of them. The system for reimbursing Medicare doctors, called the sustainable growth rate, is widely agreed to be broken, but we have not tried to fix it. That is a $250 billion ticket. Many, including myself, believe the Community Living Assistance Services and Supports Act, the CLASS Act, is structurally unsound. I voted against that as we were considering the bill.

In addition, as my colleague Congressman GLENN NYE from the Norfolk-Virginia Beach area pointed out, there is a great deal of concern among families and small businesses regarding the impact of this bill.

Again, the point is, the bill is now law. The question is how to make the law a better law. The process that got us here has been ugly. It has diminished the trust and respect some citizens hold for our own government. We need to restore that trust through a genuine and transparent effort on both sides of the aisle to fix the problems in the law. We also need to start working together again across the aisle, on this and other issues that confront us, in a bipartisan sense and a sense of shared responsibility about the many problems facing the country. We are now preparing to begin a series of votes through the reconciliation process that ultimately, quite frankly, is going to mean little or nothing in terms of the outcome of this legislation. They are not going to seriously address the problems in it. I understand the concerns on the other side. I respect them. These votes in many cases are politically necessary for the other side. But I call on my Republican friends to begin to work with some of us over here on this side to address the inequities that we are concerned about, to implement cost controls, to work together for the good of the country once this next couple of days is done.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I gather I have at least 7 minutes assigned to me.

The PRESIDING OFFICER. Ten minutes remains.

Mr. LIEBERMAN. I ask that the Chair inform me if I am not finished when there is 1 minute remaining on my time.

The PRESIDING OFFICER. The Chair will so inform.

Mr. LIEBERMAN. Madam President, a good friend once wisely said to me that it is only a very short road that has no turns. The road that health care reform has traveled to get to the Senate has been very long and has had many turns. Its path to us might well be described as tortuous, with all that word has come to mean. As I said when I explained in December why I was voting for the Senate health care reform bill, any piece of legislation this big, this complicated, and this transformational is unlikely to be perfectly pleasing to anyone. That is true for me. In the end, each of us has to ask ourselves, do the positives in this legislation outweigh the negatives? Does what pleases us in it outweigh what worries us? Let me begin with the measure before us now.

The reconciliation act that is before us preserves most but not all of the health care reform the Senate adopted and I voted for in December. I concluded then and repeat now that together these measures achieve real change in the three big areas in which our health care system needs to be changed: reforming health care delivery to put a brake on the skyrocketing costs of care for individuals, families, businesses, and our government; better regulating health insurance companies to protect consumers, including those with preexisting conditions; and helping millions of middle-income Americans who cannot afford health insurance now to buy it.

For me it is particularly noteworthy that the Senate bill, plus the reconciliation act, achieves all that progress without a government takeover of health care or health insurance. That would have been a very costly deficit-exploding mistake and would have fundamentally and adversely altered the traditional American balance of power between the public and private sectors that has worked so well over our history to create economic growth and opportunity and to build the American middle class. That is why I opposed the so-called public option so strenuously and why I am so grateful it is not in the reconciliation act the House has sent us. Those are the big and good things I appreciate in this health care reform package.

What worries me about it? First, the size of this proposal concerns me, particularly at this time of national fiscal indebtedness and economic stress. I wish we had chosen to achieve health care reform step by step, beginning with delivery reforms that would lower health costs and then moving on to expand middle-class access to affordable health insurance and then more aggressively regulating health insurance companies. But there was never enough bipartisan support for such step-by-step reform. I know because I tried to find it. So now, along with each of my colleagues, I must vote on the proposal before us, not on one I wish we had before us.

My biggest concerns about this proposal are its prospective fiscal consequences. I worry that the savings this bill achieves in Medicare and the revenue it raises from new Medicare taxes to help pay for health care reform will soon be urgently needed to save Medicare itself from running out of money it needs to pay the bills for seniors' health care. Most of all, I worry that the bottom line consequences of this health care reform will be to increase our already ominous national debt.

I am, of course, greatly encouraged by the conclusion of the independent, nonpartisan Congressional Budget Office that this health care reform legislation will not only not increase the debt but actually decrease it by more than a trillion dollars over the next two decades, and that its savings in Medicare will not only pay for part of health care reform but actually extend the solvency of the Medicare Hospital Trust Fund.

According to the Chief Actuary at the Centers for Medicare and Medicaid Services, the solvency of the trust fund will be extended by 10 years as a result of the Senate health care reform bill that is now law.

However, for those good and significant things to happen, future Congresses will have to be very disciplined and keep the promises that are made in this legislation to reform health care delivery to cut costs. Most of those reforms will over time be opposed by providers and beneficiaries. The record of Congress in resisting such pressure to stick with the costly status quo is not encouraging.

So in the end, I have weighed the pluses and minuses, and I have decided to vote for this health care reform package, choosing its real change over the broken status quo, raising my hopes above my fears, and adding, if I may, a personal prayer that future Congresses and Presidents do not weaken the reforms in this bill that will stop the constant increases in health care and health insurance costs and help reduce our national debt.

That will happen best if we can achieve the bipartisanship in overseeing the implementation of this historic health care reform legislation that we, unfortunately, were not able to achieve in its passage.

I thank the Chair.

I thank the distinguished chairman of the Finance Committee for his extraordinary effort that produced this admirable result.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, first, I thank the Senator from Connecticut for his very thoughtful endorsement of this legislation. He is one of the more thoughtful Members of this Chamber, and I want to very much compliment him on his process and his conclusion.

Mr. LIEBERMAN. I thank the Senator.

Mr. BAUCUS. Madam President, I do not think I have much time remaining—3 minutes. Thank you very much.

The Senator from Maine raised the issue of Medicare solvency. I want to remind my colleagues that health care reform extends the solvency of the Medicare trust fund. Whether it is 9 years or 10 years, I am not sure exactly, but the Medicare trust fund is extended for at least that period of time, which I am sure gives great comfort to seniors and near seniors. Health care reform is exactly what the doctor ordered for Medicare's long-term health.

The Senator also mentioned a letter from an outside group raising concerns with health care reform. Let me add for the record three of the many letters of endorsement that health care reform has received. The first is from the American Medical Association. I will read one sentence:

After careful review and consideration, the Board of Trustees of the American Medical Association supports passage of the health

system reform legislation under consideration . . . as a step forward in the journey to provide health care for all Americans.

In addition, I have a letter from the Federation of American Hospitals:

On behalf of the Federation of American Hospitals and our more than 1,000 hospitals throughout the United States, I express our strong support for health reform and the Reconciliation Act of 2010. This legislation is long overdue, and we urge all Senators to seize this historic opportunity. . . .

It is signed by Charles Kahn of the Federation of American Hospitals.

I also have a statement here from the AARP, the association of retired folks. Basically it states:

After a thorough analysis of the reform package, we believe this legislation brings us so much closer to helping millions of older Americans get quality, affordable health care.

Again, that is from the AARP.

So there are many letters of endorsement, and I ask unanimous consent that these three letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, March 19, 2010.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR SPEAKER PELOSI: After careful review and consideration, the Board of Trustees of the American Medical Association (AMA) supports passage of the health system reform legislation under consideration in the House as a step forward in the journey to provide health care coverage for all Americans.

When H.R. 3590 was being considered in the Senate, the AMA supported its passage while expressing opposition to certain provisions that we believed could be resolved in the conference committee process. Working with the Administration, congressional leaders and their very dedicated staff, significant progress was made toward resolving many of our most serious concerns. Unfortunately, there are issues in H.R. 3590 that cannot be addressed through the current reconciliation process and so will still need to be addressed by Congress and the Administration.

This forced us to weigh very carefully whether the legislation, on balance, will enhance patient care and the fundamental patient-physician relationship. By extending coverage to the vast majority of the uninsured, improving competition and choice in the insurance marketplace, promoting prevention and wellness, reducing administrative burdens, and promoting clinical comparative effectiveness research, we believe that H.R. 3590 does, in fact, improve the ability of patients and their physicians to achieve better health outcomes.

The pending bill is an imperfect product. Congress needs to act very soon to preserve access to care for seniors and military families by permanently repealing the Medicare sustainable growth rate formula that will trigger physician payment cuts of over 21 percent next month. House and Senate leaders must also move immediately to correct problems with the proposed Independent Payment Advisory Board. Other provisions that must be promptly addressed in a subsequent corrections bill include the cost-quality value index and safeguards for data release and public reporting activities. The health care system will be further improved by reining in unnecessary costs through enactment of effective medical liability reforms.

The AMA will be relentless in our pursuit of these important policy adjustments.

Passage of H.R. 3590 marks an important step toward improving the health of the American people, but our work here is far from done. Additional congressional action is needed to address outstanding issues. We look forward to working with you on the next steps to strengthen our health care system.

Sincerely,

J. JAMES ROHACK,
President.

FEDERATION OF AMERICAN HOSPITALS,
Washington, DC, March 22, 2010.

Hon. HARRY REID,
Majority Leader,
U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER REID: On behalf of the Federation of American Hospitals (FAH) and our more than 1,000 hospitals throughout the United States, I express our strong support for health reform and the Reconciliation Act of 2010. This legislation is long overdue, and we urge all Senators to seize this historic opportunity by supporting the reconciliation package as it was reported out of the House of Representatives.

The hundreds of thousands of Americans who treat patients in our hospitals understand the plight of the uninsured and the need to provide health security for all Americans. The Reconciliation Act of 2010, together with the recently enacted Patient Protection and Affordable Care Act, advance this shared goal by expanding health care coverage to 32 million Americans.

Equally vital, they provide a framework for health care delivery reform that will improve health care for Americans, and, by extension, strengthen our economy and global competitiveness by reducing costs and increasing efficiency.

That is why hospitals will forgo $155 billion in Medicare and Medicaid payments over 10 years as part of a shared sacrifice to bring about the benefits that health reform will deliver to all Americans.

It is no exaggeration to say this is the last opportunity in our generation to bring about durable reform that will make a real difference in the lives of all of us. The time for action has come, and the FAH urges all Senators to support the budget reconciliation package without amendment.

Thank you for your strong and unwavering leadership.

Sincerely,

CHARLES N. KAHN III,
President.

(From the AARP Press Center, Mar. 19, 2010)

AARP STATEMENT ON HISTORIC HEALTH INSURANCE REFORM PACKAGE

WASHINGTON.—Today, AARP Board Chair Bonnie M. Cramer, M.S.W., announced the Association's support for health insurance reform legislation containing key reform provisions that will improve health care for older Americans and their families. For more than two years, AARP has fought for health insurance reform that helps Americans 50-plus get the care and medications they need at a price they can afford. Cramer's statement follows:

''After a thorough analysis of the reform package, we believe this legislation brings us so much closer to helping millions of older Americans get quality, affordable health care. For too long, our members and others have faced spiraling prescription drug costs, discriminatory practices by insurance companies and a Medicare system awash in fraud, waste and abuse.

''The legislative package cracks down on insurance company abuses and protects and strengthens guaranteed benefits in Medicare, the program millions of our members depend on and in which millions more will soon enroll. It closes the dreaded Medicare Part D 'doughnut hole,' a gap in prescription drug coverage that is life threatening for many. The package stops insurance companies from pricing people out of coverage because they have an existing health problem or arbitrarily limiting the amount of care someone can receive. It also limits insurance companies' ability to charge higher premiums based solely on age. And it improves efforts to crack down on fraud and waste in Medicare, strengthening the program for today's seniors and future generations.

''For every American who has struggled without access to health insurance—and for all those at risk of losing their current coverage with the next job loss, illness or premium hike—this package presents the best hope to offer health security for them and their families. We understand that significant work remains even after this package becomes law, but we cannot lose the opportunity looking for a 'next time' that is doomed to be 'too late.'

''We urge Congress to seize this opportunity to improve health care so older Americans and their families get the care they need.''

Also today, AARP CEO A. Barry Rand sent a letter to every member of the House of Representatives, urging them to put the health of Americans age 50-plus first and vote ''yes'' on the legislative package.

AARP members can see how their representatives voted on the health insurance reform package by going to www.aarp.org/governmentwatch. AARP's Government Watch is a one-stop online portal that will be tracking and publicizing every designated key vote on issues facing Americans age 50-plus. A ''Key Vote Summary'' highlighting votes on these issues will be published at the end of each congressional session.

AARP is a nonprofit, nonpartisan membership organization that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. AARP does not endorse candidates for public office or make contributions to either political campaigns or candidates. We produce AARP The Magazine, the definitive voice for 50+ Americans and the world's largest-circulation magazine with over 35.7 million readers; AARP Bulletin, the go-to news source for AARP's millions of members and Americans 50+; AARP Segunda Juventud, the only bilingual U.S. publication dedicated exclusively to the 50+ Hispanic community; and our website, AARP.org. AARP Foundation is an affiliated charity that provides security, protection, and empowerment to older persons in need with support from thousands of volunteers, donors, and sponsors. We have staffed offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

Mr. BAUCUS. Madam President, I now ask for 1 hour of debate evenly divided, a half hour on the Republican side and a half hour on the majority side. I ask unanimous consent that we proceed in that respect.

I note that the next half hour will be under the control of the Republicans and, as I said earlier, the next half hour is to be controlled by the majority. I note that thereafter the Republicans will be due an amount of time greater than half an hour, and I propose that we balance that out in the next consent.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Maine.

AMENDMENT NO. 3638

Ms. COLLINS. Madam President, I ask unanimous consent to temporarily set aside the pending motions and amendments so that I may offer an amendment which is at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] proposes an amendment numbered 3638.

Ms. COLLINS. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To improve the bill by waiving the $40,000 penalty on hiring previously unemployed individuals)

At the end of section 1003, add the following:

(e) UNEMPLOYED INDIVIDUAL NOT TAKEN INTO ACCOUNT.—Paragraph (5) of section 4980H(d) of the Internal Revenue Code of 1986, as added by the Patient Protection and Affordable Care Act, is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FOR PREVIOUSLY UNEMPLOYED INDIVIDUALS.—

''(i) IN GENERAL.—The term 'full-time employee' shall not include any individual who certifies by signed affidavit, under penalties of perjury, that such individual has not been employed from more than 40 hours during the 60-day period ending on the date such individual begins such employment.

''(ii) EXCEPTION FOR REPLACEMENT WORKERS.—Clause (i) shall not apply to an individual who is employed by the employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause.''.

Ms. COLLINS. Madam President, I rise to speak on behalf of the amendment I have offered which would waive the job-killing fines in the reconciliation bill in cases where an employer hires an unemployed worker.

I think these penalties will come as a surprise to most Americans. With unemployment at 9.7 percent, and a real concern that we may be on the brink of a double-dip recession, most Americans will be shocked to learn that Washington wants to slap fines on small businesses that choose to hire more workers. But the new health care law does exactly that.

Incredibly, this reconciliation package makes this problem even worse. Here is how. In the reconciliation package, small businesses that cannot afford to provide health insurance to their employees would be fined $2,000 for each worker on their payroll. The way the formula works, the fines kick in at $40,000 when a small business reaches 50 employees. After that, they go up at a rate of $2,000 for each new worker.

Imagine what this will do to job growth. Our country relies on small businesses to create new jobs. In fact, time and time again, you will hear on the Senate floor that small businesses are the engine of the American economy. I certainly agree with that. But this reconciliation bill creates a wall—40,000 dollars high—around any small business that wants to grow past 49 workers.

Think what these job-killing penalties will mean to the unemployed. More than 8 million Americans have lost their jobs since 2007. More than 6 million have been unemployed longer than 27 weeks. But beyond even these grim statistics, the true picture of unemployment in this country is actually far worse. Broader measures of unemployment show that 16 percent of the American people are without jobs or cannot find full-time work.

I recognize some in this body will argue we should not be bothered with these penalties now because they do not become effective right away. But those who would say such a thing simply do not understand how small businesses work. We are not talking about big multinational conglomerates here. We are talking about Main Street businesses that are already struggling. Many of them are family-owned enterprises. They do not look at their employees as interchangeable parts, and they do not make hiring decisions to ''get rich quick.'' When they bring a new employee on board, they are choosing someone who they know will become part of their team and the face of their business to the community they serve.

Having these fines on the books will discourage job growth now, no matter when they become effective, because small businesses will not hire and train workers today just to fire them tomorrow when these penalties go into effect.

Ironically, less than a week ago, the President signed into law the so-called HIRE Act. It contains a provision authored by Senators SCHUMER and HATCH to provide a temporary tax credit to encourage companies to hire unemployed workers. That is a creative idea, and I supported it. But for the life of me, I do not understand how a week later we could vote for a bill that imposes fines that will hit small businesses when they hire new workers.

This makes no sense to me, and it is completely contrary to the policy we passed a week ago when we gave tax credits to encourage businesses to hire workers who are unemployed. With this bill, we are going to fine them if they hire workers who are unemployed if they cannot afford to provide them with health insurance. That is why I am offering this commonsense amendment. It would waive the fines, the onerous fines that are in the reconciliation bill when small businesses and medium-size businesses hire workers who were previously unemployed.

The mechanism to determine which workers qualify is exactly the same one we adopted in the jobs bill passed by this body last week. It is the height of irony that we would even consider imposing penalties and fines on businesses that are hiring more workers, particularly during this difficult economic time.

I encourage my colleagues to support this commonsense amendment.

Thank you, Madam President.

The PRESIDING OFFICER. The Senator from South Dakota.

AMENDMENT NO. 3639

Mr. THUNE. Madam President, I ask unanimous consent to temporarily set aside the pending motions and amendments to offer an amendment which is at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 3639.

Mr. THUNE. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To ensure that no State experiences a net job loss as a result of the enactment of the SAFRA Act)

Beginning on page 123, strike line 10 and all that follows through page 124, line 10, and insert the following:

SEC. 2201. TERMINATION OF FEDERAL FAMILY EDUCATION LOAN APPROPRIATIONS.

Section 421 (20 U.S.C. 1071) is amended—

(1) in subsection (b), in the first sentence of the matter following paragraph (6), by inserting '', except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement is after such date if the Secretary certifies that no State will experience a net job loss as a result of the enactment of the SAFRA Act'' after ''expended''; and

(2) by adding at the end the following new subsection:

''(d) TERMINATION OF AUTHORITY TO MAKE OR INSURE NEW LOANS.—Notwithstanding paragraphs (1) through (6) of subsection (b) or any other provision of law—

''(1) no new loans (including consolidation loans) may be made or insured under this part after June 30, 2010 if the Secretary certifies that no State will experience a net job loss as a result of the enactment of the SAFRA Act; and

''(2) no funds are authorized to be appropriated, or may be expended, under this Act or any other Act to make or insure loans under this part (including consolidation loans) for which the first disbursement is after June 30, 2010 if the Secretary certifies that no State will experience a net job loss as a result of the enactment of the SAFRA Act,

except as expressly authorized by an Act of Congress enacted after the date of enactment of the SAFRA Act.''.

AMENDMENT NO. 3640

Mr. THUNE. Madam President, I have another amendment and I ask unanimous consent to temporarily set aside the pending motions and amendments so that I may offer another amendment which is also at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE], for himself, Mr. COBURN, and Mr. CRAPO, proposes an amendment numbered 3640.

Mr. THUNE. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To repeal the CLASS Act)

At the end of subtitle B of title II, add the following:

SEC. 2304. REPEAL OF THE CLASS ACT.

Title VIII of the Patient Protection and Affordable Care Act and the amendments made by that title are repealed.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, might I ask the Senator from South Dakota if he could identify his two amendments for the sake of clarity?

Mr. THUNE. Sure. I would ask the Chair, is there a number on those amendments?

The PRESIDING OFFICER. Yes, 3639 and 3640.

Mr. THUNE. Madam President, 3639 and 3640—one dealing with student loans, the other dealing with striking the CLASS Act from the underlying bill.

Mr. BAUCUS. I thank the Senator.

Mr. THUNE. Madam President, in speaking to both these amendments today, I wish to make a couple of observations about the reconciliation bill that is before the Senate. Of course, it does make amendments and modifications to the Senate-passed health care bill that went through the House last week and the House adopted many of these changes. I think the thing that perhaps didn't get discussed as much as it should have throughout the course of the debate is the impact this is going to have down the road on future generations.

Obviously, the other side, of course, talked about the additional expansions of coverage that are in the bill. Folks on our side talked about the impact it is going to have in the form of higher taxes on small businesses, the Medicare cuts that are going to impact seniors across this country, the higher premiums many Americans are going to be faced with. Those are all still fundamental features of this bill. In fact, many have gotten worse through this reconciliation process because the tax increases are now $50 billion higher than they were before. So now we are raising taxes even $50 billion more than we were previously, which is $½ trillion. The Medicare cuts have now gone from $465 billion over the 10 years in the bill that left the Senate in December, and the Medicare cuts now have been increased by $66 billion. So we are raising taxes more, cutting Medicare even deeper, and at the same time adding gimmicks that I think understate the true cost of this bill.

We have all talked about this throughout the course of this debate. The other side has said it is $1 trillion or $900-some billion over 10 years, but when you look at the way it is scored, there are 10 years of revenues, 10 years of tax increases, and only 6 years of spending, so that understates the cost over 10 years.

We have a number of other budget gimmicks, some of which I will speak to in a few moments. But when you look at it when it is fully implemented—and I think that is the number the American people need to focus on—when this is fully implemented, it is $2.5 trillion of expansion of health care in this country, and it is going to be greater intervention than we have ever seen before by the Federal Government in the delivery of health care in this country.

I wish to speak for a moment—because one of my amendments deals with this issue—on how the cost of this is being understated because of the various gimmicks and tricks being used. The CLASS Act is a program that is created in the bill. It is a program where there is an assumption that there is $70 billion available in the CLASS Act to pay for this new health care entitlement. What it does is it creates a new entitlement. As if the existing entitlement programs we have that are already on the way to bankruptcy aren't enough, we now have to add another one to it. So the CLASS Act is a long-term care entitlement program, which in and of itself perhaps isn't a bad idea if it were structured correctly and if the premiums that are going to be paid by people for long-term care insurance were actually going to go into the payment of benefits.

What this does is it assumes $70 billion from this new CLASS Act program, the proceeds from which would be used to pay for this new health care entitlement program. So it overstates the amount of revenue that is coming in by $70 billion. Here is why. At some point, if you are an elderly person or perhaps even a younger person today who wants to buy into this new CLASS Act long-term care program, you would pay premiums. Those premiums, allegedly, would go into a fund that would then be available to pay benefits when the time came to pay benefits. That is not going to happen because you are taking that $70 billion and you are spending it on this new health care entitlement. So at some point in the future, when those people who have gone into this program thinking they are paying these premiums so they can derive a benefit at some time in the future if they need to, when the time comes to pay out that benefit, there will not be any money. So what happens? It is borrowed. It is added to the debt. So you have another $70 billion that goes on the backs of our children and grandchildren to pay for this new entitlement program, which, again, understates the cost of this bill.

That is the CLASS Act bill, and my amendment would strike that from the underlying bill. By the way, I offered that during the debate on the Senate floor during the health care discussion we had the first time around, and I got 51 votes for it. There were 12 Democrats who voted with me in support of taking the CLASS Act out of the bill. One of the reasons I think there is so much bipartisan opposition to it is because everybody recognizes what a sham this is. The chairman of the Budget Committee, Senator CONRAD from North Dakota, said: This is a Ponzi scheme of the highest order, something that Bernie Madoff would be proud of. That is what he said about the CLASS Act. Even the Washington Post went so far as to make the statement that the CLASS Act is a gimmick designed to pretend that health care is fully paid for. That is what the Washington Post editorialized about the CLASS Act—a gimmick designed to pretend that health care is fully paid for.

So you take that $70 billion off the overall revenues that come in under the bill and you are already creating a $70 billion hole. You add to that the $29 billion in Social Security payroll taxes that are assumed are going to come in as people who get hit—the employers that get hit with the high-end Cadillac tax, currently paying out to their employees in the form of health care benefits that are tax free, start shifting to cash compensation which would be taxable; therefore, payroll taxes would apply. That would generate another $29 billion in Social Security payroll taxes. But, there again, those are payroll taxes that at some point are going to have to pay benefits, but we don't assume that here. We assume it is going to go on to fund this new health care entitlement program. So it is another $29 billion that at some point in the future, when somebody decides: I want to draw my Social Security benefits, they are not going to be there. Therefore, we put it back on the debt. More borrowing.

So we have $79 billion, $29 billion, and then we have the implementation cost of this, which CBO has not fully given us because they don't know what it is going to cost in the outyears. But based upon what they have given us of what it is going to cost in the near term, we have extrapolated that it will cost about $114 billion to implement this new health care extravaganza run out of Washington, DC. When you add that onto the cost, none of which is accounted for in the underlying bill, you have another $114 billion in cost of this thing not paid for.

Then, we take the Medicare double counting, which is interesting, because you have these cuts that are going to occur in Medicare; you have these payroll tax increases that are supposed to occur in Medicare that are going to generate, collectively, $529 billion in additional revenue. But, here again, what is wrong with this picture? The assumption is, these are Medicare payroll taxes that are going to go into a

Medicare fund that, at some point in the future, will pay Medicare benefits. Yet, at the same time, we are saying these Medicare revenues are going to be used to finance this new health care expansion.

So what are you doing? You are double counting. You cannot spend that money twice. We are taking $529 billion in Medicare cuts, in Medicare payroll tax increases that supposedly would go into a Medicare trust fund to pay benefits at some point in the future to beneficiaries, recipients of those funds, but, no, we are going to spend that on this new health care entitlement.

What happens then? Someday in the future that Medicare recipient is going to say: OK, it is time to pay out these Medicare benefits. I have reached the appropriate age, I am eligible, and I want to get into the Medicare Program, and all that money that was supposed to have been in the program to pay for those benefits isn't there. Why? Because it was spent on this new health care entitlement program. So what happens? To pay those benefits, the Federal Government will then have to borrow—more debt that goes on the backs of our children and grandchildren—another $529 billion.

So the last point I will make is—because I have another amendment that addresses this issue—this reconciliation bill did something that obviously was not included in the health care bill that passed the Senate the first time; that is, this takeover of the student loan program in this country. It is something that has been proposed around here for some time. The way student loans are distributed across the country today is we have 2,000 lenders out there who make these loans. Students can go there and get these loans. What this will do is eliminate that model, will draw all these student loans into Washington, DC. There will be four Federal call centers where students will go to get their loans. What does that do? Well, first off, it kills a lot of jobs. I have 1,200 jobs in South Dakota that are related to the student lending business, and those are all now going to be bureaucratic jobs in Washington, DC. There are 31,000 jobs across the country where you have people who are working in the student loan business. Those jobs are in jeopardy because that is all going to be drawn into Washington DC. I don't think the American people have effectively focused on what is being done in this reconciliation bill above and beyond the bad stuff that is related to health care.

So we have this student loan program which is coming back into the Federal Government and a lot of the revenues now are being earmarked for other things. They are being earmarked for the health care bill: $9 billion is being used to pay for the health care expansion; $10 billion is going toward ''deficit reduction,'' but we have another $19 billion coming out of the student loan program. Who is going to pay for that? Students are. Students are going to pay for it in the form of higher interest rates on their loans. Essentially, we are now not only taxing small businesses, cutting Medicare recipients, but we are also taxing students to pay for this expansion of health care.

We have another $19 billion which, at some point in the future—of course, this is all going to have to be paid for again by our children and grandchildren, but we have all this double counting that is going on and all these gimmicks that are being used to understate the cost of this bill. When you add it all up, $143 billion so-called budget savings ends up in a $618 billion cost. In other words, instead of running, as the other side has said, a $143 billion budget surplus because of this health care expansion, if you take out all the gimmicks—the CLASS Act, the revenues, the Social Security payroll tax revenues which are double counting, the Medicare double counting, and the student loan program—we have a real deficit of $618 billion in the first 10 years. If you extrapolate that out into the second 10 years, it is $1.8 trillion that will have to be borrowed under this bill to pay for the costs of it. That is the cost that we know today. That is all going to be passed on to future generations, to our children and grandchildren.

The dirty little story that hasn't been told in this whole debate is how much this is going to cost future generations because of the enormous debt we are piling up and all the games and the gimmicks and the tricks and the chicanery that are being used to understate the true cost of this: $183 billion ''savings'' in this bill. When you take out all the double counting, all the gimmicks, we end up with a $618 billion deficit in the first 10 years. That is tragic.

That is why I am offering this amendment to strike this CLASS Act. We shouldn't be creating another new entitlement program when we can't pay for the entitlement programs we have. They are all going bankrupt, and we are going to create yet another one, which is going to lay more debt on the backs of our children and grandchildren.

The other thing I wish to mention just briefly in closing speaks to the other amendment. The other amendment, as I said, because of this takeover of the student loan business in this country, there are lots of States that are going to lose significant numbers of jobs. My State has over 1,200 jobs related to student lending; Minnesota, 675; Iowa, 526; Nebraska, 891. There are lots of places around this country where student lending creates jobs, private sector jobs. We are going to do away with those and bring all those jobs back to Washington, DC, and make students come to Washington to get their student loans, as it turns out, at a higher cost because we are using some of the proceeds of that program to pay for the cost of a new health care program.

What my amendment essentially would do is say the Department of Education has to certify that there will be no jobs lost across the country associated with this takeover of the student lending business and bringing all that power and consolidating it all in Washington, DC.

So those are the two amendments I offer. I hope my colleagues will vote for those. This is bad policy in so many ways, but in taking over yet another industry in this country that is creating a lot of jobs and therefore killing a lot of jobs is the wrong way to move forward when you are trying to pull an economy out of a recession.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

MOTION TO COMMIT

Mr. CORNYN. Madam President, I ask unanimous consent to temporarily set aside the pending motions and amendments so I may offer a motion to commit, which is at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the motion.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. CORNYN] moves to commit the bill H.R. 4872 to the Committee on Finance with instructions to report the same back to the Senate within 3 days with changes to strike the 3.8 percent tax on net investment income.

Mr. CORNYN. Madam President, my amendment is a motion to commit the reconciliation bill back to the Finance Committee to report the bill back without a brandnew tax on savings and investment for certain taxpayers. This is an additional 3.8-percent tax on savings, which includes dividends, capital gains, ordinary savings for many consumers, many Americans who have not had to pay before but which this bill imposes. This is a $123 billion tax hike on those categories of income.

This is a mistake for a lot of reasons. One, it will discourage the very thing we need to be doing more of, which is saving. It will reduce productivity, and it depresses wages and the standard of living for millions of Americans. Simply put, increasing taxes, particularly during a recession, on the very sectors of the economy that we want to invest and to create jobs is a terrible mistake.

According to forecasts by the Institute for Research on the Economics of Taxation, a 2.9-percent tax increase—not 3.8 percent but a 2.9-percent previously proposed—would depress economic growth by 1.3 percent and reduce capital formation by 3.4 percent.

The damage to jobs and economic growth during a recession when unemployment is at 9.7 percent would be even greater under the current proposal because we are talking about a 3.8-percent tax, not a 2.9-percent tax, which was the subject of a Wall Street Journal article and this report from the Institute for Research on the Economics of Taxation.

Not only will this motion protect jobs and the investment security of taxpayers, it will also make sure the reconciliation bill does not break yet another one of President Obama's promises. This is just another one of the President's promises that have been broken by this bill when he said, talking about this bill:

Everyone in America—everyone—will pay lower taxes than they would under the rates Bill Clinton had in the 1990s.

But the truth is, this additional tax on savings and investment will make taxes higher than they were even back in the 1990s when Bill Clinton was President of the United States.

I ask my colleagues to support my motion to commit this bill to the Finance Committee.

I also ask unanimous consent to have printed in the RECORD at the conclusion of my remarks two articles—a March 17 Wall Street Journal article entitled ''ObamaCare's Worst Tax Hike'' and the report I referred to a moment ago from the Institute for Research on the Economics of Taxation.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CORNYN. Madam President, this is not the only job-killing provision in this bill, this brandnew 3.8 percent tax increase that will attack savings and investment. Other examples of job-killing proposals in this bill include increasing the hospital insurance payroll tax. This tax is increased to 3.8 percent. It will hit thousands of small businesses that file as subchapter S corporations and pay taxes at individual rates. In addition, this revenue will not be used to pay for Medicare but will be used to fund a brandnew entitlement.

Another job-killing proposal in this bill includes new taxes and fees on health care consumers. That is right, the very people for whom we are trying to lower costs and trying to make health care more affordable, many will have to pay additional taxes and fees to the tune of $100 billion which both the Congressional Budget Office and the Joint Tax Committee have confirmed will inevitably be passed down to consumers.

Then there are the higher premiums for individuals who do not get their health coverage from their employer but have to go into the group market. We are talking about a lot of small businesses, individuals, partnerships, sole proprietors, and the like. One consulting firm concluded that premiums in the group market could go up as much as 20 percent because of the mandated, government-approved insurance that has to be sold under this bill. CBO said they concluded a somewhat lower level—between 10 and 13 percent. But still, if the purpose of health care reform is to make health care more affordable, this bill simply goes in the wrong direction.

Then there is the employer mandate. I met this morning with representatives of the Hispanic Chamber of Commerce. The Hispanic Chamber told me something I knew before but reiterated—the important role of small businesses in terms of job creation—and pointed out to me how many Hispanics and minority business owners are engaged in the very kind of job creation we should be encouraging, not discouraging. This employer mandate will kill jobs because the additional cost of health insurance will be passed along to workers in the form of lower wages or result in reduced hours or layoffs. In a July 2009 report entitled ''Effects of Changes to the Health Care Insurance System on Labor Markets,'' the CBO concluded that the employer mandate is ''likely to reduce employment.''

At a time when unemployment is at 9.7 percent, people are losing their jobs, and they cannot pay their mortgages, so they are being kicked out of their homes due to foreclosure, we are making things worse with this bill, not better.

All told, this bill that has been signed into law by the President and the bill before the Senate, this reconciliation bill, include more than $500 billion in tax increases. It makes no sense, except in the rarefied air under this dome, for Congress to even consider raising taxes, imposing new mandates on employers and individuals at a time when unemployment is so high and when that is the most pressing issue confronting the Nation today. Congress is making this worse, not better. Why Congress would pass a new tax on investment that will act like a wet blanket on the economy to further exacerbate unemployment and make recovery harder is, frankly, beyond me.

Madam President, I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Mar. 17, 2010]

OBAMACARE'S WORST TAX HIKE

The forced march to pass ObamaCare continues, and all that matters now is raw politics. But opponents should go down swinging, and that means exposing such policy debacles as President Obama's 11th-hour decision to apply the 2.9% Medicare payroll tax to ''unearned income.''

That's what savings and investment income are called in Washington, and this destructive tax wasn't in either the House or Senate bills, though it may now become law with almost no scrutiny.

For the first time, the combined employer-worker 2.9% Medicare rate would be extended beyond wages to interest, dividends, capital gains, annuities, royalties and rents for individuals with adjusted gross income above $200,000 and joint filers over $250,000.

That would lift the top capital-gains rate to 22.9% as the regular rate bounces back to 20% from 15% when the Bush tax cuts expire at the end of this year. The top rate for dividends would rise to 42.5% when the Bush income-tax rates expire. The White House plan also raises the ordinary Medicare payroll tax by 0.9 percentage points for the same filers, bringing it to 3.8%.

Preliminary estimates from the Joint Committee on Taxation peg the revenue from these changes at $183.6 billion over 10 years. The Tax Policy Center of the Urban Institute and Brookings Institution estimates that 86% of the revenue from the investment tax would come from people making more than $624,000, or about 1.2 million taxpayers. This has led many liberals to claim that it won't matter to investors or harm the economy.

Yet these static analyses ignore the incentive effects forecast by the Institute for Research on the Economics of Taxation. Stephen Entin and colleagues estimates that the investment tax would depress GDP by about 1.3% and reduce capital formation by 3.4%, and thus reduce the after-tax incomes of everyone not paying the tax directly in the neighborhood of 1.1% to 1.2%. Labor productivity and wages would fall across the board, while the lost government revenues from the more-sluggish economy would offset the expected receipts.

Senate Democrats rejected Nancy Pelosi's favored 5.4-percentage-point ''surcharge'' on modified adjusted gross income above $1 million as too radical. But they seem to be fine with its 2.9-percentage-point alter ego, although the Tax Policy Center concludes (on paper) that they'll soak more or less the same people for more or less the same amount.

Earning even a single dollar more than $200,000 in adjusted gross income will slap the 2.9% tax on every dollar of a taxpayer's investment income, creating a huge marginal-rate spike that will most hurt middle-class earners, as opposed to the superrich.

This two-tier tax also fundamentally and probably irrevocably alters the social insurance model that has governed Medicare for more than a half-century. Medicare is supposed to be a universal entitlement with at least some connection between the taxes paid on wages in return for benefits. The investment tax, and the apparatus of ObamaCare financing more generally, severs this link by redirecting Medicare's ''dedicated'' revenues toward a new entitlement. Even Bill Clinton didn't cross this policy threshold in the health debate of the early 1990s, proposing to fund HillaryCare entirely through new corporate taxes and preserving Medicare as its own discrete program.

Mr. Obama gave a preview of the fiscal confusion this creates at a Wednesday campaign stop in St. Charles. Shortly after accusing his critics of being ''just plain wrong'' about everything, he went on to boast that ''we're going to be able to help ensure Medicare's solvency for an additional decade'' and also ''reduce the deficit by a trillion dollars.''

Yet his claims are just plain wrong, as already exposed by the Congressional Budget Office. The government can't spend the same Medicare dollar twice: Either it can reduce the deficit or extend the life of Medicare, but not both. This may seem an arcane point, but the White House obviously knows better and yet continues to peddle this falsehood.

The White House has embraced this investment tax because Big Labor opposed its preferred excise tax on high-cost health plans. So the White House decided to delay the excise tax, which meant losing $116.2 billion in revenue over the first 10 years. Voila, out came the 2.9% investment tax.

So for reasons of political expediency, Democrats will now impose a destructive tax that will permanently skew the incentives to work, save and create jobs. Come to think of it, that sums up this entire exercise.

[From the Institute for Research on the Economics of Taxation, Mar. 1, 2010]

THE OBAMA ADMINISTRATION'S PROPOSED 2.9% ''HI'' SURTAX WOULD HARM THE ECONOMY AND LOSE REVENUE

President Obama has recommended imposing a 2.9% ''HI'' surtax on ''passive income'' (income from saving and investment) to help

fund his health insurance overhaul. Social Security taxes for retirement and medical programs for the elderly taxes have always been levied on wages, as a form of social insurance. Extending the Hospital Insurance tax to income from savings would be a sharp departure from previous practice and very bad economics.

ECONOMIC CONSEQUENCES OF THE 2.9% RATE HIKE

On a static basis, our preliminary estimate is that the Obama plan's 2.9% surtax on the capital gains, dividends, interest, and certain other income of upper-middle class and wealthy taxpayers would:

Raise approximately $39 billion yearly (at 2009 income levels);

Affect only a small number of upper-income individuals.

In reality, on a dynamic basis, the 2.9% surtax would, after the economy has adjusted to it:

Depress GDP by about 1.3%;

Reduce private-sector capital formation by about 3.4%;

Cut the wage rate by about 1.1%, and hours worked by about 0.2%;

Reduce the after-tax incomes of the people in the income ranges supposedly not touched by the proposed 2.9% surtax by 1.1%–1.2%;

Lose about 70% of its anticipated income tax revenue gain due to lower GDP and incomes across-the-board;

Decrease other federal tax revenues, causing total federal receipts actually to fall by about $5 billion yearly (at 2009 income levels).

DISCUSSION

Capital formation is very sensitive to taxes on capital income, and reduced capital formation reduces labor productivity and wages across the board. We estimate that the proposed surtax will depress capital formation, GDP, and wages. The resulting loss of income, payroll, corporate, excise, and other taxes will offset the assumed revenue gains. The wage depression will affect all income levels, and the tax burden will not be confined to the top income earners.

The 2.9% passive income surtax (equal to the Medicare Part A—or Hospital Insurance—payroll tax rate) would be imposed on dividends, interest, capital gains, rents, royalties, and other income from saving and investing. The tax would hit couples with more than $250,000 in adjusted gross income ($200,000 trigger for singles and heads of households). The tax would be triggered by earning even a single dollar above the thresholds, after which all of the taxpayers' passive income would be immediately subject to the tax. This creates a huge tax rate spike or ''cliff' at the thresholds. It would be imposed on AGI instead of taxable income, taking no consideration of itemized deductions and the differing circumstances of families which the deductions reveal.

The surtax would depress capital formation and wages, and fail to bring in the expected revenue. The numbers below are for the 2.9% rate hike in isolation. The Administration's proposal to raise the top tax rates on capital gains and dividends would produce additional losses. Further losses would result from the Administration's proposal that the Bush tax cuts expire for upper-income taxpayers, which would increase the top two tax rates on interest income and other ''passive'' income to 36% and 39.6%. The return of the itemized deduction limitation and the personal exemption phase-out would raise upper-income individuals' marginal rates even higher and add more economic damage. (The rise in the top two rates would also apply to labor income, and the Administration's health care proposal, taking a page from the health care bill that the Senate passed on Christmas Eve, would pile on a 0.9% surtax on wages and self-employment income.)

The House health bill has a 5.4% surtax on AGI. The Senate considered that but dropped it as ill-advised and instead opted for a 0.9% surtax on wage and self-employment income only, building on the existing payroll tax. Any surtax is undesirable, but a surtax on capital income would be especially damaging, and the ''cliff' in the Obama Administration's plan would compound the harm and is especially inept.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, has the time on the Republican side expired?

The PRESIDING OFFICER. There are 25 seconds remaining.

Mr. BAUCUS. I assume they do not want to use those 25 seconds, hearing no objection.

Madam President, we have several speakers. We are waiting for Senator SHAHEEN, Senator FEINGOLD, Senator SANDERS, Senator NELSON, and Senator MCCASKILL. I do not see any of them right now.

While we are waiting, I wish to make a point about CBO's analysis with respect to premiums.

The Congressional Budget Office says that the health care reform bill will lower premiums for all—millions—Americans—all. The Congressional Budget Office said health insurance premiums would fall by 14 to 20 percent for the same plan in the individual market and the small group market, up to 2 percent lower. Let me repeat that. The individual market for the same plan, the Congressional Budget Office says premiums will fall under this legislation. They will be lower, they will be less by 14 to 20 percent than the same plan in the individual market, as people buy insurance individually, and premiums for the small group market—that is roughly small business—would be up to 2 percent lower than currently.

Why is all that? It is basically because there are savings. The savings come from lower administrative costs, increased competition, and from better pooling of risk.

The analogy I like to refer to is Orbitz and Travelocity. Today with Orbitz, you shop online for an airline ticket. You look for fares and you look for times. The same type of operation would occur with respect to insurance—you get on the exchange and shop for insurance.

I see the Senator from New Hampshire is now on the floor. I yield 4 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Madam President, I thank Senator BAUCUS.

I am pleased to be here to join in this effort to talk about the importance of what we are doing with health care reform. We have waited so long for health care reform, and yesterday it became a reality. Today, we celebrate a reformed health care system that President Obama has signed into law. With this historic step, we have ensured that more Americans have the health care security and stability they need. We have ensured that families will have choices for coverage even if their jobs do not provide it. We have ended denials for preexisting conditions, and we have a guarantee that no one has to pay more for health insurance if they get sick and that the insurance coverage cannot be taken away. We no longer allow insurance companies to put lifetime limits on the amounts of benefits they will cover.

But insurance reforms are not the only thing we have done. We have made health care more affordable for those who need it most and made it easier for small businesses to provide coverage for their employees. We made important steps to encourage everyone to take advantage of preventive care, and we have created incentives for people to enroll in wellness programs and encourage communities to address the public health of their citizens. Finally, we are changing the way doctors provide care, making it better coordinated and more patient-centered.

I am pleased we are here building on the success of the health care reform legislation that was just signed into law. Our resolve is strong, make no mistake about that. We must continue our work in making a good bill even better.

The legislation we are now considering makes great strides to strengthen the new law. It will provide more tax relief to families to help them afford health care and more help for seniors to pay for prescription drugs.

I have talked with seniors throughout New Hampshire who struggle with the high cost of prescription drugs. The Medicare doughnut hole, as it is known, causes great stress in family budgets when seniors have to pay full price for the drugs they need, people such as Sue Quinlan from Portsmouth, who recently wrote me about her experience with the doughnut hole. She wrote:

This year, because of my illness, my drug costs have doubled, and in September I experienced the ''donut hole.'' This meant that when my Total Drug Cost reached $2,400 for the year, I was on my own.

She went on to say:

You know you are in the donut hole when a drug you have been paying $90 for is now $364.47. You know you are in the donut hole when the mail order prescription company calls to warn you that your order is going to cost $720.82 and wants to confirm that you really do want them to send it, and you have no choice except to send it unless you want to stop taking the medications. You know you are in the donut hole when the pharmacist gives you a sympathetic smile when they hand you your order.

Under this bill, seniors such as Sue no longer need to worry. They will get a discount on medicine critical to their health, and we will begin to close the doughnut hole. Seniors will now have access to affordable drugs on which they depend. We have all heard the

story of seniors breaking their pills in half or skipping their daily doses because of the cost. Under this bill, a senior with high cholesterol and heart disease who relies on Lipitor and antihypertension medication to stay healthy now can take these drugs with peace of mind and less financial stress.

This bill will expand affordable coverage to 32 million Americans. The bill will provide the same Medicaid deals for every State so that the Federal Government will help share in the burden the States face in providing coverage for new populations. The bill also builds on the previous bill to attack waste, fraud, and abuse in our health care system.

This is a historic time. Today, we build on that historic legislation with improvements to make it stronger and even better for American families and seniors.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I yield 6½ minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, for far too long, my constituents have been at the mercy of the health insurance industry which has dictated how and whether they get health care coverage. Wisconsinites have been denied coverage because of preexisting conditions, dropped from coverage because they made too many claims, or simply forced to pay through the nose for skyrocketing premiums. Those days are now coming to an end thanks to the Patient Protection and Affordable Care Act.

We have taken an important step with the enactment of that bill, but as you know, our work is not done. The Patient Protection and Affordable Care Act is not perfect, and Congress must be committed to strengthening and adjusting this law as necessary in the years to come. The first step, of course, is for the Senate to pass the Health Care Education Reconciliation Act of 2010, which the Senate is now debating. This bill will strengthen our health care reform law to ensure that health insurance is even more affordable for working families and that seniors actually pay less for prescription drug coverage.

Taken together with the Patient Protection and Affordable Care Act, this bill would help Wisconsinites purchase good, affordable health insurance and health care. As a result, this year children will no longer be denied coverage for preexisting conditions, insurance companies will no longer drop Americans because they are sick, young Americans can remain on their parents' coverage longer, and the Medicare doughnut hole that shortchanges seniors will begin to be filled. Then, over the next 4 years, States will prepare to set up health insurance exchanges for individuals and small businesses to purchase more affordable health insurance. As a result, an estimated 541,000 Wisconsinites who are uninsured and 320,000 Wisconsinites who have individual market insurance will gain access to affordable coverage. As many as 358,000 Wisconsinites are expected to qualify for premium tax credits to help them purchase health care coverage. Experts believe this reform effort will lower premiums in the nongroup market by 14 to 20 percent for the same benefits—premium savings of $1,540 to $2,200 for a family in Wisconsin. Now, this is real savings.

According to the nonpartisan experts at CBO, over the next 10 years, our national deficit will decrease by $143 billion and up to $1.2 trillion in the following 10 years. Those savings come from a number of cost containment provisions, including one which I strongly support that will begin to reimburse physicians based on the quality of care they provide rather than on the quantity of care. This movement toward value-based health care purchasing is one that is already seeing great success in hospitals and medical groups around my State of Wisconsin. I was so pleased to work with our nationally recognized medical centers around Wisconsin on these successful efforts.

Health reform also means more choice, more affordability, and more protections for Wisconsin businesses. Over 77,400 small businesses throughout the State of Wisconsin are eligible now for tax credits starting this year to help purchase health insurance for business owners and their employees. No longer will small businesses be vulnerable to insurance practices of raising rates on a year-to-year basis due to an employee falling ill.

I visit all 72 counties in Wisconsin every year, and I always hear about the burden of health care costs on small businesses. So many Wisconsinites are discouraged from striking out on their own to start a small business or to expand it because they can't afford or couldn't get health insurance on their own. This bill will help those Wisconsinites start businesses and create jobs by providing the affordability and protections of the large insurance group market to small business owners.

Reform also means better and more affordable health care for Wisconsin's seniors. The bill we are debating will build upon improvements made by the Patient Protection and Affordable Care Act by closing the Medicare Part D prescription drug doughnut hole by 2020. Beginning this year already seniors who reach the doughnut hole will receive a $250 rebate, with more and more assistance available each year until the doughnut hole is ultimately closed. Seniors will also be guaranteed an annual wellness visit and no cost sharing on preventive care visits to their physician.

Of course, we know this reconciliation bill is not just about health care. It also ends unjustified subsidies for private banks and lenders to issue Federal student loans. By transferring the authority to make all Federal student loans over to the existing Federal Direct Loan Program effective July 1 of this year, we will save approximately $61 billion over 10 years. The savings will in part be used to help ensure that students do not see a reduction in their Pell grant awards next year, providing much needed assistance to Wisconsin's low-income and middle-income students when they need it the most.

Historic health care reform is now the law of the land. But we have to do more, and passing this bill is the next step.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. FEINGOLD. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 7 minutes to the Senator from Florida, a very valued member of the Finance Committee.

Mr. NELSON of Florida. I thank the Presiding Officer and the chairman.

For the first time as a nation, we are recognizing that people have a right to not be destroyed by sickness. Under the Senate bill passed by the House and signed into law yesterday by the President, folks are no longer going to have to choose between their health and their pocketbooks. Parents will no longer have to worry about whether they can afford to get their kids to the doctor. Seniors will not have to wonder if Medicare will still be there for them several years down the road.

Health care reform doesn't mean people would not have to continue taking responsibility for themselves. The bill we passed, and even the one we are now debating, improves health care affordability and access for all, but it still requires folks to do their part. Families who can afford to will be asked to contribute to the cost of their coverage. People are expected to get regular primary care so they do not end up in the emergency room with something that could have been treated easily and cheaply if it had been addressed sooner.

But, very importantly, we are also going to hold the insurance companies accountable. We are finally telling them: You can't drop someone just because they get sick; you can't cap someone's benefits just because you are tired of paying for their care; and you can't decide not to offer someone coverage because they have a preexisting condition. We are telling them: No more, no more, no more.

We are also saying to our seniors that we, as a nation, remain unwavering in our commitment to protecting and preserving Medicare for today, tomorrow, and the next millennium.

There has been an awful lot of misinformation going around about Medicare and something called Medicare Advantage. The fact is, the original Senate bill proposed an unfair way to fix overpayments to these private Medicare HMO insurance plans. The fix

would have come at the expense of seniors living in areas with high medical costs, such as my State of Florida. I was able to pass an amendment in committee that fixed that problem fairly.

Under this reconciliation bill, the President has proposed another way to rein in those Medicare Advantage insurance companies, and this, upon close inspection, also treats seniors fairly. It puts companies on the hook for their performance. If they do not provide quality service, their reimbursements are cut. Their enrollees—the seniors—are going to demand that they provide quality service. I appreciate the President's leadership on this issue and the fact that he heard the concerns expressed by a number of us, including Senator SCHUMER and Senator WYDEN.

But having said all this, we have left something undone in this Senate bill that is now law and even in this reconciliation package. I am not happy this legislation lets the drug companies pretty much off the hook. You all know that over the past few years I have been voicing the concerns and fears of residents in my State about what is happening to their drug prices. I also hear from the folks who can't afford their medications when they hit the prescription drug coverage gap known as the doughnut hole. They skimp on food or split their pills or stop taking them altogether. While this bill offers a discount to seniors in the doughnut hole, there is nothing to keep drug companies from continuing to jack up the prices until that discount is meaningless.

I also hear from folks who are frustrated that in other countries folks are getting the very same drugs for much less than we pay here. I had an amendment that would have required the drug industry to pay its fair share of the tab for health care reform. It required the drug manufacturers to give the government price breaks on drugs for a lot of our low-income seniors, and that would have saved us $106 billion of taxpayer money, which was more than enough to fill the doughnut hole altogether and then make a dent in offsetting the Federal deficit.

So I intend to come back and revisit this. In the meantime, I want to say this reconciliation bill deepens and extends the promise of the health care reform bill that was signed into law just yesterday. I stood with the President when he put pen to paper yesterday. I think it is great we have begun the process of health care reform.

It has been said by many folks in many different ways that we are not put on Earth for ourselves, but we are placed here for each other. Well, here we are, and here we are debating legislation that stands to improve the lives of tens of millions of Americans. So despite its flaws, I will vote to pass this legislation.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank the Senator from Florida for his very considered and thoughtful conclusion in deciding to vote for this legislation. I deeply appreciate that very much. He is a wonderful member of the committee.

Mr. President, I yield 7 minutes to the Senator from Vermont.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. SANDERS. I thank the Senator from Montana for yielding.

Mr. President, my Republican colleagues have reached the conclusion that this is not a perfect bill. Well, they are right. While my problems with this bill are very different than theirs, I do hope that in the weeks and months to come, after we pass this reconciliation package, we will improve it. But I would ask my Republican colleagues to tell me something: When they controlled the White House and they controlled the Senate and they controlled the House, when President Bush was our President—during that period—7 million more Americans lost their health insurance and health care costs soared. Where were they then in talking about health care? Did they have one substantive idea during that period about how we were going to lower the cost of health care for Americans and provide health insurance for all of our people?

I do hope that after we pass reconciliation we are going to improve this bill. In that regard I want to thank Majority Leader REID who has promised us—Senator MERKLEY, myself and others—that we will have the chance to vote on a public option provision. I think millions of Americans understand that public option is a choice that people should have—the right to go outside of the private insurance companies for their health insurance. That public option will provide competitive pressure on the insurance industry to control soaring health care costs. So I very much appreciate Senator REID telling us that we are going to have a vote on that issue within a couple of months.

This bill is a strong step forward. It is no small thing that we are providing health insurance to 32 million more Americans. It is no small thing that we are moving to eliminate preexisting conditions as a grounds for rejecting someone for health care. It is no small thing that we are going to begin to fill that doughnut hole so that seniors will be able to get the prescription drugs they need in an affordable way. Those are, among other achievements, quite significant.

But having said that, after the passage of this legislation, we still have to deal with the reality that we will continue to spend far more per capita on health care than any other major country.

A few days ago, we had the Ambassador from Denmark visiting Vermont. In that country, they provide quality care for all of their people, and they do it spending about 50 percent of what we do because they have eliminated private insurance companies and all of the administrative and profiteering costs associated with private insurance companies. I hope we will one day at least allow States the option to move forward with a single-payer, Medicare-for-all program, which I think ultimately is the way we are going to go as a nation if we are going to solve the need for comprehensive universal and cost-effective health care for all of our people.

I do want to say a word on one aspect, one provision of this bill which I think is enormously important, and I am very excited it is included in this bill. Again, I thank Senator REID for his help in making sure it remained in and is amply funded. That is that in this legislation we are going to take a giant step forward in providing primary health care to the people of this country through a major expansion of Community Health Centers and the National Health Service Corps. This legislation provides enough funding so that we are going to create, over the next 5 years, 8,000 new health center sites, more than doubling the number that now exists. We are going to increase access for primary health care, dental care, mental health counseling, and low-cost prescription drugs by doubling the number of Americans with access to community health centers from 20 million to 40 million in every State, and in every region of this country. That is a huge step forward in providing basic health care to millions of Americans who today cannot access that care.

While we do that, we are also going to significantly expand the number of doctors, the number of nurse practitioners and dentists that we desperately need in order to provide primary health care to our people.

This legislation—over a 5-year period—triples the amount of money going into the National Health Service Corps, a program which provides debt forgiveness and scholarships for those doctors and dentists who will be serving in underserved areas throughout this country.

Through the National Health Service Corps, we are going to support an additional 17,000 new primary health care doctors, dentists, nurse practitioners, and mental health professionals. What this means is that if somebody has no health insurance, if somebody has Medicaid, if somebody has Medicare, if somebody has private health insurance, that individual is going to be able to walk into a community health center and get the high quality care they need. The incredible thing, and this is quite remarkable, is that by doing this we are going to actually save taxpayers money because we are going to keep people out of the emergency room, which is the most expensive form of primary health care; we are going to prevent people from becoming sicker than they should and ending up in the

hospital at great expense. Based on a study by the Geiger-Gibson Program at George Washington University, it is conservatively estimated that, by investing $12.5 billion in health centers and the National Health Service Corps, we will save Medicaid alone over $17 billion over the next 5 years.

This legislation is going to be very significant in providing the primary health care that we need as a nation, and I am very appreciative it is part of the bill.

Mr. President, as I conclude, I ask unanimous consent to have printed in the RECORD the findings of the study by the Geiger-Gibson/RCHN Community Health Foundation Research Collaborative, George Washington University, dated October 14, 2009.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINDINGS

Since health centers are non-profit entities that operate subject to comprehensive federal standards, our models assume that health centers will serve as many patients as their revenues permit. As a result, the number of patients served at health centers depends on the revenue available to health centers and the distribution of insurance coverage among health center patients. The Senate provisions increase health center revenues in three key ways: (1) by increasing federal health center grants; (2) by increasing Medicaid revenues as a result of expanded Medicaid coverage; and (3) by assuring higher private insurance revenues as a result of the extension of the Prospective Payment System (PPS) to health center patients insured through a health exchange. By lowering the number of uninsured patients, health reform thus will allow health centers to use their grant funds to reach additional uninsured patients, thereby increasing the number of patients who can be served.

It is important to note that federal health center grants and payments under Medicaid and private health insurance represent only a portion of total health center revenue. Other important sources include other federal, state, local and private grants or contracts. As in our prior report, we conservatively assume that these other funding sources will grow by only five percent annually.

We estimate that by 2019, these combined policy changes would roughly triple the number of patients receiving care at health centers. The number of patients would rise from an estimated 19.0 million in 2009 to 44.2 million in 2015 and to 60.4 million by 2019. In order to expand to serve this many patients, we assume that the number of health center grantees and the number of health center delivery sites (i.e., clinics) would grow substantially, permitting a major expansion of health centers and clinics into more medically underserved rural, suburban and urban communities.

In our prior paper, we analyzed data from the 2006 Medical Expenditure Panel Survey to compare the medical expenditures of people who receive the majority of ambulatory care at health centers and those who do not. We found that, after adjusting for health status, age, gender, race/ethnicity, and health insurance coverage, the average patient receiving care at a community health center had annual medical expenditures $1,093 lower than an average patient who did not use health centers. This estimated savings includes both reduced ambulatory costs as a result of health center efficiencies as well as reduced inpatient medical expenses, which may be due to the prevention of more severe health problems requiring hospitalization. These findings are consistent with numerous prior studies showing that health centers are efficient providers of quality primary care and that more effective use of primary care can reduce hospital and specialty care costs.

Using the estimate of $1,093 savings per health center patient in 2006, we applied the estimates of the increased number of health center patients and adjusted savings to account for health care inflation to estimate total medical savings associated with the expansion of services at health centers over the next ten years. These are summarized in Table 1.

TABLE 1—ESTIMATED INCREASE IN HEALTH CENTER PATIENTS, TOTAL MEDICAL SAVINGS AND FEDERAL MEDICAID SAVINGS UNDER THE SENATE PROVISIONS, 2010 TO 2019

	2009	2015	2019	2010–2015	2010–2019
Total Number of Patients (mil)	19.0	44.2	60.4	.....	.....
Increase Over 2009 Patients (mil)	.....	25.2	41.4	.....	.....
Est. Total Med Savings Per Person	$1,262	$1,551	$1,780	.....	.....
Est. Total Medical Savings (bil)	—	$39.0	$73.7	$129.1	$369.2
Est. Federal Medicaid Savings (bil)	—	$11.0	$22.5	$34.2	$105.0

Source: Authors' estimates.

As seen in Table 1, in 2019, we estimate that the number of patients receiving primary care services at health centers will rise by 41.4 million over the 2009 level of 19.0 million, to 60.4 million total patients. This growing use of health centers to serve an additional 41.4 million patients times the medical savings of $1,780 per patient yields an overall medical savings estimate of $73.7 billion in 2019 alone. Over the 2010–2019 period, we estimate that an increase in the number of patients who receive their health care through health centers will lead to $369 billion in total medical savings. (Following the approach used by the Congressional Budget Office, we estimate only the additional savings due to increases in the number of patients served at health centers. We estimate that the 19 million patients already served in 2009 create medical savings of $24 billion in that year alone; savings from the existing 19 million patients are not included in the estimates shown in Table 1 above.)

This estimate includes all medical savings, whether public or private. From the federal perspective, the critical question is federal savings. We estimate savings attributable to federal spending by focusing on federal Medicaid savings, accounting both for the increased volume of Medicaid patients and the effective increases in federal matching shares for Medicaid. (There are also state Medicaid savings not included in the estimate of federal savings.) This calculation yields an estimated federal Medicaid savings of $22.5 billion in 2019 and $105 billion between 2010 and 2019. This is a conservative estimate of federal savings, since there would also be savings under Medicare as well as in the federal subsidies spent to purchase health insurance through exchanges.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. BAUCUS. Mr. President, how much time remains on our half hour?

The ACTING PRESIDENT pro tempore. There remains 2 minutes 40 seconds.

Mr. BAUCUS. I yield 2 minutes 40 seconds to the Senator from Missouri.

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized.

Mrs. MCCASKILL. Mr. President, we have had a lot of that childhood story we all learned of ''Chicken Little.'' We have had a lot of Chicken Little around this building in the last few months: The sky is falling, the sky is falling. You know, I woke up this morning, I looked up and the sky was not falling. Every day that goes by in America people are going to realize the sky is not falling. In fact, as time goes on that sky is going to get bluer and brighter because people in America are going to realize this bill is not full of booby traps, it is full of good things that will reform health care.

I rise this afternoon to take a couple of minutes to talk about a new low of obstructionism, taking game playing to a whole new level. In 10 minutes I was supposed to convene a hearing on the contracts for police training in Afghanistan. This is a very important part of our mission in Afghanistan, the training of local police departments. There was a witness who was going to be there from the State Department, a witness there from the Defense Department, the Inspectors General were going to be there.

Just last week GAO wiped out a contract that had been let on police training because of problems in the way the contract was competed. So this hearing was timely and it is important. We cannot succeed in Afghanistan if we do not have effective police training. These contracts are problematic. The State Department is supposed to be overseeing them. We have hundreds of millions of dollars not accounted for.

So what do I find out this morning? The Republican party is not going to let us have the hearing. What in the world? Why in the world are we not being allowed to work this afternoon? Why in the world are we not able to ask questions at a hearing in a few minutes as to why the police training is not going well in Afghanistan and how we can do better?

Our men and women are over there and they are at risk if we do not get this right. I don't get it. I don't get what the purpose of saying no is. I don't get what we accomplish. We are sent here to work. We are paid by the people of this country to work. The idea that I had to call these witnesses and say go home because the Republicans will not let us have a hearing—

somebody has to explain this to me. Disagree with us, debate, vote no—but let us work. I implore you: Let us work.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I have one unanimous consent request that we continue altering sides of the debate. I ask consent we continuing alternating back and forth, and the next half hour be on the Republican side.

I ask unanimous consent the next half hour be controlled by the Republicans and the half hour thereafter be controlled by the majority, and the half hour after that be controlled by Republicans.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, for the information of Senators, the final block of time is reserved to be under the control of the chairman for concluding remarks; that is, prior to a series of votes. I make that statement for the information of Senators.

The ACTING PRESIDENT pro tempore. The Senator from Kansas is recognized.

AMENDMENT NO. 3579

Mr. ROBERTS. I ask consent to call up Roberts-Inhofe-Brown amendment No. 3579, and I ask unanimous consent Senator CRAPO be added as cosponsor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Kansas [Mr. ROBERTS], for himself, Mr. INHOFE, Mr. BROWN of Massachusetts, and Mr. CRAPO, proposes an amendment numbered 3579.

Mr. ROBERTS. I ask unanimous consent the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To strike the medical device tax)

Strike section 1405 and insert the following:

SEC. 1405. REPEAL OF MEDICAL DEVICE FEE.

(a) IN GENERAL.—Section 9009 of the Patient Protection and Affordable Care Act, as amended by section 10904 of such Act, is repealed effective as of the date of the enactment of that Act.

(b) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

(c) APPLICATION OF PROVISION.—The amendment made by subsection (b) shall apply as if included in the Patient Protection and Affordable Care Act.

Mr. ROBERTS. Mr. President, included in the half trillion dollars in new taxes in this health reform bill is a tax hike of $20 billion on medical devices, a $20 billion excise tax on lifesaving medical devices. The nonpartisan Congressional Budget Office and Joint Committee on Taxation have both confirmed that these excise taxes will not be borne by the medical device industry if in fact that is what the other side wanted to do. Instead, the tax will be passed on to patients in the form of higher prices and higher insurance premiums. My colleagues are going to speak in greater detail about this tax, but let me take a moment to talk about some of the people who will bear the burden, and what types of devices will be taxed.

People with disabilities, diabetics, amputees, people with cancer and people with Alzheimer's are just some of the folks who will see their tax costs go up because of this tax. My amendment prevents this new tax from raising the already high cost for these groups by striking the tax on medical devices.

This is a tax on innovative devices as well, a device such as the cyberknife. The cyberknife is a noninvasive alternative to surgery for the treatment of both cancerous and noncancerous tumors anywhere in the body. Yet under this bill, such cutting-edge devices will be taxed. Those who need the treatment offered by the cyberknife will see the cost of that treatment go up. When innovative and lifesaving technologies such as the cyberknife are taxed, when the costs of many tests increase because the devices used in the tests are taxed, when the new devices are not developed and when fewer manufacturers are able to survive in the anticompetitive environment this tax will create, consumers of health care will suffer for it.

I urge my colleagues to support this amendment, and yield the remainder of my time to the distinguished Senator from Massachusetts, Mr. BROWN.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. BROWN of Massachusetts. Mr. President, I thank Senator ROBERTS for bringing this very important issue to the forefront. Many of you know I live in Massachusetts. We have over 225 medical device companies there. Before I got here, I visited many of them and the message was very clear, that if in fact that 3-percent medical device tax goes into effect, it is virtually all of their profit for many of these young companies and established companies.

Placing a tax on medical devices, in my opinion and their opinion, will dramatically affect jobs, not only in Massachusetts but throughout the country.

Unemployment in my State is hovering near 10 percent and we should be doing everything we can at this point to create jobs and stimulate the economy. I am hopeful that in the effort I made in the beginning for a bipartisan effort to start jobs with the first jobs bill that we can look at the areas we are trying to focus on to make this bill better. I am hopeful once again, through the Senator's leadership and that of Senator ROBERTS and others who sponsored it, we will look twice at what we are trying to do here in order to pay for the so-called health care bill.

As we are in the middle of a 2-year recession, taxing companies, especially vibrant companies throughout my State and throughout the country, I am fearful they will leave and go to other countries to do their business.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma is recognized.

AMENDMENT NO. 3588

Mr. INHOFE. Mr. President, I call up amendment No. 3588 and make it pending.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE] proposes an amendment numbered 3588.

Mr. INHOFE. I ask unanimous consent we dispense with the reading of the amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To exclude pediatric devices and devices for persons with disabilities from the medical device tax)

On page 99, between lines 9 and 10, insert the following:

(e) EXCLUSION OF MEDICAL DEVICES FOR PEDIATRIC USE AND PERSONS WITH DISABILITIES.—

(1) IN GENERAL.—For purposes of section 4191(b)(1) of the Internal Revenue Code of 1986, as added by subsection (a), the term ''taxable medical device'' shall not include any device which is primarily designed—

(A) to be used by or for pediatric patients, or

(B) to assist persons with disabilities with tasks of daily life.

(2) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

(3) APPLICATION OF PROVISION.—The amendment made by paragraph (2) shall apply as if included in the Patient Protection and Affordable Care Act.

Mr. INHOFE. Mr. President, President Obama repeatedly promised during the campaign that no one making under $250,000 per year would see their taxes increase. However, the Democrats claim to spend $2.6 trillion in new health care at a time when the country cannot afford the promises they have already made and we have a record 1-year budget deficit, $1.4 trillion.

We hear President Obama always talking about what he inherited from George W. Bush. What he inherited was nothing like what he did. He actually raised the deficit $1.4 trillion in 1 year. That is more than President Bush did in his last 5 years.

The HELP bill, which recently passed the House, represents an unprecedented

expansion of government control and increases taxes on Americans during a difficult economic time. But the Democrats did not stop with one expensive health care bill. Now the Senate is debating a fix-it bill which increases taxes an additional $50 billion on the American people.

Reading through the legislation, I am struck by a myriad of ways this raises taxes on American citizens, from job-creating small businesses to middle-income families—over a half trillion dollars of new taxes.

If you happen to need a medical device—that is what we are talking about right now—you get taxed under the bill. Section 9009 of the recently passed health care bill imposes a new tax on assistive devices, which includes items such as pacemakers, ventilators, and prosthetics, and incubators for premature babies. The fix-it bill—I call this the payoff bill because as you all know the Speaker of the House had to pay off all these individuals. We understand how that works. That is what this bill is all about right now. That is why it needs to be amended. This is what we are currently debating. It actually expands to include more medical devices such as tongue depressors, elastic bandages, most hand-held dental instruments, and examination gloves.

I am joining with my Republican colleagues to propose an amendment striking the tax on medical devices.

Additionally, I have filed amendment No. 3588—that is what we are talking about now—that will strike this expansion of taxes on assistive devices for two of the most vulnerable populations, children and individuals with disabilities.

I have previously spoken on the floor about this new tax and how it hurts Americans. Let me remind you of a couple of examples.

My son-in-law Brad Swan installs pacemakers and defibrillators. I know this is true because he lives right across the street from us. At 1 o'clock in the morning he was called to an emergency involving a young 8-year-old boy with no heartbeat whatsoever.

He was born with congenital heart disease, was able to have a pacemaker put in that morning, right after he was called, and now he has a full, healthy life ahead of him. My older sister Marilyn faced a similar situation and is alive and healthy today. Additionally, Dr. Stanley DeFehr, a cardiologist in Bartlesville, OK, explained to me that:

> The cost of a pacemaker [we are talking about $5,000; it is something that lasts 10 years] pales in comparison to the cost of a stroke or multiple fractures.

Now with this tax, we are making these medical devices more expensive for families, which may prevent others from accessing the device they need in order to enhance or even save their lives.

I have never been through anything like this in the 20 years I have been here. We look at the tax increase in this bill of $569 billion; now it is going to be more than that.

Additionally, I was talking this morning in Chickasha, OK, on a radio show, and the person intervening me was talking about his 94-year-old mother and how she depends on Medicare. I explained that there is $523 billion in Medicare cuts in this bill.

So, you know, the White House was celebrating. You could hear the champagne corks popping all night long. Yes, they successfully increased taxes by $569 billion.

So I encourage people to vote for this amendment to at least relieve part of the problem that is out there. It is amendment No. 3588.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

AMENDMENT NO. 3644

Mr. HATCH. Mr. President, I ask unanimous consent that the pending amendment be set aside. I have an amendment at the desk.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

> The Senator from Utah [Mr. HATCH], for himself, Mr. COBURN, and Mr. CRAPO, proposes an amendment numbered 3644.

Mr. HATCH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To protect access for America's wounded warriors)

On page 99, between lines 9 and 10, insert the following:

(e) EXCLUSION OF MEDICAL DEVICES SOLD UNDER THE TRICARE FOR LIFE PROGRAM OR VETERAN'S HEALTH CARE PROGRAMS.—

(1) IN GENERAL.—For purposes of section 4191(b)(1) of the Internal Revenue Code of 1986, as added by subsection (a), the term ''taxable medical device'' shall not include any device which is sold to individuals covered under the TRICARE for Life program or the veteran's health care program under chapter 17 of title 38, United States Code, any portion of the cost of which is paid or reimbursed under either such program.

(2) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

(3) APPLICATION OF PROVISION.—The amendment made by paragraph (2) shall apply as if included in the Patient Protection and Affordable Care Act.

Mr. HATCH. Mr. President, before I talk about my amendment to exempt our Nation's wounded warriors from this new medical device tax, let me take a moment to talk about the enormous tax burden imposed under this bill.

Republicans in Congress agree with the majority of Americans who believe that simply throwing more hard-earned taxpayer dollars at a $2.5 trillion health care system will not deliver meaningful reform. Simply raising more than $650 billion in new taxes at a time when our national unemployment rate stagnates near double digits is a really bad idea.

Now, let us take a look at the claims that despite more than $650 billion in new taxes in this bill, this big government bill will not raise taxes for Americans making less than $200,000 a year, a pledge that President Obama repeatedly mentioned both as a candidate and then as our President. Well, the Democratic chairman of the Finance Committee, and I commend him for his honesty, in his floor remarks on March 23, 2010, stated: One other point that I think is very important to make is that it is true that in certain cases, the taxes will go up for some Americans who might be making less than $200,000. We have known all along that this pledge is an illusion that will slowly but continuously disappear over time.

A recent analysis by former Congressional Budget Office Director Douglas Holtz-Eakin based on data provided by the Joint Committee on Taxation revealed some startling facts on the distributional impact of the Senate-passed bill. Let me share these findings with you:

Only 7 percent of Americans would qualify for the new government subsidy to help them pay for mandatory health insurance. 93 percent of all Americans will not be eligible for a tax benefit under this bill.

Twenty-five percent of Americans earning less than $200,000 a year would see their taxes rise.

So what does this all mean? For every one family that receives the government subsidy, three middle-class families will pay higher taxes.

Simply put, we will continue our march towards the Europeanization of America as fewer and fewer Americans continue to bear the burden of supporting the needs of a growing majority.

By the way, the figures I just discussed, do not take into account all the tax increases in this bill signed by the President yesterday, including hundreds of billions in new taxes on employers who do not provide coverage to insurance premiums, prescription drugs and medical devices.

Representatives from both the Congressional Budget Office and the Joint Committee on Taxation testified before the Finance Committee that these taxes will be passed on to the consumers. So even though the bill tries to hide these taxes as fees, average Americans who purchase health plans, use prescription drugs and buy medical devices will end up footing the bill. Every American knows that there is no such thing as a free lunch in this town.

Included in the $650 billion of new taxes in this health bill is a tax hike of $20 billion on medical devices. Of the few exemptions included in the reconciliation bill, there is no mention of

the brave men and women in the military and our veterans who have sustained injuries defending this country during the wars.

My amendment would prevent this new tax from raising costs or hurting access for American soldiers and veterans by exempting medical devices used by the TRICARE program and the Veterans health care program. We must protect our wounded warriors who rely on these life-saving and life-enhancing medical devices.

I urge my colleagues to stand up for our brave warriors and support this amendment.

Let me tell you, I hope my colleagues on both sides will stand up for the wounded warriors. I hope they will stand up and realize that these folks should not be hammered with higher costs on medical devices. We owe them a debt of gratitude not more taxes.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. I wish to speak in support of Senator INHOFE's amendment No. 3588, which would be to exclude medical devices for children and persons with disabilities from a medical device tax.

I know that when you talk about a medical device tax and if it is on the manufacturers, you are going to say: Well, what should I be concerned about that for because some manufacturer is going to pay it. Well, don't fool yourself. You know, corporations do not pay taxes, only people pay taxes, and there are three categories of people who pay taxes: stockholders or employees or consumers. And I will bet in most cases consumers end up paying for that.

So this provision in this bill is much broader than the Inhofe amendment would apply to, but I think Senator INHOFE has picked out a very important aspect of adding taxes, the extent to which surely the vulnerable people whom you call children and persons with disabilities are consumers who shouldn't be paying for a tax to pay for a bill that 59 percent of the people in this country say they are against. But because the majority party and the President want to make history, just make history, don't worry about the people at the grassroots of America, what they think.

So there are all these taxes and all of these fees in here, and I compliment Senator INHOFE for his leadership in at least trying to reduce this burden on people who are very vulnerable, people with disabilities.

Of the many taxes in this bill, I am especially worried about the tax on medical devices. What will happen when the Democrats impose a new tax hike on $20 billion of these innovative medical devices? During the markup of the Finance Committee bill, I asked the question to the nonpartisan Congressional Budget Office and the nonpartisan Joint Committee on Taxation.

For people who might not understand the emphasis of ''nonpartisan'' about the Congressional Budget Office and the Joint Committee on Taxation, I would like to say it is very important that you understand that because everybody thinks everything connected with Congress is totally political. Well, these are professionals who are around here a lot longer than a lot of Senators and Representatives, and then their job is, in a professional way, to look at what things cost and how much money certain taxes will raise. So they are kind of like God around here. They are believed. If you want to overrule them, you know, it takes 60 votes. That is a lot of power when you have to have 60 votes to overrule something on a point of order.

So explaining what nonpartisanship is with the Congressional Budget Office and our constituents understanding that so they understand we are not quoting a Republican or a Democrat, we are quoting professionals, I think is very basic to understanding the points we individually make so that they are accepted as intellectually honest.

In this particular case where these two offices—both of them said these excise taxes will be passed on to consumers in the form of higher prices and higher insurance premiums. When I began my remarks, I said that is what is going to happen. Well, Chuck Grassley said that, but I want you to know that is what these professionals in the Joint Committee on Taxation and the Congressional Budget Office backed me up in saying.

Who are the consumers of these devices? I have the exact language here of how these things are going to be passed on to consumers so that you know, you see the document right here.

Who are these consumers of these devices who will bear the burden of the new medical device excise tax? I would like to tell the story of the Tillman family, a family who would bear the burden of this new medical device tax.

At only 5 months old, Tiana Tillman had her life saved by a medical device.

This story has received a lot of attention because Tiana's father is a professional football player for the Chicago Bears. However, lifesaving stories like this happen all across the country.

When Charles Tillman reported to training camp in 2008, it was not long before his coach told him his 5-month-old daughter Tiana had been rushed to the hospital. When Charles got to the hospital, Tiana's heart rate was over 200 beats per minute. The doctor told Charles and his wife Jackie that Tiana may not make it through the night.

Tiana survived the night, and after a series of tests, she was diagnosed with cardiomyopathy, that is, an enlarged heart that is unable to function properly. Her condition was critical, and without a heart transplant, she would not survive. But finding pediatric donors is very difficult, and many children do not survive that long wait time.

Tiana was immediately put on ECMO, a device that would help the functions of the heart while Tiana waited for a transplant. However, ECMO is an old device that has many shortcomings.

The Tillmans waited for one of two outcomes: either Tiana would receive the transplant or she would die waiting on ECMO.

If you want to know, ECMO is E-C-M-O, an acronym.

But then doctors told them about the new pediatric medical device called the Berlin Heart—the Berlin Heart is an external device that performs the function of the heart and lungs—the Tillmans decided to move forward with the Berlin Heart. After 13 days of being on ECMO without any movement, Tiana underwent surgery to connect the Berlin Heart. After the operation, you can see Tiana in that photo. It pumped her blood through her body—a job her heart could not perform on its own. Doctors said the Berlin Heart helped Tiana regain her strength because she was off the paralytic medication and finally moving.

Not long after Tiana connected to the Berlin Heart, a donor was found and Tiana underwent an 8-hour transplant surgery. The risky surgery was a success, thank God. Usually it takes some time for a new heart to start working, but doctors said that due to Tiana's strength, her new heart started working immediately.

So you see here Tiana today. She probably loves that football just like her dad loved the football. She is a happy and healthy 2-year-old girl. She enjoys playing on her swing and watching her dad play football.

Without the Berlin Heart to keep her alive and help her to gain strength, she might not, in fact, be alive. Democrats would increase costs for families such as the Tillmans with this tax, particularly. But it will be relieved somewhat if we adopt the Inhofe amendment. In fact, the Democratic bill would tax most pediatric medical devices. I wish to make clear that any vote against the Inhofe amendment is an endorsement of the tax on devices such as the Berlin Heart and many others children across this country rely upon. Not only that, it would also probably have a great impact upon research that brings about some of these miracle medical devices that make a difference. Taking money away from research at businesses is going to delay the miracle things that come along, whether they are pharmaceuticals or medical devices.

We should not be discouraging that. In the rest of the world, there has not been as much research done in the rest of the world as is done in the United States. Maybe go back 50 years ago and you had Germany and other European countries very much involved. But their government taking over everything and their high rates of taxation are drying up resources used for research. So the United States has been the beneficiary of that. Our pharmaceutical industry and medical device

industry have taken advantage of it. So much new development around the world in the enhancement of these devices as well as pharmaceuticals have come because of the research we do. This tremendous tax burden that the American consumer is going to feel from the massive money coming in to fund this bill, which isn't going to drive down health care costs, is going to stymie a lot of innovation we should not want to stymie.

May I ask the Chair how many minutes my side has remaining?

The ACTING PRESIDENT pro tempore. The Senator has 3½ minutes remaining.

Mr. GRASSLEY. I will take that 3½ minutes to comment on another aspect of the bill. This is not on the Inhofe amendment, at this point. It is something unrelated to health care, but in a sense it is related to health care. This is the nationalization of the student loan program. For a long time, colleges on behalf of their students have had the benefit of going with a direct student loan from the government or getting it through the banks. They have voted by their feet, by the overwhelming amount of them going to the banks to get their student loans. Now this reconciliation is going to nationalize student loans, have just direct loans. There are about 31,000 people around the country who have something to do with student loans. Those people are going to be out of work at a time when we are all talking about jobs. We need to do something for jobs. So we're going to nationalize education loans and have that unemployment and then take four call centers around the country to take its place. Do you think college students are going to get the service they get when they have to deal with the Federal bureaucracy redtape? I don't believe so. But there's supposedly a certain amount of savings in this. I don't know whether it is real savings, but the CBO, which I say is God around here, scored it as a certain amount of savings, even considering the fact that the government is going to have to borrow $½ trillion to get this program underway. They are going to use those supposed savings from the student loan program to fund this bill, the health care bill.

We are in a situation that is just something that common sense Americans in the Midwest are not going to understand. But it is something, I suppose, you would expect to happen in Washington, DC, which is an island surrounded by reality, that you are going to have college students who are going to pay 6.75 percent interest on their loans to the Federal Government that the government only pays 2.75 percent to borrow, that you are going to be taxing college students to pay for health care. It doesn't add up, at the very same time that too many of us in this body are complaining about the increased cost of education.

I hope the college students will speak up in this particular instance about what is being done, that college students should not be taxed to provide health insurance. But this whole health care bill taxes everything. It just seems like everything.

How many minutes are remaining?

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from New Jersey, Mr. LAUTENBERG.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I thank Senator BAUCUS for his leadership on this health care reform effort that is underway.

This is the most astounding thing. For all these weeks, our friends on the other side have said no, no, no to health care. Not one good word. Not one of them stood and said: Yes, we should cover 32 million people who don't have coverage; yes, we should cover young people who want to join their parents' health insurance policy. They said no to small businesses that need help in providing affordable health coverage to their employees.

Many know that recently I was stricken with an illness. Five weeks ago this time, I was in an ambulance on my way to the hospital, bleeding profusely, very sick. I was lucky. I had health care coverage. The doctors were there waiting for me. They were there to give me transfusions. They were there to give me intravenous fluids. They were there to care for me. I had nursing care, and I came through a crisis, as my children stood by, my four children stood by with their fingers crossed, pleading for my health to return. It was because I had health care coverage that I am standing here today on my way to a full cure—less hair but still willing to fight the fight for the people I represent, for the people across this country who are being denied coverage in any way they can do it.

What we see is obstructionism at its worst. I have yet to hear them say: Let our conscience come out here and say we ought to cover these people, that we ought to make sure health care is affordable.

The night I was brought into the hospital and was so fortunate enough to have the health care coverage I had, during the days of recovery I thought: What would happen if I was 40 years younger, had two or three kids, had no health care coverage, and I came in, in this kind of critical condition? The chances of my walking out of that hospital would have been very low.

So I say to my friends on the other side, they are not bad people, they are just totally wrong. They don't want to say that a young person can join their family's affordable health care insurance. They don't want to encourage people to find insurance that is affordable through the exchanges that are provided. They don't want to permit people who are there without coverage, who would force their way into an emergency room, perhaps, and say: Look, I am very ill. I have no pep. I feel terrible. Take care of me. Yes? Take a number like you do in a supermarket. You are No. 32. We will get to you. Don't worry about it.

Well, I worry about it because I know a different kind of America. I know an America that was there for me when I needed an education. I know an America that is there for people. I get letters from them all the time that say thank you for helping us to be able to afford a better education. Thank you for the things you can do.

I say to my colleagues on the other side: Open up. Tell the truth. If you don't want to give those people affordable coverage, then throw in the coverage you have. Throw in your policy. When you say no to the 32 million people, say: I mean it when I say no. I am giving up my coverage similar to those people out there. Tell the truth about how you feel about the people who stand there without coverage, worrying every day whether an illness is going to rob them of their jobs, of their opportunity to perform their parental duties or any duties. That is what ought to happen. Stand. Vote no, vote no against anything that improves or might improve this insurance and say: No, I mean it when I say no. I mean it. I am willing to give up the coverage I and my family have.

I am talking to the Senators on the other side. Say no and mean no. But mean it for yourselves as well as the people outside who are begging for the coverage.

I thank the Chair.

Mr. BAUCUS. Mr. President, I thank my good friend from New Jersey. I am reminded how he led the fight years ago to stop cigarette smoking in airlines. I was so pleased when he did that. I know many millions of Americans who are still pleased. It was he who did it.

I yield 10 minutes to the Senator from Oregon, a big leader in health care reform. He has been working health care reform as long as I can remember. I thank the Senator from Oregon.

The ACTING PRESIDENT pro tempore. The Senator from Oregon is recognized for 10 minutes.

Mr. WYDEN. Before he leaves the floor, let me echo the praise for our friend from New Jersey, who has prosecuted the case against cigarettes for so many years. We are thankful to him. What a strong advocate he is.

I thank the chairman as well for all his efforts. I wish to highlight a couple provisions he and I worked on together that speak to the headlines we are seeing in this morning's newspaper; in particular, the provision he and I partnered on that allows States to innovate and take their own fresh approaches in terms of addressing health care challenges. We all read today about how roughly a dozen States are

already challenging the important, recently-signed health care law on the grounds that the individual mandate is unconstitutional. He and I worked very closely together to ensure that States could have a waiver to, in effect, go out and set up their own approach. In fact, counsel to the Senate Finance Committee specifically said, in response to our questions during the markup of health reform, that if a State could meet the general framework of our legislation, it did not have to do it with an individual mandate.

I thank the chairman for stepping up and empowering the States. I want the country to know that under the legislation Chairman BAUCUS worked on with me, every State does not have to litigate. They can innovate. They can go out and look at fresh approaches to address our health care challenges. That would include doing health reform without an individual mandate. I have followed the discussion on the floor over the last couple days about how somehow reform would Europeanize the health care system. On the contrary, what Chairman BAUCUS has done, with Section 1332 of the health reform bill, similar to what I sought to do in the legislation I drafted that had bipartisan support, is to send a message to all the States all across the country that we invite them to come up with the kind of fresh, creative ideas that are going to help us hold health care costs down. In fact, the chairman and I spent a lot of time trying to make sure States could tailor their own health insurance exchanges, which would be fresh marketplaces, so that, for example, an approach in Montana or Oregon that folks there thought made sense, could be entirely different than a strategy New York would try on its own. Not only is section 1332 a provision that allows for State innovation, but, as the chairman knows, there is also another approach that our colleague Senator CANTWELL came up with that advances similar State innovation, allowing States to set up a basic health care plan.

So my message to these States talking about litigating right now is, why would you say at this point you are going to go out and go to court and sue everybody in sight when, in fact, what the President signed yesterday gives the States the authority to come up with their own approach? Senate Finance Committee counsel is on record as saying that States could pursue their own approach without an individual mandate. I hope—given the amount of attention that is being paid this afternoon to the question of States filing these lawsuits, alleging the law is unconstitutional because of the individual mandate—I hope some of those States will take a look at section 1332 that, in my view, ought to be attractive to elected officials all across the political spectrum who share the view Chairman BAUCUS and I share; which is, we would like to empower the States.

Another area where innovation is encouraged to occur is the Medicare Advantage provision in our legislation. We have had a lot of discussion on the floor about Medicare Advantage. Having been involved with this program for a number of years, and its predecessors during the days when I was codirector of the Gray Panthers, I wish to offer up to colleagues that not all Medicare Advantage is created equal. Two years ago, we heard testimony in the Senate Finance Committee about some Medicare Advantage products that, as far as I am concerned, are so shoddy and so devoid of consumer protection the people who sold them ought to be in jail. We have taken steps to add consumer protection to the Medicare Advantage Program.

On the other hand, there are very good Medicare Advantage Programs in our part of the country that have been able to win recognition from the Federal Government as high quality plans. In fact, under this legislation, plans that have earned a high quality rating from the Federal Government on the basis of, for example, how they manage chronic conditions, the kinds of screenings they do of a preventive nature, and their responsiveness to member complaints, when they get a high rating from the Federal Government on the basis of such criteria and earn those extra stars, they will get bonus payments. This was an idea the Chairman worked closely with me on when the legislation was advanced by the Finance Committee.

We will probably have further discussions on the floor about Medicare Advantage, but I only come to the floor today to say—for those who are interested in promoting quality; for those who believe that no matter how much you do to contain costs, you also have to beef up quality—take a look at the work that was done with respect to Medicare Advantage. It acknowledges that not all Medicare Advantage is created equal.

(Mr. MERKLEY assumed the Chair.)

Mr. WYDEN. The Presiding Officer in the Senate, who has just joined us, knows that our home State has the largest percentage of folks in Medicare Advantage than any other State in the United States: over 40 percent. They happen to be in good plans with those high ratings I mentioned from the Federal Government. So clearly, our States with high quality are going to be appreciative of this. But so will all the other programs across the land that have similar ratings, and we will have created an incentive for all of those other Medicare Advantage Programs in the years ahead to meet our standards.

I come to the floor briefly this afternoon to point out these two provisions in the bill that promote quality and innovation. First, I hope States will use the provision that creates incentives for them to innovate. Our message ought to be innovate rather than litigate. I hope attorneys general will remember that in the days and weeks ahead.

Second, I hope colleagues will look at the new incentives in this legislation to promote quality in the Medicare Advantage program and beyond because I believe those two provisions in this legislation—that encourage State innovation, that promote quality in the Medicare Program—ought to be widely supported by colleagues on both sides of the aisle in the days ahead.

That is, in my view, the kind of approach that can bring the American people together and help us implement this law in a fashion that is in line with what Americans want: good quality, affordable care, and reform that works for them.

Mr. Chairman, I thank you for this time and particularly for your help on those two provisions that I think ought to appeal to both Republicans and Democrats in the days ahead.

Mr. BAUCUS. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Might I inquire, Mr. President, how much time remains on this side for this block?

The PRESIDING OFFICER. Fifteen minutes.

Mr. BAUCUS. I thank the Chair.

Mr. President, I yield 10 minutes—5 minutes—to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Thank you, Mr. President. I say thank you to the Senator from Montana for his generosity. I will not take 10 minutes. I know the Senator from Pennsylvania is here.

Mr. President, I stand here today for the millions of Coloradans and American families who are sick and tired of the name calling, the bickering, and the partisanship in Washington.

I am here today for over 800,000 uninsured Coloradans who will now have a fighting chance to get the health care they need.

I am here for the 1.2 million Coloradan children who will never again be at risk of being denied coverage because they have a preexisting condition.

I am here for the 70,000 small businesses that will get a tax cut to provide health insurance, so they do not have to make the terrible choice between providing health care coverage for their employees and keeping their doors open.

I am here for the hundreds of thousands of seniors who depend on Medicare and expect us to protect and preserve it for generations to come.

We have passed a bill that makes our country more competitive, ends insurance company abuses, gives people more coverage, and starts putting our country on a more sound fiscal footing for the next 20 years.

I join those on this side of the aisle and on the other side of the aisle who have said this is not a perfect piece of legislation. No piece of legislation is perfect. But it is a great first step for the reasons I said.

The nonpartisan Congressional Budget Office has confirmed a $143 billion reduction in the Federal deficit over 10 years, as a consequence of our passing this legislation, and a $1.2 trillion reduction in the first 20 years.

Now we need to pass this reconciliation bill—a bill that gets rid of the special deals I spoke out against at the end of the year, a bill that makes sure our seniors can afford the prescription drugs they need, a bill that covers more people in my State of Colorado.

But the insurance companies and the special interests have not given up. The defenders of the status quo are still at it. Put simply, to amend the bill is to kill this bill. The only reason we are going through this process is because opponents of health care reform want to kill the bill. Now is not the time to play games with the lives of thousands of Coloradans and millions of Americans, and I will not do it.

There are also some who are well intentioned and want to amend this bill to include a public option. I am and have been a strong proponent of a public option and, like a lot of people, have taken a lot of heat for it. I am not sure why because everywhere I went in Colorado people said to me: MICHAEL, if you are going to require us to have insurance, we want as many choices as possible for our family. Please don't force us into this private insurance if there are other options out there.

A lot of us did all we could to convince the House to include it in this bill, and we were disappointed when they did not. We are going to continue to fight for it until we get a vote. We will have our vote on a public option. But I will not risk the well-being of Coloradans to do it, and I will not play into the hands of those who want to kill the bill.

So today I stand with many of my colleagues, with the American Diabetes Association, the American Hospice Foundation, the Autism Society, Doctors for America, Easter Seals, and the National Alliance on Mental Illness, along with over 150 organizations that want us to pass this bill as well. I stand with AARP which knows that changing this bill now will put seniors at risk.

But more important than all of that, I stand with the people of Colorado who expect more from their government and who want more for their children and grandchildren than politics and name calling.

I urge all of my colleagues to pass reconciliation and send this bill to the President's desk.

I yield the floor.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield the remainder of the time to the Senator from Pennsylvania, Mr. CASEY.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I am grateful for this opportunity to speak about health care. I commend our chairman, Senator BAUCUS, for his great leadership in the Finance Committee and on so many other important issues we have been wrestling with with regard to health care.

We have had a chance over many months now—and even as we speak today—to talk about a lot of the policy of the bill the President signed into law, our health care bill we passed here in the Senate, and, of course, the policy contained in the bill we are considering now. But sometimes it is important for us to step back and talk about some—not all—but a few examples of some of the real people out there on whom this legislation will have an impact.

I have spoken a number of times about Trisha Urban from Berks County, PA—all the problems she and her family had with their health care: denied coverage because of a preexisting condition, running into problems when the insurance company dropped coverage. Her husband died in the process. And the same day he died, her daughter was born. I have told that story a number of times, and I will tell it again.

I also want to highlight what has happened to another family, the Ritter family from Manheim, PA, Lancaster County. The family has two young girls whom I have met. I met them in 2009. As children, these two little girls, Hannah and Madeline Ritter, hit their lifetime cap on their cancer treatment before they completed their course of treatment. When they hit this cap, they were 4 years old, these two Ritter twins. If that is not proof that comprehensive health reform is needed now, I do not know what more we can say.

We are very happy the President signed into law the bill we passed in December. Now the health care reform is the law of the land. The Ritter twins—Hannah and Madeline Ritter—will not have to worry about how to get or keep health insurance coverage throughout their lives because, in 2010, strong consumer protections will go into effect. Not only will these protections ensure that these two little girls—Hannah and Madeline—not only will it ensure they can have access to the medical care they need to grow up healthy, but also they will be able to reap the benefits of other parts of this bill.

This bill will also help hard-working insured Americans from having to declare bankruptcy due to medical bills, as the Ritter family of Manheim, PA, had to do at one point. I do not have the time in this segment to be able to tell their whole story, but suffice it to say, in addition to the nightmare their daughters lived through, the family had to declare bankruptcy.

But some highlights of what this bill means to real families: Health insurance reform puts American families and small business owners—not their insurance companies—in control of their own health care.

Secondly, this bill makes health insurance affordable for middle-class families and small businesses—one of the largest tax cuts in history—reducing premiums and out-of-pocket costs.

Third, it holds insurance companies accountable, at long last, to keep premiums down and prevent denial of care and coverage, including for preexisting conditions.

No. 4, this legislation improves Medicare benefits with lower prescription drug costs for those in the doughnut hole, better chronic care, free prevention care, and nearly a decade more of solvency for Medicare.

Finally, No. 5—and this is not a comprehensive summary but one more point—this legislation reduces the deficit, according to the Congressional Budget Office, by $143 billion over the next 10 years. If you look at the 10 years after that, 20 years in total, it is well over $1 trillion.

So this is a bill, and this is legislation, whose time has come. At a time when our State—in Pennsylvania, where we have 577,000 people out of work, almost a record number of people out of work in Pennsylvania—we have to make sure that one of the things we put in place is a more secure health care system for workers and their families.

We all have heard the list of provisions that will go into effect right away. Small businesses will have access to—have the eligibility, I should say—for tax credits. Some companies will get credits up to 35 percent of the dollars they spend on premiums. The Federal Government will be investing in community health centers even in greater amounts than the Federal Government does now. Older citizens would not be affected by the doughnut hole problem where they have to pay the whole freight for prescription drug costs for several thousands of dollars' worth of care. They are going to get relief from that. In 3 months' time—3 months from yesterday—people with preexisting conditions will be able to get help from a high-risk pool, a special fund to help them in that crisis.

As we know, in 6 months—in September—children will have the full legal protection in new insurance plans for denials of coverage—or I should say against denials of coverage—for a preexisting condition.

So for all of those reasons and more, whether we are thinking about the problem that Trisha Urban and her family had before and certainly after her husband's death, or the Ritter twins, Hannah and Madeline Ritter, we hope more families have the benefit of the protections in this bill. We know one thing. We know small businesses across the country are starting to get a sense now of what this will mean in terms of helping them with the tax credit, helping their employees with the critically important issue of health care.

Mr. President, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I believe the Senator from Tennessee is here and ready to speak.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I might meditate for about 60 seconds and step back up. I now notice the absence of a quorum, unless I should give it to the other side.

Mr. GREGG. No. If the Senator is not ready to speak, I will speak.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. The Senator from Tennessee is going to offer an amendment in a second, and I will follow him with an amendment. I wish to highlight what my amendment will do as we are waiting.

One of the extraordinary shell games that is played under this bill in the ''Alice in Wonderland'' claim that this bill is paid for is the fact that the doctors will receive a $285 billion cut in their reimbursements if this bill goes forward in its present form. We all know that is not going to happen. So at some point there is going to have to be a doctors fix, which means $285 billion not accounted for in this bill will have to be spent over the next 10 years. Of course, if they had included this in the bill—this fact that doctors are being underreimbursed and that we are going to correct this; this is called the doctor fix, and we do it every year on an annual basis—if they had included it in the bill, as they should have because this is, after all, called health care reform, then the bill would have been in deficit even under the gamesmanship played by the Democratic Party on this bill.

Remember, the way they got a surplus in this bill in the first 10 years was they took 10 years of spending cuts, 10 years of revenues, and matched them against 6 years—6 years—of programmatic expenditures. So they were able to get a surplus, and CBO has to score what is given to them. If you are given phony ideas, you have to score them. In any event, what CBO was not asked to score as part of this health care, because there was no attempt to correct it, and even though it is the essence of health care, is how do you correct the reimbursed doctors.

So after the Senator from Tennessee proceeds, and I think he may be ready to proceed at this time, I am going to offer an amendment for a doctors fix so that this bill will address that issue which is, obviously, one of the core issues on the question of health care reform around here.

So I will reserve now on that issue and turn to the Senator from Tennessee who I see is ready to proceed.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I wish to thank the Senator from New Hampshire who I think has offered extraordinary leadership on this issue and on the issues regarding our country's huge amount of indebtedness. As does Senator GREGG, I find it hard to believe that we are taking over $500 billion in savings from Medicare, as he just mentioned, to leverage a new entitlement when we know that Medicare itself has a $37 trillion unfunded liability. As he mentioned, we go further by not even dealing with this doc fix which he was just discussing.

I look forward to his amendment, I look forward to supporting it, and I thank him for his leadership.

I wish to speak today about unfunded liabilities. I was the mayor of a city. I know the Presiding Officer served in the general assembly in the State from where he comes. I was the commissioner of finance for our State where we dealt with all of our financial issues for the State of Tennessee. I know Senator GREGG was a Governor.

One of the things that I think bothered all of us who used to serve at the city and State levels was unfunded mandates. It is an incredible thing where Washington will pass a piece of legislation and, by the way, have a major signing ceremony where everybody is patting each other on the back and celebrating that they just passed something, and the part that is left out is that the States across this country are left with a huge unfunded mandate.

We have a very good Governor in our State. His name is Phil Bredesen. He is a Democrat. He has spent a lifetime in health care. He has handled our State's finances very well. He called me on Friday with a sense of tremendous concern in his voice talking about the fact that this bill was going to cause the State of Tennessee, which is already experiencing huge tuition increases—we have all kinds of services there that we are having difficulties dealing with—and this bill is going to create a $1.1 billion unfunded liability for the State of Tennessee. I just find it hard to believe that, again, knowing the stress our States around this country are dealing with, we are passing legislation that puts in place a $1.1 billion unfunded mandate on the State of Tennessee.

But let me go a step further. This bill also violates something we thought was sacrosanct around here and that was the Unfunded Mandates Reform Act, which basically said that we acknowledge—most of us have come from other places, served in local and State governments, and we acknowledge that we should not be passing legislation that creates unfunded mandates. We shouldn't be patting ourselves on the back, passing legislation that we say is good for the people back home, and then sending the tab there.

So this bill violates that. I think everybody in this body knows it violates that. So it is just kind of, yes, we said we didn't want to deal inappropriately with States, but we decided we wanted to pass health care reform, and we are going to do it.

Let me come to the one that I find most fascinating. Senator GREGG was just talking about the fact that we have this 21-percent cut coming for physicians who treat Medicare recipients, and instead of taking the Medicare savings that we found in this bill and using that to make sure these physicians are paid, we are not going to do that. So in a short time, without us taking, again, emergency action—$200 billion or so—these physicians are going to have a cut.

Let me tell my colleagues what we are doing in this bill, and I think the Presiding Officer may already know this, but in addition to creating in our State a $1.1 billion unfunded mandate, we are going to pay physicians who treat Medicaid recipients at the same level as, if you are a primary care physician, as Medicare reimbursements are today, but we are going to do that for 2 years.

Now, this is like the worst joke ever that we can play on our States. What we are saying is, we are going to mandate to the States that the primary care physicians who treat Medicaid recipients, their rate has to be jacked up, and we are going to provide the money for that for 2 years, but then that drops off. So not only do we have this issue of the unfunded mandate, we are creating that exact cliff issue for States in this bill, which means that after this 2-year period ends—after this 2-year period ends and we have given them the money to pay these physicians at Medicare rates instead of Medicaid, which is much lower—we are going to cut off the funding.

So the State is going to be in the position, obviously, of having to keep that up. It is like the worst joke ever.

I don't know how we can come up with legislation such as this and call it reform. I said this before. Half the people who are going to be receiving health insurance after this bill passes are going on a Medicaid Program.

There was a bill in the Senate that Senators WYDEN and BENNETT worked on together. It had some flaws. It would have been an interesting starting place, though, and that bill did away with Medicaid and caused Medicaid recipients to have the same kind of health care that you and I have. What we have done in this bill instead of that—instead of focusing on cost—we are going to put half of the new recipients in a program that none of us—none of us—would want to be in, and we are calling that health care reform.

So I do plan later to offer an amendment to deal with this issue of unfunded mandates. I think it is wrong for us as a country to have people in Federal office who push their desires off on people and then call them to pick up the tab. I was a mayor. I was a commissioner of finance. The Presiding Officer served in the general assembly. Senator GREGG served as a Governor.

We know that is wrong. I don't know why we are doing it. I plan to offer an amendment to correct it.

Mr. President, I thank you for the time, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3651

Mr. GREGG. The States don't have the elasticity the Federal Government has, which we will not have much longer, by the way, as a result of passing this bill specifically because our debt is growing so fast that it is going to be very hard for us 5 or 6 years from now to be able to sell our debt at a reasonable price, in my opinion, and we are going to find that maybe some people don't even want to buy our debt.

There was a very significant event this week when it was determined that the debt issued by Warren Buffett was going out at a lower cost than the debt issued by the United States of America. That is the first time that anybody can remember something like that, and that is a very clear statement by the markets that they are getting very worried about how much deficit and debt this government is running up.

Now we pass this bill which adds $2.6 trillion to the spending of the U.S. Government and alleges it is paid for, but we know it is not going to be, and creates new entitlement programs which we know would not be fully funded. Even if it were paid for, it takes resources which should be used to reduce the debt, especially in the area of making Medicare more solvent, and uses them to expand new programs.

This event, as I have described it, is an astroid of debt headed at our country. The simple fact is, it is going to have an effect. The effect will be that we will have more difficulty selling our debt, the deficits and debt we pass on to our children will be extraordinary, and their ability to have a higher standard of living will be reduced as a result of that.

But the point, of course, is this bill, on top of all of the other egregious things it does in the area of fiscal policy—of running up debt and creating a massive government that we can't afford, being intrusive in everybody's health care delivery system, undermining the ability of small businesses to offer insurance, raising premiums, raising taxes on people not only earning more than $200,000 but earning less than $200,000, replete with special deals—on top of all of that, this bill, as Senator CORKER said, puts pressure on the States and local communities.

It asks them to spend money which they did not want to spend and which is not reimbursed. That is not fair. It is called unfunded mandates. It is inappropriate. We actually have a law around here that this bill basically runs over that says we will not do that.

As I said earlier, another thing this bill does, which I find extraordinary, is it does not address one of the elephants in the room relative to the cost of health care in this country, which is the fact that we are not adequately reimbursing our doctors; that our doctors are going to receive a $285 billion cut over the next 10 years, a $65 billion cut over the next 3 years unless we correct that. This is from basically a freeze level of reimbursement.

Every year we adjust that payment so doctors do get their money they deserve or at least some portion of it in that we do not keep up with inflation. But this bill, which is supposed to be a comprehensive resolution of health care, leaves the doctors out in the cold. It means every year they are going to have to come hat in hand, one more time, asking for something they should not have to ask for, which is a fair reimbursement for their services.

We will every year, hopefully, address it. But it is not right that we have a bill that does not even account for that.

Why was it not put in? It was not put in because if it had been put in, this bill could not meet the budgetary rules that give it the special protection that allows it to come to the floor of the Senate, and it would have been in deficit, at least over the first 10 years, by $100 billion, even using the gamesmanship scoring the other side of the aisle has used relative to the big bill.

This is not fair to the doctors. The doctors deserve better than this. We should correct this right now as part of this process. This trailer bill has the title ''fix-it bill'' on it. One thing we should definitely fix is the fact the doctors are getting shortchanged. So let's fix it. That is what my amendment does.

My amendment says: OK, this bill alleges it generates a surplus. Let's use part of that surplus to make the doctors whole for the next 3 years. It is a paid-for amendment. I cannot imagine anybody would want to oppose this amendment. After all, after we complete this bill—immediately after we complete this bill—we are going to do, I believe it is a 1-month extension to try to correct the doctor problem. How inconsistent, how fundamentally hypocritical is it for us to pass a major health care reform bill, and then in the next breath—literally the next breath—within the next 24 hours, this body will take up a bill to give a 1-month extension to the doctors fix. I think it is 1 month. That is not right. Let's do it now. Let's do it in this bill. Let's do the doctors fix. I have come up with a proposal that will take care of the doctors in a fair and forthright manner for 3 years.

That is my amendment. I am not sure if it is at the desk or whether I have to send it to the desk.

I send my amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] proposes an amendment numbered 3651.

Mr. GREGG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for a long-term fix to the Medicare sustainable growth rate formula in order to improve access for Medicare beneficiaries)

On page 61, between lines 3 and 4, insert the following:

SEC. ___. INCREASE IN THE MEDICARE PHYSICIAN PAYMENT UPDATE FOR THE LAST 9 MONTHS OF 2010 AND ALL OF 2011 THROUGH 2013.

Paragraph (1) of section 1848(d) of the Social Security Act, as added by section 1011(a) of the Department of Defense Appropriations Act, 2010 (Public Law 111–118) and as amended by section 5 of the Temporary Extension Act of 2010 (Public Law 111–144), is amended to read as follows:

''(10) UPDATE FOR 2010 THROUGH 2013.—

''(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), and (9)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for each of 2010, 2011, 2012, and 2013, the update to the single conversion factor shall be 0 percent for such years.

''(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2014 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2014 and subsequent years as if subparagraph (A) had never applied.''.

Mr. GREGG. Mr. President, let me summarize it again. We know the doctors are being shortchanged. They deserve fair treatment. It is pretty obvious that if we are going to do a health care reform bill, the proper place to correct the doctor issue of reimbursement is in that bill, not the next day in a short-term extension.

This is a forthright and fully paid-for attempt—and if it is passed it will occur—to reimburse the doctors at a fair rate for the next 3 years and correct what is known as the SGR problem relative to doctor reimbursement.

I cannot understand why we would not want to do something such as this.

I see the Senator from North Carolina. I will be happy to yield to him for any thoughts he may have on this amendment or the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I wish to reiterate the fact that this should be part of health care reform. It is not. It is shocking that we would have something of this magnitude that is not fixed in a reform bill. We have an opportunity in a bill that has now come before us, which is to fix the things they missed in the health care bill, to provide a 3-year comfort on the part of physicians around the country that their reimbursements are not going to

be cut. They are targeted for 21 percent. It expires March 31. There is not a more appropriate time than right now.

What a lot of us have said is: Let's pay for it. Let's simply pay for it. Enough is enough on spending money we do not have. Here is an excellent opportunity, where we have savings from the health care reform bill that we can now pump back in to pay for the fix to the sustainable growth rate about which the doctors have been under the gun.

We have extended it every 30 days for some time without paying for it. Here is a real opportunity in a bill that is designed specifically to fix things that were missed in the health care bill.

I thank my colleague, Senator GREGG, for understanding the importance of this issue and working up an amendment but, more importantly, saying to every physician in America: We can finally fix this, we can do it with money that is paid for and, more importantly, we can take you out of the box of this horror story of wondering what your reimbursement for services is going to be at any given point in time in the future.

Let's seize this opportunity in this bill and fix this sustainable growth rate.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, what needs to be fixed in this bill is a whole lot more than that, but this is a great attempt to try to solve a problem.

Let me describe a scenario, what is getting ready to happen. Every State is cutting Medicaid reimbursement. We are going to add 16 million people to Medicaid. We cannot get them all seen now. Then we have a doctor cut that is coming to 21 percent for people who are under Medicare. What is going to happen? What do you think the average physician in this country is going to do? I can tell you that they are going to do three things: Fewer will see Medicaid patients so there will be fewer doctors taking Medicaid at the time we increase the enrollment by 50 percent. That is No. 1.

No. 2, fewer doctors are going to take Medicare as we have this ballooning increase of baby boomers going into Medicare.

No. 3—and this is probably more important than anything—we are going to see a large percentage of doctors, with this bill passed with no continuity as to how they are ever going to get funded under Medicare, quit. They are going to quit. They can take their training, their effort, their education and knowledge and apply it in some other field of endeavor and not have to live with the hassle of a 21-percent cut hanging over their head.

Even if we fix it for 3 years, 3 years from now the same problem is going to come up, except it is going to be worse. So there is no fix in it. There is an unrecognized $300 billion to get doctors even, let alone take away the cut—no increase—with this amendment. My hope would be we would fix this situation for 3 years.

Mr. GREGG. Mr. President, I ask unanimous consent that we be able to participate in a colloquy on our side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I wish to ask the Senator from Oklahoma, who is obviously a physician and has an in-depth knowledge of this issue, I heard the other side of the aisle say: There are no cuts to the benefits of people on Medicare. If you reduce doctor payments under Medicare 21 percent, don't you think that is going to affect what they receive? Technically, there will be no cut because they will still have the right to see a doctor. Is it not going to be hard to see a doctor because doctors will stop seeing them?

Mr. COBURN. They are not going to find a doctor, and that is the whole problem. Whatever we see in the urban areas now, multiply it tenfold in the rural areas. We are going to increase eligibility for Medicaid to 133 percent of the poverty level, we are going to add 16 million people to a system that is not handling the people who are in it today, so we are going to promise them: Here is your Medicaid.

Now where is the care? It is not going to be there. There is not the available physicians in this country to care for 16 million new Medicaid patients.

If we, in fact, do not fix long term the SGR, physicians are going to do one of two things. They are either going to completely quit seeing Medicaid and Medicare patients or they are going to retire. Quite frankly, physicians my age who are still practicing are not doing it for the money; they are doing it because they love the patients. But they are going to be forced to quit because they will not even be able to pay their overhead to care for those patients.

Mr. BURR. If I may add to Dr. COBURN's comments and say, when you double the size of the Medicaid population, you are already forcing more doctors to say: I am not going to see Medicaid patients. But you are changing the payer mix. Every provider, every practice, every hospital is going to see more patients whose reimbursement is less. That is automatically going to affect Medicare right there because people are going to have to try to bring in more private pay, private insurance.

Mr. COBURN. Will the Senator yield for a second?

Mr. BURR. Absolutely.

Mr. COBURN. What it is going to do is exacerbate the cost shifting going on with Medicare and Medicaid right now, which means insurance rates for everybody else in the country are going to go up.

Mr. GREGG. I thought we were told insurance rates were not going to go up.

Mr. COBURN. All I will tell you is, the best guess of CBO—wonderful people, but they can only make decisions within the parameters they are given. There is no question private insurance, individual and family insurance, is going to go up, but everybody else's is because we are going to increase the trend of cost shifting from government programs to the private sector.

You are going to end up with three taxes. You will pay income taxes, you will pay a Medicare tax, and then you will pay a tax on your insurance—actually, you will pay four—and then you are going to pay higher health insurance premiums because the government does not cover the cost.

Mr. GREGG. I assume that is not just going to be people with incomes over $200,000.

Mr. COBURN. That is everybody in this country who has private insurance, either through their employer or the individual market.

Mr. GREGG. Isn't it equally likely that a large number of small employers will get frustrated with the rate increases they are getting in order to support people on Medicaid that they will simply drop that and push their membership, their employees over into this new exchange?

Mr. COBURN. Yes, they will pay the fee. They will pay the tax and say it is easier. Consequently, the young people in our country, because we do not have a big enough payment under the ''individual mandate,'' are going to say it is smarter for me to save my money, pay the fine, and not get insurance because when I get sick, I can get it. You are going to get what is called adverse selection, which is even going to drive the rates up further. Anybody 40 or older, watch out, your health insurance rates are getting ready to bloom.

Mr. GREGG. We have basically a multiplier effect——

Mr. COBURN. That is correct.

Mr. GREGG. In the area of costs being driven up as a result of this new policy of adding a huge number of people to an uninsured system that cannot afford it right now, Medicaid. The costs are going to multiply on people in the private sector. The effect will be higher premiums, less opportunity for your employer to give you insurance and, in the end, a higher tax rate for you, Americans who are just working Americans, not people with high incomes.

Mr. COBURN. And people who are not necessarily getting a subsidy.

Mr. GREGG. Then they do not even take care of the doctors. They cut the doctors 21 percent on top of all this.

Mr. COBURN. What happens to all this? What is the ultimate? The ultimate is failure of the insurance market.

Mr. GREGG. That is the goal, isn't it?

Mr. COBURN. That is the goal, so the government can control it all. I yield back.

Mr. BURR. Let me add, if I may, to my good friend, Senator GREGG, even though some would choose not to have coverage and pay the fine, we have an

emergency room system that is obligated to see those individuals when they have traumatic care. For those who claim we have sorted out the system where the high-cost delivery of care does not exist, no, we have again exacerbated the problem.

I think Senator COBURN hit on the key. As you try to handle the health care of individuals by limiting the reimbursement, whether that is the way we are limited in the problem you are trying to fix, whether we do it by shoving them into Medicaid, you have now cost shifted more money to the side causing greater inflation for the health care in this country.

Mr. GREGG. The Senator is absolutely right. Isn't it true one of the ultimate cost shifts is to claim that the health care bill is fiscally responsible when it ignores the fact that the doctors are being cut by 21 percent and does not even attempt to address that huge problem which represents $65 billion over 3 years?

Mr. BURR. I have learned throughout this whole process to never try to figure out what promises have been made. But I know the promise we have made to physicians—to reimburse them fairly for the services they provide—and anything less than that jeopardizes the pool of health care professionals we have and eventually will affect the quality of care simply because if the pool is not big enough to handle the patients, the quality will suffer.

Mr. GREGG. So I guess I would get on to the next question because it is pretty obvious we have to correct this problem with the physicians. In fact, as I understand it, the next bill immediately that we will consider will correct it for 30 days. Why wouldn't we correct it right now for 3 years, get that 3-year consistency in the system so physicians can have some confidence in their reimbursement rates, fully paid for? What possible, conceivable reason would there be not to vote for this type of amendment?

Mr. BURR. Because the Senator from New Hampshire remembers this body did pass a bill that partially paid for an extension of this through September of this year. The problem was, when they passed the health care bill, they used the pay-fors out of that extension bill to be included in this health care bill. Now they have gone to a point that they just seek the 30-day renewals and claim it is an emergency. One, I don't think that passes the threshold of emergency. I think it should be paid for. And there is a legitimate way to pay for it and extend it for 3 years, where this Congress can fully understand the implications of the current health care bill as it is implemented and put back the comfort of physicians around this country and their trust back in the system.

Mr. GREGG. Well, I think the Senator is absolutely right, but I would also suggest that maybe there is another reason they haven't paid for it in this bill or put the correction in this bill, which is that if they did that, the bill would fall because it would be out of compliance with the budget because it is a $285 billion cost over 10 years. Therefore, aren't they sort of trying to pull the wool over somebody's eyes here? Aren't they trying to act as if this bill that we know exists for our doctors, that we are never going to pay for it? We are not going to pay; we are just going to act as if it doesn't exist? We know as soon as this bill is over, we will have to do something about it, at least for the next 30 days.

Mr. BURR. You are absolutely right, it will be the first order of business when this bill is finished if we miss the opportunity to fix it in this bill and fix it for 3 years and actually fix it in a way that it is paid for.

Mr. GREGG. I see the Senator from Arizona has arrived.

Mr. MCCAIN. Mr. President, I ask unanimous consent to be included in the colloquy.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. I would say to the Senator from New Hampshire that there is some recent information that I find hard to believe, but apparently it may be the case. As we go through this 2,733-page piece of legislation, the IRS may need up to $10 billion to administer the new health care program this decade, and it may need to hire as many as 16,500 additional auditors, agents, and other employees to investigate and collect billions of new taxes from Americans. Is that possible, in this legislation, I would ask the Senator from New Hampshire?

Mr. GREGG. The Senator is absolutely correct, and that does call into question the representation that this bill is not a tax increase on Americans that we need 16,000 new IRS agents to enforce it.

Mr. MCCAIN. At $10 billion to administer. That is probably believable, given what is in 2,733 pages.

Mr. GREGG. Well, you are going to need one IRS person for everybody in America who doesn't have insurance, I guess, or however the ratio works out. Everybody has to buy insurance under this bill, and your local IRS agent is going to show up at your door to tell you that you better do it or else you will have to answer to the IRS.

We know there are no new taxes in this bill because that has been represented to us a number of times.

Mr. BURR. If I could add, it also adds some insight into how many people will choose not to have insurance and make themselves susceptible to the fine. The anticipation is the IRS is going to chase a lot of people to recover the fine.

Mr. MCCAIN. I would also finally add that perhaps we could get some indication—I think we should before we vote on passage of this bill—as to how many new bureaucrats and bureaucracies there are going to be with 193 new boards and commissions and other layers of bureaucracy. I think the American people are owed at least a round figure as to how many new bureaucrats there are going to be to administer this program.

I see the Senator from Montana, and I don't want to impede on what has been the agreed-upon rule here, but I did want to continue and say to my friends very quickly that I think there are several myths here that have to be refuted by the facts.

One is that this legislation will result in a tax cut for the American people. I would say to my friend from New Hampshire, we have to rebut that in the next hour.

The next myth is that the health care bill won't increase taxes on individuals with incomes under $250,000. The fact is, millions of Americans with incomes below $250,000 will pay higher taxes.

Another myth: The legislation will reduce the growth of health costs—President Obama's stated goal for health reform—and premiums will go down. The fact is, national health expenditures and premiums will increase.

Another myth: The legislation is deficit neutral. The fact is, commitment to health care spending under existing obligations increases the deficit.

Myth: ''If you like the plan you have, you can keep it.'' Fact: Millions of Americans with coverage will lose their current coverage, including 330,000 citizens of my State who have the Medicare Advantage Program.

Finally, the myth is that the law will provide immediate coverage for children with preexisting conditions. The fact is, children are not necessarily protected against discrimination for preexisting conditions.

So I hope we have a chance, I would say to my friend from New Hampshire, to address the allegations about this legislation, and perhaps the first one is that legislation will result in a tax cut for the American people when the fact is that taxes will increase for millions of Americans.

I would yield to my colleague from New Hampshire.

Mr. GREGG. I thank the Senator from Arizona, who has been one of the most cogent and thoughtful speakers on the issue of what this bill really does. He has hit the nail on the head time and time again with his points. They are all absolutely accurate.

Has the Senator completed his statement?

Mr. MCCAIN. Well, I just wanted to throw in here that perhaps one of the most egregious statements, and it is worth repeating, is this so-called doc fix. They are using an assumption that we will cut physicians' fees by 21 percent sometime this fall in order to make up—and please correct me if I am wrong—some $281 billion over 10 years, which we know is not going to happen. And the reason it is not going to happen is because doctors would refuse to take Medicare patients if they cut their reimbursement by some 21 percent.

So this is one of the fundamental assumptions they are selling this on, is that it is deficit neutral when it is not.

Mr. COBURN. If I may, I would like to add one other thing here. Think about it. We are talking about the cuts that are set to go. But since there is no tort reform in this bill, we spend $250 billion on defensive medicine and liability costs continue to rise. You could bring them back whole, but if you give them no increase, they are still going to quit seeing Medicare patients.

One other point I would like to make is with the student loan program being totally taken over by the government, 31,800 people in this country this July will lose their jobs. So we are going to lose 31,800 jobs in the private sector, but we will add 16,500 jobs at the IRS. I don't think anybody in America would like to see that happen.

Mr. MCCAIN. The CEO of Caterpillar wrote a letter saying that the taxes for Caterpillar would go up by $100 million next year. What does that do to Caterpillar? It obviously makes them either not hire or lay off individuals as they pay an additional $100 million. And I might point out, as we all know, Caterpillar's headquarters is in Peoria, IL.

So, again, I would ask the Senator from New Hampshire, is this legislation deficit neutral?

Mr. GREGG. No, it is not deficit neutral if you actually score the number of years of income against the number of years of expenditures or you include the doctors fix. Either one would throw this into a deficit-negative situation.

Mr. MCCAIN. Isn't that another of the great scams, that for 4 years the benefits are cut and the taxes are increased, and for most—not all but most—of this bill, none of the benefits really kick in until after 4 years?

Mr. GREGG. That is right.

Mr. MCCAIN. So when you score it, that is the way you make it deficit neutral over 10 years?

Mr. GREGG. That is correct. And it is a bit of a scam, as you say.

I am going to have to reserve the remainder of our time here for a moment, but I understand the Senator from North Carolina wants to bring up an amendment.

AMENDMENT NO. 3652

Mr. BURR. Mr. President, I ask unanimous consent to temporarily set aside the pending motions and amendments so that I may offer an amendment that is at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from North Carolina [Mr. BURR] proposes an amendment numbered 3652.

Mr. BURR. Mr. President, I ask unanimous consent that the amendment be considered as read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To protect the integrity of Department of Veterans Affairs and Department of Defense health care programs for veterans, active-duty service members, their families, widows and widowers, and orphans who have sacrificed in defense of our Nation)

At the end of subtitle F of title I, insert the following:

SEC. 1___. TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE HEALTH PROGRAMS.

Subtitle G of title I of the Patient Protection and Affordable Care Act is amended by adding at the end the following new section:

"SEC. 1564. DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE HEALTH PROGRAMS.

''(a) CLARIFICATIONS WITH RESPECT TO CERTAIN PROGRAMS AND AUTHORITIES.—Nothing in this Act or in the amendments made by this Act shall be construed as affecting any of the following:

''(1) Any authority under title 38, United States Code.

''(2) Any authority under chapter 55 of title 10, United States Code.

''(3) Any health care or health care benefit provided under the TRICARE program under chapter 55 of title 10, United States Code, or by the Secretary of Veterans Affairs under the laws administered by such Secretary.

''(b) CLARIFICATION WITH RESPECT TO MINIMUM ESSENTIAL COVERAGE.—For purposes of this Act and the amendments made by this Act, the term 'minimum essential coverage' includes the following:

''(1) Coverage provided under chapter 55 of title 10, United States Code.

''(2) Eligibility for health care provided by the Secretary of Veterans Affairs under title 38, United States Code.''.

Mr. BURR. Mr. President, I yield the floor, and I protect the remainder of the time.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, the debate on this bill is winding to a close, so let me return to the nonpartisan Congressional Budget Office.

The Congressional Budget Office is the referee we all turn to as an impartial judge of whether we are accomplishing what we set out to do, so I will take a moment and quote from the Congressional Budget Office. It is very appropriate as it relates to the prior conversation on the other side. Let me read excerpts from the most recent Congressional Budget Office statement on deficits, debt, and coverage and whether this is deficit neutral. This was released Saturday. This is a statement by the Congressional Budget Office and the Joint Committee on Taxation. They are our scorekeepers. They determine how much we are spending and how much revenue we are taking in on legislation and what the net result is.

Here are the highlights of the letter:

Enacting both pieces of legislation—H.R. 3590—

That is basically our Senate bill that passed the House and the President signed—

—and the reconciliation proposal—would produce a net reduction in Federal deficits of $143 billion over the 2010–2019 period.

That is a direct quote from the CBO.

Further quoting:

Enacting H.R. 3590 by itself would yield a net reduction in Federal deficits of $118 billion over the 2010–2019 period.

Further quoting:

The incremental effect of enacting the reconciliation proposal would be an estimated net reduction in Federal deficits of $25 billion during the 2010–2019 period over and above the savings from enacting H.R. 3590 by itself.

Further quoting CBO:

The combined effect of enacting H.R. 3590 and the reconciliation proposal would be to reduce the number of nonelderly people who are uninsured by about 32 million people. The share of legal nonelderly residents with insurance coverage would rise from about 83 percent currently to about 94 percent.

CBO said of the new health care law:

Enacting H.R. 3590 would reduce Federal budget deficits over the ensuing decade—

That is the next decade, the second decade—

with a total effect during that decade in a broad range between one-quarter percent and one-half percent of gross domestic product.

But what is more, CBO further said:

The combined effect of enacting H.R. 3590 and the reconciliation proposal would also be to reduce Federal budget deficits over the ensuing decade . . . with a total effect during that decade of a broad range around one-half percent of GDP.

I might add parenthetically, that is about $1.3 trillion.

CBO continues:

The incremental effect of enacting the reconciliation bill over and above the effect of enacting H.R. 3590 by itself would thus be to further reduce Federal budget deficits in that decade, with an effect in a broad range between zero and one-quarter percent of GDP.

In other words, the new health care formula would accomplish major deficit reduction. This is the CBO talking, not Senators. Don't take my word for it. Don't take anyone else's word for it. This is the Congressional Budget Office. This reconciliation bill itself would accomplish major deficit reduction, probably the greatest deficit reduction actually we are going to take over a long period of time—the preceding perhaps 8, 9, 10 years and a subsequent period of time. We don't know that, but this is certainly major deficit reduction. Together, these two bills would accomplish deficit reduction of historic proportions.

Let me continue to quote the letter from the Congressional Budget Office.

[T]he reconciliation proposal would probably continue—

Get this—

to reduce deficit budget deficits relative to those under subsequent decades. . . .

Not just this period, not next decade but subsequent decades. This is my edit now. This means this bill continues to reduce the deficit in year after year after the second decade, according to the Congressional Budget Office.

Finally, CBO says:

In subsequent years, the effects of the provisions of the two bills combined that would tend to decrease the federal budgetary commitment to health care would grow faster

than the effects of the provision that would increase it.

Let me get to that statement. It gets to the Federal involvement in health care as a result of the consequences of this bill.

In subsequent years the effect of the provisions of the two bills combined that would tend to decrease the federal budgetary commitment to health care would grow faster than the effects of the provisions that would increase it.

Further quoting:

As a result, CBO expects that enacting both proposals would generate a reduction in the federal budgetary commitment to health care during the decade following the 10-year budget window. . . .

Even less government in the second 10 years relative to current law. In other words, CBO says that after the first decade, health care reform will reduce—yes, reduce—the budgetary role of government in the health care sector.

Whom do we trust? Whom else are we going to listen to? We all have opinions. Those folks at CBO have sharp pencils. They are very good at what they do. They are nonpartisan. Nobody has ever suggested they are partisan. Nobody has ever questioned their professionalism. They are very good. This is what CBO says.

That is it. CBO says health care reform cuts the deficit. Let me pause there and let that sink in. CBO says health care reform will cut the deficit. CBO also says it expands coverage. More people will get health insurance, from 83 percent to 94 percent. Also, this legislation reduces the Government's budgetary role in health care. It reduces it.

That is quite a feat—more coverage, deficit reduction, and less Federal involvement in health care. I think this bill is pretty well designed to accomplish all those purposes—cuts cost, increases coverage, and reforms the health insurance market, most significantly in the individual market and also in the small group market.

On another matter, I think it is relevant and important—this is a letter from AARP, dated March 24 of this year. It says:

Dear Senator,

We have made enormous progress advancing historic, urgently needed health care reform legislation but we are not done yet.

This is from the AARP. Continuing:

We now urge you to promptly pass the Health Care an Education Affordability Reconciliation Act of 2010—without amendments.

Let me repeat that. AARP, in a letter dated March 24, strongly suggests the Congress, especially Senate, pass this legislation without amendments. Those are their own words, ''without amendments,'' in order ''to help make affordable, high-quality health care available to all Americans.''

The letter is much longer. I just wanted to quote the more salient provisions, where the AARP suggests amendments not be adopted so we can get reconciliation passed so we can implement the law which the President already signed and get health care to Americans who desperately need it and reform of the health care industry, which is desperately needed, and start getting control of health care costs, which is desperately needed.

I ask unanimous consent the full letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AARP—NANCY A. LEAMOND, EXECUTIVE VICE PRESIDENT, AARP SOCIAL IMPACT GROUP,

MARCH 24, 2010.

DEAR SENATOR: We have made enormous progress advancing historic, urgently needed health care reform legislation, but we are not done yet. We now urge you to promptly pass the Health Care and Education Affordability Reconciliation Act of 2010—without amendments—to help make affordable, high quality health care available to all Americans.

The Reconciliation Act will:

1. Close Medicare's dreaded ''doughnut hole'' drug coverage gap for all beneficiaries. This is a top priority for AARP because it helps older Americans afford drugs they need to stay healthy and avoid costlier treatments;

2. Make coverage more affordable for hard-working middle-income families who now too often are uninsured because the cost of coverage is beyond their modest means. Added help is vital to meet the public's demand for coverage that is truly affordable for all Americans;

3. Further strengthen our fight against fraud, waste and abuse, a key component to better controlling rising costs in our health care system; and

4. Improve Medicare's fiscal health and extend the solvency of the Medicare Trust. Fund.

These provisions build on the solid foundation of the Patient Protection and Affordable Care Act that the Senate passed in December. These two bills together will protect and strengthen Medicare's guaranteed benefits, eliminate barriers to prevention, and crack down on insurance company abuses, such as denying affordable coverage because of age or health status and setting arbitrary caps on how much care they will cover. The legislative package will also provide affordable coverage options to millions of Americans and small businesses, help Americans to better plan for their future long-term care needs, and receive services to help them remain in their own homes and stay out of costly nursing facilities.

We, like you, hear countless stories from our members who were denied coverage or cannot afford their prescriptions or insurance premiums. Health care remains among the most important and personal economic issues for the vast majority of Americans.

Health expenditures consume roughly one sixth of our economy today, and will reach 20 percent in seven years if current trends continue. These skyrocketing costs strain the budgets of families and businesses as well as the government—crowding out other priorities—as health care costs continue to grow 2–3 times faster than general inflation. That is why all the major health care stakeholders have come to the table to solve this unsustainable situation.

Delay will only mean more Medicare beneficiaries will not be able to afford the drugs they need. Millions of our family members and neighbors will not be able to afford the coverage they need. Billions of additional dollars in uncompensated care costs will unfairly shift to those who do have coverage. More individuals will impoverish themselves to get the health care they need. Skyrocketing costs will continue to strain even more family, business, and government budgets.

AARP therefore urges all Senators to vote in favor of the Health Care and Education Affordability Reconciliation Act of 2010. Both the economic and physical health of our members, their families, and our nation are at stake,

Because AARP members have a strong interest in how their elected officials vote on key issues, we will be informing them about how their Senators vote on this important issue.

Sincerely,

ADDISON BARRY RAND.

Mr. GREGG. What is the time situation?

The PRESIDING OFFICER (Mr. FRANKEN). We have 27 minutes 51 seconds on the majority side and 35 minutes 42 seconds on the minority side.

Mr. GREGG. Let me make two quick points. The only way CBO gets to the conclusions they reach, and they had to get to those conclusions, is because of the facts put before them. One of those facts, they have to presume Medicare is going to be cut $500 billion in the first years before full implementation, $1 trillion in the second 10 years during full implementation, and $3 trillion during the first 20 years of full implementation—$3 trillion.

All that money is going to be taken out of Medicare and moved over to start new programs, new entitlements to benefit people who are not senior citizens and who, for the most part, have never paid into Medicare. That is a serious problem.

You can score that positively if you wish, but first off I do not think it will happen. I think what will end up happening is, it will get put on our children's backs as debt. But second, if it does happen, it is wrong because Medicare has to be fixed and you are taking the money that should be used to fix it, if you believe in these types of cuts in Medicare, and you are spending them on a new entitlement.

Mr. BAUCUS. Mr. President, may I ask my colleague a friendly question?

Mr. GREGG. On your time you may ask a question, including my answer, which may take 24 minutes.

Mr. BAUCUS. I trust in the good faith of the Senator from New Hampshire not to abuse the situation.

As I understand it, basically the Senator does not question the professionalism of CBO. Clearly, CBO had all the facts. All Senators have them, all Senators, House Members, the whole world has. CBO has all the facts. You are not questioning their professionalism. You do question their conclusions.

Mr. GREGG. I certainly don't question their professionalism. They are an extraordinarily good organization with a wonderful leader who is fair and unbiased. I don't question their conclusions because what they have to score is a fact pattern that was given them and

the fact pattern given them by this bill is, on its face, not believable relative to what is going to happen in the outyears, even though they have to score it as believable. It is a fantasy.

Mr. MCCAIN. I ask the Senator from New Hampshire, while the Senator from Montana is here, maybe it is a legitimate question. Does the Senator from Montana believe that the assumption given to the Congressional Budget Office that the so-called doc fix, reimbursement for physicians who treat Medicare patients, will be cut by 21 percent? The Senator from Montana knows full well the AMA has been told in no uncertain terms it will be fixed between now and when it is supposed to take effect because the fact is, as the Senator from Montana knows, you can cut Medicare physician reimbursement. Then doctors will not treat Medicare patients. So maybe the Senator from Montana would tell us if that was a valid assumption given to the CBO, that there would be some $281 billion that would be accrued because physicians' payments would be reduced by some 21 percent?

Mr. GREGG. I simply ask the time of the Senator from Arizona come off ours and the time of the Senator from Montana for his answer come off his.

Mr. BAUCUS. Mr. President, that sounds fair.

Let me say to my good friend from Arizona, first of all, clearly this body, the Senate and the Congress, is going to not let the SGR problem expire; that is, doctors are not going to be cut 21 percent, whatever the rate is the first year or more and so on. That is not going to happen. First, from the seniors' point of view, second from the doctors' point of view, that is not going to happen. I do not want to take too much time on the subject, but the long and short of it simply is we are going to have to find a way, this Congress, to address that problem. If I might finish, it is not part of health care reform, and we will find a way. A question is going to be how much will be paid for. That is a judgment this body is going to have to make in the pretty near future.

Mr. MCCAIN. I appreciate very much the acknowledgment, on the part of the manager of the bill, that the assumption that provides us with deficit neutrality is not valid. That is the point we have been trying to make. It is based on false assumptions. The assumption that doctors—I am very happy to hear the Senator from Montana state unequivocally what was given and assumed by the CBO when they gave us our numbers is not true. So we will be voting, in a short period of time, on a piece of legislation which is based on false assumptions. I think that is an unfortunate circumstance.

Mr. GREGG. I simply note the Senator from Montana made the case for my amendment rather eloquently because my amendment does address the doctors fix and it is paid for. Therefore, I certainly hope the Senator might consider voting for it.

At this point, I yield 5 minutes to the Senator from Georgia.

Mr. CHAMBLISS. I thank the Senator, from New Hampshire. Let me reiterate what just came out of this dialog and colloquy between the Senator from Montana and the Senator from Arizona. That is this. CBO has said this is going to be a deficit saver, a deficit reducer, and the President is going around the country talking about the fact that this bill is going to reduce the deficit.

What the President is not going to say but what the Senator from Montana just agreed to, is the fact that our physicians who are due a 21-percent decrease in Medicare reimbursement payments are not, in fact, going to have that 21-percent reduction. That decrease was included in this bill to make it appear more deficit-neutral over the first 10 years. When you factor that in, this not only does not reduce the deficit, but it adds to the deficit an additional $281 billion difference in what the number of the CBO says we are going to reduce the deficit by.

You know very clearly we are going to add to the deficit when we pass this bill because the Senator from Montana is right, we are not going to see that 21-percent reduction. I suspect that the $523 billion in Medicare cuts that are provided for in this bill, that are scheduled to take effect in future years, may not ever happen. If that is the case, then not only are we looking at an additional cost of that $523 billion, the $281 billion for the SGR fix or the doctors fix, but we are looking at increasing the deficit to fund a domestic program in a future way.

One thing the CBO does say is, this bill provides an additional $569.2 billion in new taxes, new taxes on the American people, particularly the small business community that is hit the hardest by this.

The American people have made it very clear: They do not want these bills to become law. Two new polls by CBS and CNN show that only 20 percent of Americans believe this legislation will benefit them and their families. Still, the majority party has chosen to push these unpopular proposals through.

My constituents in Georgia have reached out in record numbers to register their opposition to President Obama's plan.

Why? For starters, because this is an unprecedented government involvement in an industry that constitutes one-sixth of the Nation's economy. If we get it wrong, if we overreach, our fragile economy will suffer and a recovery will lag, perhaps for years.

This bill also does something very un-American: It would penalize individuals for not purchasing health insurance. Today, we have seen 13 State attorneys general file lawsuits challenging the constitutionality of fining Americans for not purchasing insurance.

The bill that passed the Senate and was signed by the president is filled with backroom deal-making, partisan arm-twisting and special carve-outs for some of my wavering colleagues on the other side of the aisle.

Now, instead of working together on a bill that would be more palatable to all Americans, my colleagues on the other side of the aisle have decided to push forward in the face of united opposition.

The Governor of Georgia recently expressed concern regarding the unfunded mandates in this legislation. Our State faces an additional billion dollars or more of Medicaid spending per year.

These new costs that will be absorbed by the State will require further tax hikes on Georgians or cuts to public safety, education and other core State government services.

The bill that was just signed contains $518.5 billion in gross tax increases. It cuts Medicare by $465 billion—and, more importantly—does nothing to bend the health care cost curve down.

With Medicare on the verge of insolvency, this bill takes money from the Hospital Insurance Trust Fund to pay for unrelated entitlement spending.

Under this new plan, new Federal taxes on Americans start immediately. But full benefits won't take effect until 2014. The bill raises $60 billion in taxes before any of the major benefits go into effect.

Looking at the years 2013–2024, the 10–year period after the law is fully implemented, the overall cost is estimated to be $2.6 trillion.

Some of these numbers are so large that its tough to get your head around them. But rest assured that they will detrimentally impact Americans and our economy.

There is also substantial evidence that this new law will hurt small businesses.

The bill imposes $493 billion in new taxes that will fall disproportionately on the backs of small-business owners.

A $54 billion increase in the Medicare payroll tax will hit approximately one-third of the small-business owners across the country.

A $60 billion tax on insurers means small businesses that manage to provide health insurance coverage for their employees will see this tax passed on to them, increasing premiums.

The CLASS Act portion of the new law appears to make it less costly because, as the CBO said, ''the program would pay out far less in benefits than it would receive in premiums over the 10–year budget window,'' raising $70 billion in premiums that will fund benefits outside the window. Outlays in later years will increase significantly.

And the legislation just signed into law is still filled with the sweetheart deals that have so angered Americans.

That includes the Cornhusker Kickback, in which the Federal Government pays the entire tab of Nebraska's Medicaid expansion.

It also includes the Louisiana Purchase, in which the Federal Government pays an extra $300 million in

Medicaid dollars to the State of Louisiana.

And it still has the Gator Aid Florida Medicare Advantage grandfather clause to protect certain areas of Florida from Medicare Advantage cuts that all other seniors in America will face.

Meanwhile, the 176,000 seniors in Georgia who rely on Medicare Advantage to supplement the gaps in traditional Medicare will see their benefits cut by $33 each month.

The new law significantly raises taxes, cuts benefits for seniors, adds to the Federal deficit and allows the government to make decisions that should be between a patient and his doctor.

The reconciliation bill—optimistically deemed a ''fix-it'' bill—is actually a ''make-it-worse'' bill.

The legislation before us today raises taxes by an additional $50 billion more than the Senate bill. That is an overall tax increase of $569.2 billion.

The reconciliation bill nearly doubles the tax on health insurers beginning in 2014, and also raises taxes and fees on drugmakers and medical devices. The Congressional Budget Office has specifically stated that these taxes will be passed on to all Americans in the form of higher health costs and rising insurance premiums.

The reconciliation bill raises another $66.1 billion from Medicare Advantage, bringing total Medicare cuts in both bills to $523 billion.

And it forces an additional 1 million individuals into Medicaid on top of the 15 million already added to Medicaid in the Senate bill. That means 16 million of the 32 million newly insured individuals would obtain that coverage through Medicaid—a program President Obama admitted already suffers from serious access problems.

It also increases penalties for businesses that don't offer health insurance and have at least one employee receiving a subsidy in the exchange from $750 per full-time employee to $2,000 per full-time employee.

And, among other things, it penalizes many Americans with higher incomes from rent, interest, royalties and individuals by forcing an almost 4 percent Medicare tax on their investment income.

According to the Congressional Budget Office, this bill is going to cost $940 billion over 10 years.

We are burdening our children and grandchildren—generations of America's future—by creating a behemoth new government entitlement program.

And in the same week of its creation, we turned around and immediately added to this new program almost $1 trillion more.

The American people are asking a simple question: Where does the spending end?

Also, I wish to talk about a specific provision that is going to have an immediate, direct impact on my taxpayers in Georgia; that is, with the increase in the threshold to qualify for Medicaid going from 100 percent to 133 percent, in my State, according to our Governor—and he has run the numbers—that is going to cost the taxpayers of Georgia, in addition to their share of this $569.2 billion in additional taxes, an additional $1 billion per year that Georgia taxpayers are going to have to pay.

We are in difficult times in my State, as all 50 States are right now. That is a new provision, a new tax.

I ask unanimous consent that a statement from the Governor of Georgia, the Honorable Sonny Perdue, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Office of the Governor, Mar. 22, 2010]

STATEMENT OF GOVERNOR SONNY PERDUE REGARDING THE HEALTHCARE LEGISLATION PASSED BY THE UNITED STATES CONGRESS

ATLANTA.—Governor Sonny Perdue issued the following statement today regarding the healthcare legislation passed by the United States Congress:

''Unfortunately, the United States House of Representatives last night chose politics over the will of the American people. The enormous upheaval of our healthcare system was pushed through the House against the wishes of the majority of American families and businesses.

Here in Georgia, this vote will force an additional billion dollars or more of Medicaid spending per year, requiring either a tax hike or offsetting cuts to public safety, education and other core services of state government. While this colossal unfunded mandate cripples our budget, I am even more concerned about the debilitating impact it will have on Georgia's small businesses. The extension of the Medicare tax on all non-wage income means that small business owners will see their top rate increased by 20 percent and investment income taxes increasing 60 percent.

What is most unfortunate is that the American people had no voice at the table in Washington during the course of this debate. The only glimpse citizens saw of the process were closed-door meetings that resulted in backroom deals and the buying of votes to ensure passage. I am today renewing my December request to the Attorney General that he join other states in reviewing the constitutionality of this travesty. My office has already begun to review any and all legal options to challenge this legislation.

I also urge the Georgia General Assembly to continue moving forward on my proposal to allow Georgians to purchase insurance plans across state lines. Now that Congress is mandating that every American purchase health insurance, we should open the individual market to as much competition as possible.

Since this bill has such a significant impact on future state budgets, it is imperative that current candidates for elected office publicly state their plans to either support the Obama-Pelosi legislation or fight for the people of Georgia.''

Mr. CHAMBLISS. Let me say that within the last 48 hours we have discovered that the agency that is going to be administering the new health care reform bill the President signed into law is none other than the Internal Revenue Service. The Internal Revenue Service has said that in order to review the tax returns of every taxpayer in America to ensure that they have complied with the law and bought insurance or had insurance taken out through their employer, they are going to have to have an additional 16,500 Internal Revenue Service Agents at a cost of an additional $10 billion to the taxpayers. That $10 billion is not factored in here in anyway.

We are dealing with a piece of legislation that the American public has shown, over and over in every poll taken, whether it is by a Democratic pollster, Republican pollster or an independent pollster, that they do not want. We are going to force that bill down on the American people and that is wrong, that is not the way this body and the body across the Capitol should be working with respect to the best interests of the American people.

I urge my colleagues at the appropriate time during the vote on the amendments this afternoon and tonight to repeal this bill and let us replace it with a true, meaningful health care reform bill that we can all agree on. There are a lot of provisions in those 2,700 pages plus, the length of this so-called fix-it bill that we can agree on, that we can replace this bill with, that will provide the American people with true, meaningful health care reform that they need and deserve.

We will not see all of these huge increases in taxes, we will not see all of these huge reductions in Medicare benefits, and we can do the will of the people in the right and appropriate way.

I yield the floor.

Mr. GREGG. Mr. President, I yield 2½ minutes to the Senator from Louisiana.

AMENDMENT NO. 3553

Mr. VITTER. Mr. President, at this point I ask unanimous consent to set aside any pending amendment and call up amendment No. 3553.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. VITTER] proposes an amendment numbered 3553.

Mr. VITTER. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To repeal the government takeover of health care)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Patient Choice Restoration Act''.

SEC. 2. REPEAL.

The Patient Protection and Affordable Care Act, and the amendments made by that Act, are repealed.

Mr. VITTER. Mr. President, this amendment is very simple, and it goes to the heart of all of these arguments. This amendment would repeal this new ObamaCare plan.

All of us on this side urge this action and urge us to focus instead on a focused step-by-step approach to solve

specific, real problems with specific solutions. This gargantuan plan which this amendment would repeal does not do that. This gargantuan plan has fundamental problems at its core that my colleagues have been talking about; truly offensive, fundamental problems such as over a $½ trillion cut to Medicare. The American people do not want to pay for anything through that. Over $½ trillion of increased taxes and costs. The American people do not want an approach that does that, increasing health ObamaCare costs, when the American people know our big challenge is to do the opposite.

Nonpartisan sources such as the Congressional Budget Office confirm that the ObamaCare plan does not decrease health ObamaCare costs, it increases health ObamaCare costs from their rising rate already. It pushes that cost curve up and growing the bureaucracy, including thousands of new IRS workers, and putting them and the Federal Government between you and your doctor.

These are not minor parts of the ObamaCare plan. This is the core of that plan. That is why we absolutely need to repeal it and take a fundamentally different approach, an approach that is focused like a laser beam on real problems and that deals with those real problems with real and targeted and step-by-step solutions.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. VITTER. I urge support of amendment No. 3553.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, we are coming to a close, or a beginning, I am not sure which, when we start the vote on amendments. If my calculation is correct, the time for debate on this reconciliation bill will expire around 5:10, about that time, approximately.

At that time, approximately, we will start voting on amendments. By my count we have 21 amendments pending, and if we vote on amendments in the time in which it usually takes to vote on amendments in a series, my experience is it roughly takes around an hour for three amendments. Maybe we can speed that up. With 21 amendments, that is 7 hours. That is the good news. There probably will be some intervening disruptions.

But the good news is, that means the earliest we might be finished is around midnight. But, of course, that is not the case, because there will be other amendments offered.

For the information of my colleagues, we will probably start voting on amendments at approximately around 5:10, thereabouts. We have 21 amendments pending at the present time. It takes about 1 hour to vote on three amendments. I believe we can squeeze that time down. It is my hope that we can. But that is my experience around here, it takes about that long.

Because there are a lot more amendments most likely to be offered, I inform my colleagues that we will be in very late tonight, certainly way past midnight, because of the number of amendments that are currently pending.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. What is the time situation?

The PRESIDING OFFICER. The minority has 23 minutes 47 seconds left.

Mr. GREGG. And the majority?

The PRESIDING OFFICER. The majority has 24 minutes 52 seconds.

Mr. GREGG. I yield 10 minutes to the Senator from Tennessee.

Mr. ALEXANDER. Mr. President, could you let me know when 8 minutes has been consumed?

The PRESIDING OFFICER. The Chair will advise the Senator.

Mr. ALEXANDER. Mr. President, this has been a debate filled with passion and good intentions and a lot of hard work. Our political parties have come to vastly different conclusions. The President and the majority have said, this is an historic occasion. I agree.

But I believe, as do most of us, that it is an historic mistake, and it is important to say why we think that. This is the fundamental mistake, that with the law that was passed yesterday and what the majority has proposed to do in this second bill, to expand a health ObamaCare delivery system that we all know is more expensive than we can afford, instead of stepping back and instead seeking to reduce the cost of that health ObamaCare delivery system so that more Americans can afford to buy health insurance. That is the mistake.

I wish to try to say in 3 or 4 minutes what this bill means to Tennesseans. I was listening to the Senator from Montana and the Republican Senators talk about debt. We believe, I believe, that this bill, these two bills, will increase each Tennessean's share of the national debt.

The Senator from Montana says: Well, but the Congressional Budget Office says it does not. Well, that would be like going to the Congressional Budget Office and saying: I have got a horse farm here. Tell me how much it costs to operate over the next 10 years. The CBO would say: Would you like me to tell you how to do it with the horses or without the horses? If you tell me how to do it without the horses, it is not going to cost as much. Or, if I have a gas station, would you like me to tell you how to operate that with the gas in it or without the gasoline?

That is what we are saying here. They have gone to the Congressional Budget Office and said: Tell us how much this health bill costs. They have said to them: With the doctors or without the doctors?

They say: Oh, no, keep the doctors out.

Because, according to the President's own budget, that is $371 billion over 10 years. If you put that in, then the whole bill adds to the deficit, so they leave it out. So that is why we say, and I would say, that the first thing this bill does is add to the debt, each Tennessean's share of the debt.

The second thing is, it adds $8,470 in new spending for every Tennessean. Thirdly there are 243,000 Tennesseans enrolled in Medicare Advantage, which is about one out of four persons in Medicare who will have their benefits reduced by half, according to the Congressional Budget Office Director in testimony before Congress, whose veracity we have been hearing extolled on all sides.

The next thing it does is about 1.4 million Tennesseans making less than $200,000 will pay higher taxes, based on estimates by the Joint Committee on Taxation. Some 300,000 Tennesseans in the individual health insurance market will see premium rate increases of 30 to 45 percent based upon a Blue Cross/Blue Shield study of Tennessee and other analysis.

Next, Tennessee's small businesses employing 50 or more people and construction companies employing 5 or more people—that is 5,000 construction companies in Tennessee—will pay higher health ObamaCare costs because of new government mandates.

Then here is the other one. This is the one that was just added over the weekend: 200,000 Tennessee students including—I checked—11,000 at the University of Tennessee-Knoxville where I was this week, will be overcharged by $1,700 to $1,800 over the next 10 years on their student loans in order to help pay for the health ObamaCare bill and other programs.

Let me say that again. Over the weekend, without any debate in the Senate, they have stuck in this bill—they are going to overcharge 19 million students in America, 200,000 in Tennessee, $1,700 or $1,800 more than it costs the government to borrow the money, because the government is taking over the student loan program.

They borrow the money at 2.8 percent, they loan it out at 6.8 percent, they take the difference, they spend it, $8.7 billion of it to help pay for the health ObamaCare program. So that is 200,000 Tennessee students. These are not Wall Street financiers. This is a mom with a child and a job going to school to get a better job. That is 200,000 Tennessee students. And $1.1 billion in costs will be forced on the Tennessee government. That is according to our State Democratic Governor, who said that is the cost of the Medicaid expansion and what happens to the State after the physicians reimbursement expires in 2 years for Medicaid. This will force States, Tennessee for sure, and many other States, to raise taxes, cut services, or increase college tuition.

According to an Oliver Wyman study, 30 percent of young people will pay up to 35 percent more in premiums as premiums go up in the individual market.

Then finally, of course, the bill does add in Tennessee about 200,000 people to our TennCare or Medicare rolls. But

that is not health ObamaCare reform because nationally only about half of doctors will see new Medicaid patients.

So we are saying to people, we are giving you health ObamaCare, but it is like saying, we are giving you a bus ticket to a bus line where the bus only runs half the time. When you put these low-income Americans into this program in such large numbers, what that additionally does is create more opportunities for physicians, for hospitals, and for drugstores to say, we cannot serve Medicaid patients any more.

That is why we feel this is the wrong course and an historic mistake. What we would do instead is replace this bill with a different bill that focuses on costs. We have said it over and over again. We said it at the health ObamaCare summit. We would start with allowing people to buy health care across State lines; with allowing small businesses to combine their resources to offer insurance to more people at lower costs; with reducing the number of lawsuits against doctors for malpractice.

We would step up efforts against waste, fraud, and abuse, expand health savings accounts. All of these were proposals made before the Senate, basically ignored. But the fundamental mistake and the reason we have such a difference of opinion between that side of the aisle and this side of the aisle is that that side of the aisle, which has the majority, is expanding a health ObamaCare delivery system that we all know is too expensive, and we think instead what we should be doing is focusing on reducing health ObamaCare costs so that more Americans can afford to purchase health ObamaCare insurance.

I yield back my time to the Senator from New Hampshire.

Mr. GREGG. I would yield for 30 seconds to the Senator from Kansas to put in order a couple of amendments.

The PRESIDING OFFICER. The Senator from Kansas.

AMENDMENT NO. 3577

Mr. ROBERTS. I ask unanimous consent to temporarily set aside the pending motions and amendments so that I may offer an amendment, No. 3577, which is at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes an amendment numbered 3577.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To protect Medicare beneficiary access to hospital care in rural areas from recommendations by the Independent Payment Advisory Board)

At the end of subtitle B of title I, insert the following:

SEC. ___. PROTECTING MEDICARE BENEFICIARY ACCESS TO HOSPITAL CARE IN RURAL AREAS FROM RECOMMENDATIONS BY THE INDEPENDENT PAYMENT ADVISORY BOARD.

(a) IN GENERAL.—Section 1899A(c)(2)(A) of the Social Security Act, as added by section 3403 of the Patient Protection and Affordable Care Act and amended by section 10320 of such Act, is amended by adding at the end the following new clause:

''(vii) The proposal shall not include any recommendation that would reduce payment rates for items and services furnished by a critical access hospital (as defined in section 1861(mm)(1)).''.

(b) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

MOTION TO COMMIT

Mr. ROBERTS. Mr. President, I ask unanimous consent now to temporarily set aside the pending motions so that I may offer a motion to commit, which is at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] moves to commit the bill (H.R. 4872) to the Committee on Finance with instructions to report the same back to the Senate within 3 days with changes to repeal the Patient-Centered Outcomes Research Institute, the Center for Medicare and Medicaid Innovation, any new functions of the United States Preventive Services Task Force, and the Independent Payment Advisory Board and adds an offset.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 24 minutes 40 seconds.

Mr. BAUCUS. I yield half that time to the distinguished chairman of the Banking Committee, former acting chairman of the HELP Committee, and one of the most valuable and productive Members of this body, the Senator from Connecticut.

Mr. DODD. I thank my colleague and commend him for his leadership on this issue, along with, of course, our distinguished majority leader so many others, including the wonderful staff we don't often mention—the remarkable work being done by the individual staff of Members and the committee staff of the Health, Education, Labor, and Pensions Committee. I see my good friend, TOM HARKIN, who now chairs that committee, along with MAX BAUCUS, and so many others of the leadership staff who have brought us to this moment.

I rise to discuss the Health Care and Education Reconciliation Act. Although none of us are ignorant of the historic nature of the health care portion of our work this past week, I wish to take a few moments to talk about the significance of the education portion of the bill. I listened intently to my friend from Tennessee talk about this part of the bill as well. I have great admiration for him, having served as the Secretary of Education and as Governor of Tennessee. He has a wealth of knowledge on the subject matter. I commend him for it. However, we disagree with this particular portion.

I rise to express a different point of view about why I believe what we have included in this bill has great value. Obviously, the major attention has been focused on the health aspects of what we are doing. That in itself is a major achievement. The reconciliation portion of this bill before us now strengthens a good bill and makes it even better.

Last evening I discussed portions of the bill that I think add tremendous value to our efforts to provide health care once and for all for all Americans. But the education portion of this bill also has great significance.

Since the Pell grant was established in the 1970s, as all of us know, it has made college a possibility for millions and millions of young Americans. I had the great pleasure of serving with Claiborne Pell as a Member of this body. He served in the 1960s up until only a few years ago. We lost him a number of months ago; he passed away. But it is incredible to think of what a difference that individual, that one Senator made in the lives of millions of our fellow citizens. In years to come, some may not know who Claiborne Pell was, but I would like the record to reflect he was a remarkable Senator. He authored legislation creating the Northeast Corridor, wrote the legislation that banned the testing of nuclear weapons on the ocean floor. He was the author, along with Jacob Javits, of the National Endowments for the Arts and Humanities, and he was the author of Pell grants. Unique and remarkable contributions, each and every one of them, but he should long be remembered for making education an opportunity that would not be denied because one lacked the resources to afford it.

Those millions of young Americans are now leaders in our Nation. They are innovators, some of our most productive and successful citizens. This bill is not unlike the GI bill at the end of World War II, when we recall men who came back from the theaters of the Pacific and Europe who were able to receive an education under the GI bill, who would tell us what a remarkable investment it was.

It has been repaid millions of times over by those who today make contributions to our country because they got an education because there was a creative Congress, because there was an administration that understood the value of an education in the midpart of the 20th century. Here we are now into the second decade of the 21st century facing a similar issue.

There should be no doubt in anyone's mind about the value not only of making us a healthier country by the adoption of the health care provision of this bill, but a better educated country—

not only to advance our own needs—but to make sure individuals have the opportunity to maximize all of their potential. Today that wouldn't be the case without Pell grants. What they have done to and for our society has been remarkable. Countless individuals would not have had the opportunity to attend college without Pell grants.

Since then the importance of a college education has only grown, not only for the individual students who want to achieve their full potential, but our Nation as well. America's ability to compete in the global economy depends on having a well-educated workforce in the 21st century. Today, that means a college-educated workforce. Unfortunately, while the urgency of opening the door to college has grown, the support provided to our most important college aid program has slipped. In fact, it has gone further—it has fallen off a cliff. In 1975, the maximum Pell grant covered 80 percent of the average student's tuition, fees, room and board at a 4-year public university. Today it covers less than one-third at a public university.

Our failure to keep pace with the exploding cost of college threatens to slam the door on a generation of Americans, making college impossible for many and leaving those who do find a way to further their education with a debilitating burden of overwhelming debt.

Make no mistake, allowing the Pell Grant Program to wither, as would be the case without the adoption of the language in this bill, isn't just a slap in the face to low and middle-income hardworking American families. It is a serious threat to America's competitiveness in the 21st century. Fortunately, the legislation in front of us presents an opportunity to revitalize the Pell Grant Program and to unlock the opportunity of higher education for millions of Americans.

The bill invests $13.5 billion to fill the shortfall in the Pell Grant Program and ensures that such a shortfall doesn't develop again, as the cost of college continues to increase in the years ahead. For instance, if we fail to act, the maximum Pell grant award could be a paltry $2,100 for the year 2010. Never before has the effectiveness of this program been at such risk. The legislation before us protects the maximum award at a level of $5,500 and increases to almost $6,000 by 2017, 7 years from now.

We all know that in 7 years the cost of education will have continued to skyrocket. I would be the first to admit that while we are putting tremendous resources into this program, we can imagine in 2017 what college education will be like, even at public universities. This Pell grant assistance, as important as it is, is not going to come close to meeting the needs of families, so we will continue to work to increase aid. But in this legislation, we also peg these increases to inflation in order to try to keep up with the cost of higher education.

In my home State of Connecticut, this would enable more than 4,300 additional students to go to college. In addition, this legislation makes important investments in Historically Black Colleges, community colleges, and the College Access Challenge Grant Program, which fosters partnerships between government and the nonprofit sector that helps low-income kids get a chance to go on to a higher education.

It invests in programs that help students determine what college is best for them, as well as prepares them not only to get into those schools but to graduate from them. When those students do graduate, they will no longer be faced with that mountain of debt we have heard about over and over again that puts so many of their own careers and contributions to society on hold while they have to pay off these debts, seeking jobs and opportunities that may not be what they need for their future growth and potential.

To help with this, our legislation caps repayment of Federal loans at 10 percent of discretionary income and forgives payments after 20 years. This represents an important investment not only in our children's future but in the future of our country. It will pay enormous dividends.

This investment isn't just smart, it is fully paid for. In fact, the Congressional Budget Office estimates this legislation will reduce the national debt and deficit by $10 billion over the next 10 years. We accomplish that by eliminating what amounts to billions of dollars in wasteful spending within the Federal student loan program.

Let me explain. Currently, some Federal student loans are made through the Direct Loan Program, while others are made through the Federal Family Education Loan Program, the so-called FFEL Program. This program overpays banks for servicing these Federal loans. The result is that money intended to help students go on to a higher education ends up instead helping to pad the profits of those lenders. That is a waste of money.

What is more, banks in the FFEL Program get their loan guarantee and interest subsidy entitlements regardless of how they treat the student borrowers. While they bank the profits when the loans are repaid, taxpayers end up shouldering the risk of defaults. So our legislation converts all future Federal student loans to direct loans.

This doesn't cut the private sector out of the student loan industry. What it does is as American as apple pie. It makes them compete. It ends these unnecessary payments and force banks to compete for the job of servicing student loans. When institutions have to compete, consumers benefit.

For students and parents, it means better customer service and the same good rates that have always been the hallmark of Federal student loans.

As for taxpayers, it means a savings of $61 billion over 10 years, money that now flows into the coffers of banks, but under this legislation will be used to help more kids go on to college and bring down our national deficit.

In short, what we have here is a win-win, a fully paid for and much needed investment in equal opportunity and American competitiveness. I would be remiss if I did not note that we could and should be doing more. It comes as a serious disappointment to me and to education advocates across the country that funding for a new early childhood learning initiative was not included in this package. I desperately wanted it to be there, as did my friend TOM HARKIN from Iowa who has worked with me, along with others, for years on early education. As important as it is to enable a high school student to graduate and attend college, it is just as critical that we prepare every child to be a viable candidate for their next step in the education process. The achievement gap that robs too many American children of their opportunity begins very early, before the age of 3, according to everything we know about child development. You know the statistics, as most of us do. Investments in early childhood education pay off tenfold when we consider the decreases in crime, the reduced need for special education and welfare services, and improved health of these children who have access to early education.

Just as the increasingly competitive global economy calls us to unlock the door to higher education, we must also do everything we can to bring every American child to that threshold of maximizing his or her potential. That important work requires a serious commitment to early education. This legislation would have been a perfect opportunity to follow through on that commitment. So the fight will continue, unfortunately, without the strength this bill would have provided. But for now we have the chance to do some real good for young people and for our Nation.

I urge my fellow Senators, both Democrats and Republicans, to support this commonsense measure, save the Pell Grant Program, and make a real difference in the lives of countless young Americans for years to come. I remind my colleagues this is just part of what is at stake in this debate. The amendments being offered, on too many occasions by our friends on the other side of the aisle, are doing nothing more than trying to stop this legislation from going forward. I hope that will stop. Let's pass this bill. We have a chance to not only change the quality of health in America but also to open the doors of opportunity for American students.

For those reasons, I urge adoption of this package.

I yield the floor.

Mr. GREGG. I yield to Senator MCCAIN such time as he may use.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I read a lot about what has been going on in the

health care debate, and all of us have. Americans are very aware of it. I keep hearing the word ''historic'' this, ''historic'' that, ''historic.'' I agree. It is historic. This is a historic vote, and I think we are pretty aware of what the outcome will be sometime tonight, tomorrow, or the next day. It is the first time in history, the history of this country, that a major reform has been enacted on a purely partisan basis, the first time.

Every major reform throughout history has had significant—you can go down the list—bipartisanship votes. In the 1970s—this one, purely partisan, rammed through from beginning to whatever this end is.

It is historic, and it is the first time that a process called reconciliation has ever been used to affect one-sixth of the gross national product. I know the response will be: Well, Republicans did it—et cetera, et cetera. It will be the first time that 51 votes has been the measure of a decision on so-called reconciliation. Now, that is historic. That is historic because we have basically broken down the 60-vote tradition of the Senate when we address it in this fashion—an issue of this magnitude.

Let me tell you, when the President of the United States was still a Senator—another time we were doing reconciliation—what he said:

> You know, the Founders designed this system, as frustrating [as] it is, to make sure that there's a broad consensus before the country moves forward. . . . And what we have now is a president——

He was referring to former President Bush—

> who . . . [h]asn't gotten his way. And that is now prompting, you know, a change in the Senate rules that really I think would change the character of the Senate forever. . . . And what I worry about would be you essentially have still two chambers—the House and the Senate—but you have simply majoritarian absolute power on either side, and that's just not what the founders intended.

That is what Barack Obama, the Senator from Illinois, said.

So here we are. Yes, it is historic. It is historic. And it is historic what we have seen take place from the beginning. We have seen the special interests. We have seen the votes, the provisions in these bills that carve out special deals for special interests and special States, such as the ''Louisiana purchase,'' the $100 million inserted in this 2,733-page document that builds a hospital in Connecticut. Why Connecticut? Why $100 million? Why is it that there are these special provisions for certain locations in the country?

It is historic in the special deals that have been cut—for PhRMA, for the American Medical Association, for the hospital association, for the unions in the taxation of Cadillac plans. Everybody has a deal but the American citizen—the average American.

How many Americans, how many ordinary Americans who are, say, enrollees in Medicare Advantage in my State, who are going to see the Medicare Advantage program cut drastically—how many of them were allowed in the majority leader's office? How many of them were allowed in the Speaker's office? How many of them were allowed in the White House as the special interests' representatives went in and out?

So there are winners and losers. That is what is being judged. The winners will be those who live in favored States who will have special deals. There will be those who are winners—PhRMA, the hospital association, the unions. Again, my congratulations to PhRMA. They are running $100 million-some worth of ads favoring this deal because they got a deal that is worth billions—worth billions.

As I have quoted on the floor several times, their head lobbyists, or $2 million-a-year lobbyists, said: A deal is a deal. We expect the White House to keep it.

So who are the losers? Who are the losers? Well, the first loser is the Senate because, as I said before, this reconciliation, requiring only 51 votes, is a radical departure from anything we have done in the past. I do not accept the statement that it has been done in the past—not when it affects one-sixth of the gross national product, and as a direct result of the vote in the State of Massachusetts that gave this side 41 votes. If they still had 60 votes, we would not be doing this on reconciliation. We would be doing it in the regular way we address legislation—legislation through the House, legislation through the Senate, a conference committee, and then, obviously, a final vote. But they cannot afford a final vote because there are 41 votes now, not 60. So the Senate is a major casualty of this process.

But the biggest losers probably are average citizens—average citizens who were told the Congressional Budget Office judged this to be deficit-neutral, and it would not cost the taxpayers additional money. I just had a conversation with the Senator from Montana who said clearly we are not going to cut physician payments by 21 percent; so, therefore, the assumption they gave the Congressional Budget Office is false—is false. So before we go any further, it is already a $150 billion deficit because everybody knows we are not going to cut physicians' payments by 21 percent.

So the American people are the ones who never had access to get a special deal. And 330,000 citizens of my State who have enjoyed and chosen the Medicare Advantage program are now going to see those benefits slashed. But the average citizen who thinks today there is a huge disconnect between their lives and that of the life that is led here and the way we do business here—last Saturday, I was in my own home State of Arizona. I did two townhall meetings, one in Prescott and one in East Valley Phoenix, and people are hurting. People are hurting, people are angry, they are frustrated, and they feel there is a huge disconnect between themselves and Washington. I come back the next day, and they are drinking champagne in celebration of a ''historic'' victory. Americans do not get it. Americans do not get it. They are angry. They are frustrated.

I want to assure them—I want to assure them—this fight is not over. We will take it, as I mentioned before, to the towns and cities of America. We will have townhall meetings all over the country. We will register voters. We will urge them to turn out. We will urge them to take part in one of the most seismic elections in the history of this country.

I know the liberal media is saying: The American people are going to move on. Well, they are not going to move on. They are not going to move on because they are sick and tired of the spending and the generational theft we have committed on future generations of Americans. This is only one part of their frustration. It is a big part, but it is only one part.

So I know I speak for my colleagues when I say this fight is far from over. This struggle to regain control of this body and this institution in Washington, DC, and give it back to the people of this country will go on.

I have great faith in this country and its future. That is why I am confident that over time, sooner or later, we will be back and we will repeal and we will replace—we will replace—this huge government takeover with medical malpractice reform, with going across State lines to get insurance of your choice, to reward wellness and fitness, to establish risk pools that insurance companies will bid on in order to treat people with preexisting conditions. We have a long list we will replace this mortgaging of America's future with that will be what all Americans want; that is, to maintain the quality of health care in America and, at the same time, bring costs under control.

I thank the Senator from New Hampshire for his leadership. I thank the Senator from Montana for his courtesy during this debate over these days and weeks and even months, on days and nights and weekends. I want to assure my colleagues this debate is far from over.

I yield the floor.

Mr. GREGG. Mr. President, I just want to thank the Senator from Arizona for his excellent summation of where this issue lies and its impact on the American people. I hope that statement will be read across this country because it was a reflection of the concerns which are legitimate and which are being expressed by vast amounts of Americans. It is not unusual it should be expressed by the Senator from Arizona because he is so much a personality of this Nation and a force within our political process.

I would reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield to the distinguished chairman of the HELP Committee, who has been so involved in health legislation, education legislation. Might I ask, how much time do we have left?

The PRESIDING OFFICER. There remains 11 minutes 48 seconds.

Mr. BAUCUS. Mr. President, I yield as much time to the Senator as he wishes to take, including 11 minutes 48 seconds.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I thank my friend from Montana, the chairman of the Finance Committee. I thank him for all of his great leadership, and also Senator DODD, who just spoke.

If I might just add a little historical footnote. Senator BAUCUS, chairman of the Finance Committee; Senator DODD, who led the effort through the HELP Committee; myself, as now chairman of the HELP Committee; Chairman MILLER on the House side, chairman of the Education and Labor Committee; and Chairman WAXMAN, the chairman of the House Commerce Committee—all of whom had big parts of the whole health care bill to develop—a historical footnote: We were all sworn in on the same day in January of 1975. It was a great class, and our classmates, as history would have it, survived to be able to put together this great health care bill.

I again want to thank my longtime friend and colleague from Montana, Senator BAUCUS, for his extreme patience and his endurance in getting us to this point.

Mr. President, we are in the midst of a historic week in this Nation's Capital. Health care reform is no longer a bill; it is the law of the land. It has been signed.

Just as the history books remember 1935 as the year FDR signed Social Security into law, and 1965 as the year when Lyndon Johnson signed Medicare into law, they will now remember the year 2010 as the year President Barack Obama signed comprehensive health reform into law.

Each of these three bills marked a giant step forward for the American people. Each was stridently opposed by the special interests and defenders of the status quo. But in the end—in 1935, in 1965, and now in 2010—a critical mass of Senators and Representatives rose to the historic occasion. They voted their hopes, not their fears. They created a better, fairer, more compassionate America for all of our citizens.

As a Nobel Prize-winning economist recently put it, the new health reform law is a ''victory for America's soul''—a ''victory for America's soul.'' At long last, we are realizing Senator Ted Kennedy's great dream of extending access to quality, affordable health insurance to every American. We are ending the last shameful bastion of legal discrimination and exclusion in our country.

Think about it: Over the decades, we have outlawed discrimination based on race, color, and national origin. We have outlawed discrimination based on gender and religion. We have outlawed discrimination based on age and disability. But until now, it has been perfectly legal to discriminate against our fellow Americans because of illness—because of illness—and to exclude tens of millions of our citizens from decent health care simply because they could not afford insurance or afford health care—blatant discrimination.

When President Obama signed health care reform into law on Tuesday, he set in motion a series of changes that will tear down these last barriers of discrimination and exclusion. That truly is a great moral victory. It is, indeed, a victory for America's soul.

But our work is not done. The reconciliation bill now before us includes a number of modifications to strengthen the new health care reform law. It also includes reforms in the student lending program that in their own way are also profound and historic. I regret these landmark education reforms have not gotten the attention they deserve.

Senator DODD—I just listened to his speech—outlined in great detail what these reforms are and what they will mean for our families and for our students.

This bill in front of us now eliminates $61 billion in wasteful subsidies to banks and redirects most of that money to low-income college students in the form of increased Pell grants. The status quo in student lending is a bizarre Rube Goldberg process that makes no sense. The Federal Government pays private banks to make entirely risk-free loans. The banks then sell the loans back to the Federal Government and pocket hundreds of millions of dollars in fees. This is a brazen case of corporate welfare—a huge government giveaway to bankers. This bill at long last will put a stop to it.

Mr. President, I want to state forthrightly I am not antibanker. I am not antibank. I have family members in the banking business and they do a great job. But who does not like free money? If you give the banks free money, they love it. But if we have money we want to give away, I say do not give it to the banks. Give it to low-income students so they can go to college. Banks have lots of ways in which they can make money. A low-income student has no other way to go to college but that we provide him and her access to meaningful Pell grants. I am disappointed our Republican colleagues are doing everything in their power to delay and obstruct and to kill this bill. Reportedly, they now plan to offer dozens and dozens of largely meaningless amendments to try to stretch the process out and delay a final vote. One might call this the Republican version of March madness. They know it is going to end; they just want to drag it out.

Let's be clear what is at stake. A vote against this bill is a vote against eliminating the doughnut hole in the Medicare prescription drug plan for seniors. A vote against this bill is a vote against parents' rights to keep their kids on health insurance plans until age 26. A vote against this bill is a vote against a tough new crackdown on fraud and abuse in Medicare and Medicaid Programs. A vote against this bill is a vote against ending discrimination against rural areas in Medicare reimbursement rates. A vote against this bill is a vote against ending tens of billions of dollars in corporate welfare for banks, a vote against redirecting that money to more generous Pell grants for needy college students.

I might add, a vote against this bill is a vote against a very important provision. I know an amendment has been offered to do away with what is called the CLASS Act. The CLASS Act is now the law of the land. Here is what it is. It is a voluntary program. No one has to join it. It is fiscally solvent for 75 years. All it says is that an individual during their working years can set aside some money. If they, God forbid, become disabled, they can have some income to be able to live in their own homes and not be put in a nursing home. That is the law of the land right now, and there is an amendment before us to do away with that. Over 275 groups representing people with disabilities and seniors support the CLASS Act, and we ought to keep it in the law and not repeal it with an amendment.

In short, those who are determined to kill this reconciliation bill need to decide whose side they are on. Are they going to continue their die-hard defense of the health insurance companies and the banks or are they going to stand with ordinary Americans who want access to quality, affordable, reliable health coverage and with needy young people who need Pell grants in order to go to college? It is time to choose.

We are going to have a whole series of amendments. Oh, some of them will sound nice. Some of them I would probably like to vote for myself if they weren't to this bill. But we can't be lured into this by the siren song of amendments that sound good but only have one purpose; that is, to kill this bill, to delay it, to kill it, to make sure it is not enacted into law. That is the only purpose of these amendments, make no mistake about it. So when an amendment comes up that I like and I might want to support, I will vote against it because it is that important to make sure this reconciliation bill gets passed and sent to the President for his signature.

So I say to all of my friends on this side of the aisle: Don't be lured. Don't be lured by the siren song of amendments that may sound good. Don't be afraid that somehow they are going to use it against you in a campaign. Hey, they can use anything against you in a campaign. We all know that by now. Let's stand united. Let's stand strong. Let's say no to these amendments designed only to kill this bill.

I urge my colleagues to support passage of the Health Care and Education Reconciliation Act of 2010, to defeat all of the amendments. Let's get this bill to the President, let's help our students get to college, and let's help the people of this country have better health care.

Mr. President, one of the arguments raised by my Republican colleagues regarding the landmark new health reform law just signed into law by President Obama is that it is unconstitutional. Well, I strongly disagree. One example of the strong constitutional basis of the new law is outlined by the American Constitution Society in a paper released at the end of last year.

I commend this paper to my colleagues and ask unanimous consent its conclusions be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the American Constitution Society for Law and Policy, Dec. 2009]

MANDATORY HEALTH INSURANCE: IS IT CONSTITUTIONAL?

(By Simon Lazarus)

VI. CONCLUSION: MANDATORY INSURANCE IS NEITHER BURDENSOME NOR UNPRECEDENTED.

A major reason why all opponents' legal arguments fall short is that they share a common factual foundation, which itself is a fallacy. Their root assumption, or assertion, is that requiring Americans to carry health insurance is both extraordinarily novel—''unprecedented''—and extraordinarily burdensome. But this endlessly repeated assertion is specious, for several reasons:

To begin with, experience demonstrates that mandatory health insurance is neither unprecedented nor burdensome. Hundreds of millions of millions of individuals live under a variety of mandatory health insurance regimes, with very high rates of compliance and no record of discontent with the requirement, in other advanced economies and, indeed, as noted above, in Massachusetts.

As noted above, the overwhelming majority of Americans already carry health insurance that satisfies the terms of the mandate, so they will not be affected by the mandate at all. Of the approximately 46 million Americans who currently lack health insurance, the majority are in this state only because it is unavailable or unaffordable, and they of course, will welcome the opportunity presented by the legislation to gain coverage.

For those currently uninsured Americans who would prefer to forego the cost of coverage, even with whatever level of subsidy they will be in a position to claim, the mandate is no more a burden than the requirement to pay Social Security and Medicare taxes—indeed, it is less, since the coverage they receive in return is available immediately, not when they reach eligibility in their 60s.

By conceding that social and health insurance taxes are constitutionally valid restrictions on individual liberty, while condemning functionally equivalent contributions to private insurers, opponents effectively contend that a single-payer, government-run program like Medicare is the only type of universal health insurance system Congress may establish. The Constitution surely does not impose such an arbitrary strait jacket on Congress.

The great majority of Americans live in jurisdictions that require the purchase of automobile insurance. Health care reform opponents claim that these state mandatory auto insurance regimes are not ''precedents'' for federal mandatory health insurance, for a variety of essentially legalistic reasons. For example, they assert that auto insurance is a voluntary payment in exchange for a ''privilege,'' permission to drive on public roads. But for most people, driving is an economic necessity. In terms of its actual impact on people, mandatory auto insurance is a common-sense indicator of whether the public would find novel or inherently burdensome a mandate to purchase health insurance from the private insurance industry.

If, as opponents claim, the burden of mandatory health contributions was—in principle—oppressive and unfair, Medicare, and for that matter Social Security taxes would raise constitutional questions no less than if these landmark statutory programs were cast as regulations of interstate commerce. In fact, of course, since 1937, such questions have never been raised either in the courts or in Congress. The reason is simple: most people regard these mandatory contributions—in light of what they expect to receive in exchange—as a bargain not a burden.

Mr. HARKIN. Mr. President, this bill makes unprecedented investments to expand high-quality educational opportunities for all Americans. It invests in the Pell grant scholarship award, strengthens historically Black colleges and universities and other minority-serving institutions, and provides more resources to States for college access and other supports for students through the college access challenge grant program.

Further, these investments are paid for without increasing our Nation's deficit, through key reforms in the Federal student loan programs designed to provide a stronger, more reliable, and more efficient student loan system. The legislation directs more than $10 billion of the savings generated under this legislation to paying down the country's deficit.

The education provisions of this legislation will convert all new Federal student loans to the Direct Loan Program starting in July 2010, saving $61 billion over the next 10 years. These changes will also upgrade the customer service borrowers receive when repaying their loans. The legislation will also maintain jobs by ensuring a robust role for the private sector, allowing lenders and not-for-profits to contract with the Department of Education to service Direct loans.

The legislation significantly increases the Federal Pell grant award; the cornerstone of need-based Federal student assistance since its creation in 1972. Investments in this program are essential to ensuring access to higher education and making college more affordable for students and families. Both the House and Senate authorizing and appropriating committees have made significant investments in increasing the maximum Pell grant award in the past few years—32 percent since 2006. This legislation includes $36 billion to help address the Pell grant shortfall in fiscal year 2011 and to increase the maximum Pell grant to $5,550 in 2010 and to $5,975 by 2017. Starting in 2013, the grant will be linked to match rising costs of living for 5 years by indexing it to the Consumer Price Index.

The legislation includes $750 million to bolster college access and other supports for students. It will more than double funding for the college access challenge grant program to fund programs in every State that focus on informing students about college options and financing, increasing financial literacy and helping students persist from year to year and graduate.

While this legislation seeks to ensure increased access and success for all students, we intend for the Secretary to work with States to address the unique access issues faced by underserved communities, including: low-income individuals, individuals with disabilities, homeless and foster care youth, disconnected youth, nontraditional students, members of groups that are traditionally underrepresented in higher education, individuals with limited English proficiency, veterans, including those just returning from active duty, and dislocated workers.

The legislation also includes a continuation of funding for investments in historically Black colleges and universities, Hispanic-serving institutions, tribal colleges and universities, institutions serving Alaska and Hawaiian Natives, predominantly Black institutions, institutions serving Asian American and Pacific Islanders, and institutions serving Native Americans, first made under the College Cost Reduction and Access Act of 2007, recognizing the critical role these institutions play in serving the Nation's minority populations. Minority serving institutions educate more than half 58 percent, of minority undergraduate students. While Hispanic serving-institutions (HSIs) comprise less than 8 percent of colleges and universities nationwide, they consistently graduate approximately one-third of all Hispanic students with degrees in science, technology, engineering and mathematics. Similarly, even though historically Black colleges and universities only make up 3 percent of all colleges and universities they graduate 40 percent of African Americans with degrees in science, technology, engineering and mathematics. These schools also produce 50 percent of African-American teachers and 40 percent of African-American health professionals.

Concerning the servicing contracts with eligible not-for-profit servicers, this legislation recognizes that not-for-profit servicers play a unique and valuable role in helping students in their States succeed in postsecondary education and that students should continue to benefit from the assistance provided by not-for-profit servicers.

Including more high-quality servicers in the contracting process will increase competition amongst servicers and deliver better customer service for student borrowers. Under the bill, not-for-profit servicers will be allocated a minimum of 100,000 borrower loan accounts as a starting

point. The Secretary of Education has been given the authority to increase or decrease that volume based on factors that include capacity and customer service. With sufficient loan volume and competitive servicing rates, eligible not-for-profit servicers can individually or collectively generate sufficient revenue to continue the valuable services they provide to borrowers. Because of the significant increase in loan volume as all Federal loans are moved to the Direct Loan Program, additional servicing capacity will be needed and is provided for through the contracts provision. I encourage the Secretary to implement these provisions in a timely manner so that many local not-for-profit servicers will continue to play a role in the student loan program.

The Department of Education should use the not-for-profit servicers to increase competition and quality in the student loan programs. To ensure that occurs, the Department must hold not-for-profit lenders to the same high standards of quality, performance and integrity used for other Department of Education loan servicers. This bill would require that eligible not-for-profit servicers meet the same standards for servicing Federal assets as apply to all other servicing contracts under section 456. These standards relate to: information technology security; financial reporting; collection and payment processing by the Department of the Treasury; internal control management; and, Federal accounting practices and debt management. The standards are derived from a variety of statutory and other sources of guidance, including the Federal Information Security Management Act of 2002 (44 U.S.C. 3541 et seq.); the Privacy Act (5 U.S.C. 552a); the Federal Financial Management Improvement Act of 1996 (P.L. 104–208); the Debt Collection Improvement Act of 1996 (P.L. 104–134);the Federal Managers Financial Integrity Act (31 U.S.C. 3512); the Chief Financial Officers Act of 1990 (31 U.S.C. 901 et seq.); the ''Government Management Reform Act of 1994'' (P.L. 103–356); OMB Circulars A–123 (Management's Responsibility for Internal Control), A–127 (Financial Management Systems), and A–129 (Policies for Federal Credit Programs and Non-Tax Receivables); and the Treasury Financial Manual.

Critical amendments will be made in America's community colleges through one additional important program that is funded in the Finance Committee's title of this bill. Community colleges serve an instrumental role in both our education and workforce systems. They provide needed postsecondary education and job training, particularly to individuals and families hardest hit by difficult economic times. This includes workers eligible for training under the Trade Adjustment Assistance for workers program, individuals who are, or may become eligible for unemployment compensation, and other individuals who have been impacted by the economic and employment crisis. To ensure that these institutions have access to the resources they need to develop and improve educational and career training programs designed to meet the needs of the workers in the affected communities, the legislation directs the Secretary of Labor to award community college career training grants especially to struggling 2-year public community colleges, (as defined in section 101 of the Higher Education Act of 1965. As the legislation ensures that all States benefit from these resources with the inclusion of a State minimum, I also encourage that the Secretary strive to ensure a diverse geographical representation of community colleges in both urban and rural areas and to provide grants to both large and small community colleges. Finally, in order to ensure that these grants reach the institutions and students they are intended to serve, I encourage the Secretary of Labor to consult with the Secretary of Education in implementing grants provided under this program. I also remind the Secretary of Labor in implementing this program that community colleges are public 2-year degree-granting institutions of higher education that offer associate's degrees; or public 4-year institutions of higher education that offer associate's degrees, are not located reasonably close to a community college, and have an open enrollment policy for certificate or associate's degree programs; or tribal colleges or universities. This should be the universe of institutions awarded grants under the community college and career training grants program.

Mr. President, I ask unanimous consent to have printed in the RECORD a document entitled ''Constitutional Findings regarding the Individual Responsibility Requirement.'' Furthermore, in support of this document, I commend to my colleagues a list of the following studies and papers:

—http://www.cbo.gov/ftpdocs/99xx/doc9924/12-18-KeyIssues.pdf

—http://content.healthaffairs.org/cgi/content/full/27/5/w399

—http://www.familiesusa.org/assets/pdfs/hidden-health-tax.pdf

—http://download.journals.elsevierhealth.com/pdfs/journals/00029343/PIIS0002934309004045.pdf

—http://www.newamerica.net/files/NAF_CostofDoingNothing.pdf

—http://www.urban.org/UploadedPDF/411603_individual_mandates.pdf

—http://www.nber.org/papers/w13758.pdf

—http://content.healthaffairs.org/cgi/content/full/28/6/w1079

—http://www.cbo.gov/ftpdocs/107xx/doc10781/11-30-Premiums.pdf

—http://www.cms.hhs.gov/nationalhealthexpenddata/downloads/proj2008.pdf

—http://www.cbo.gov/ftpdocs/108xx/doc10868/12-19-Reid_Letter_Managers_Correction_Noted.pdf

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONSTITUTIONAL FINDINGS REGARDING THE INDIVIDUAL RESPONSIBILITY REQUIREMENT

The individual responsibility requirement provided for in the Patient Protection and Affordable Care Act, and amended by Section 1002 of the Health Care and Education Reconciliation Act, is commercial and economic in nature, and substantially affects interstate commerce in many ways, including as a result of the following aggregate effects:

(1) The requirement regulates activity that is commercial and economic in nature, involving the distribution and consumption of health care services throughout the national economy, and in particular economic and financial decisions about how and when health care is paid for and when health insurance is purchased. Some individuals currently make an economic and financial decision to forego health insurance coverage and self-insure, paying for charges for services directly to the provider and relying on uncompensated care. The decision by individuals not to purchase health insurance has many substantial effects on the national economy, the national marketplace for health insurance, and interstate commerce. Individuals who fail to purchase health insurance have a diminished capacity to purchase health care services, and increase overall health care costs. When such individuals inevitably seek medical care, the costs of that caremust often be paid for by providers, insured individuals and businesses through higher premiums, or Federal, State, and local governments. The requirement encourages prepayment for services, and affects an individual's decision whether or not to purchase health insurance by imposing penalties on individuals who remain uninsured. Congressional Budget Office, Key Issues in Analyzing Major Health Insurance Proposals, December 2008.

(2) The uninsured receive about $86,000,000,000 in health care, of which about $56,000,000,000 is uncompensated. Private spending on uncompensated care is $14,500,000,000, and includes profits forgone by physicians and hospitals. Government spending on uncompensated care is $42,900,000,000, and is financed by taxpayers at both the State and Federal levels. Jack Hadley et al., Covering the Uninsured in 2008: Current Costs, Sources of Payment, and Incremental Costs, Health Affairs, August 25, 2008.

(3) Health care received by the uninsured is more costly. The uninsured are more likely to be hospitalized for preventable conditions. Jack Hadley, Economic Consequences of Being Uninsured: Uncompensated Care, Inefficient Medical Care Spending, and Foregone Earnings, Testimony before the Senate Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, May 14, 2003. Hospitals provide uncompensated care of $35,000,000,000, representing on average 5 percent of hospital revenues. Health Affairs, August 25, 2008.

(4) Those who have private health insurance also pay for uncompensated care. Medical providers try to recoup the cost from private insurers, which increases family premiums by on average over $1,000 a year. Families USA, Hidden Health Tax: Americans Pay a Premium, May 2009.

(5) The decision to self-insure increases financial risks to households throughout the United States. 62 percent of all personal bankruptcies are caused by illness or medical bills, and a significant portion of medically bankrupted families lacked health insurance or experienced a recent lapse in coverage. David U. Himmelstein et al., American Journal of Medicine, Medical Bankruptcy in the United States, 2007: Results of a National Study, 2009.

(6) The national economy loses up to $207,000,000,000 a year because of the poorer health and shorter lifespan of the uninsured. Elizabeth Carpenter and Sarah Axeen, The Cost of Doing Nothing, New America Foundation, November 2008.

(7) A large share of the uninsured are offered insurance at low or zero premiums, but choose to forego coverage. New America Foundation, December 6, 2007. According to one estimate, the absence of a requirement from health reform would leave 50 percent of the uninsured without coverage. Linda J. Blumberg and John Holahan, Do Individual Mandates Matter?, The Urban Institute, January 2008. While generous subsidies alone would not achieve universal coverage, the requirement further expands coverage. Congressional Budget Office, December 2008. The requirement improves budgetary efficiency by significantly lowering the federal cost per newly insured. Jonathan Gruber, Covering the Uninsured in the U.S., National Bureau of Economic Research, January 2008. In Massachusetts, where a similar requirement has been in effect since 2007, the share of uninsured declined to 2.7 percent in 2009. Massachusetts Division of Healthcare Finance and Policy.

(8) By regulating the decision to self-insure, and expanding coverage, the requirement addresses the problem of free riders who rely on more costly uncompensated care, shifting costs to medical providers, taxpayers, and the privately insured. It will also reduce the cost to the national economy of the lower productivity of the uninsured.

(9) The requirement is necessary to achieve near-universal coverage while maintaining the current private-public system. It builds upon and strengthens private employer-based health insurance, which covers 176,000,000 Americans nationwide. In Massachusetts, a similar requirement has strengthened employer-based coverage: despite the economic downturn, the number of workers offered employer-based coverage has actually increased. Sharon K. Long and Karen Stockley, Massachusetts Health Reform: Employer Coverage from Employees' Perspective, Health Affairs, October 1, 2009.

(10) Under the Patient Protection and Affordable Care Act, if there were no requirement, many individuals would wait to purchase health insurance until they needed care. Higher-risk individuals would be more likely to enroll in coverage, increasing premiums and costs to the government. The Urban Institute, January 2008. The requirement will broaden the private health insurance risk pool to include healthy individuals, which will spread risk, stabilize the market, and lower premiums. Congressional Budget Office, An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act, November 30, 2009. It is necessary to create effective private health insurance markets throughout the country in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold.

(11) Administrative costs for private health insurance, which were $90,000,000,000 in 2006, are 26 to 30 percent of premiums in the current individual and small group markets. Congressional Budget Office, December 2008. The requirement is necessary to create effective private health insurance markets throughout the country that do not require underwriting, eliminating its associated administrative costs. By significantly increasing health insurance coverage and the size of purchasing pools, which will increase economies of scale, the requirement, together with the other provisions of the Patient Protection and Affordable Care Act, will significantly reduce administrative costs and lower health insurance premiums.

(12) Health insurance and health care services are a substantial part of the national economy. National health spending is projected to increase from $2,500,000,000,000, or 17.6 percent of the economy, in 2009 to $4,700,000,000,000 in 2019. Centers for Medicare & Medicaid Services, Office of the Actuary, National Health Expenditure Projections, 2008–2018. Private health insurance spending is projected to be $854,000,000,000 in 2009, and pays for medical supplies, drugs, and equipment that are shipped in interstate commerce. Centers for Medicare & Medicaid Services, Office of the Actuary. Since most health insurance is sold by national or regional health insurance companies, health insurance is sold in interstate commerce and claims payments flow through interstate commerce.

(13) The requirement, together with the other provisions of the Patient Protection and Affordable Care Act, will add more than 30,000,000 consumers to the health insurance market. Congressional Budget Office, Patient Protection and Affordable Care Act, Incorporating the Manager's Amendment, December 19, 2009. In doing so, it will increase the demand for, and the supply of, health care services. According to one estimate, the use of health care by the currently uninsured could increase by 25 to 60 percent. Congressional Budget Office, December 2008.

(14) Under the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Patient Protection and Affordable Care Act, the Federal Government has a significant role in regulating health insurance. The requirement is an essential part of this larger regulation of economic activity, and the absence of the requirement would undercut Federal regulation of the health insurance market.

(15) Payments collected from individuals who fail to maintain minimum essential coverage will contribute revenue that will help the Federal government finance a reformed health insurance system that ensures the availability of health insurance to all Americans.

The preceding 15 points cite numerous studies and papers which illustrate the extensive evidence that the Patient Protection and Affordable Care Act, as amended by Section 1002 of the Health Care and Education Reconciliation Act, substantially affects interstate commerce. These citations are included as hyperlinks or in their written entirety for the record.

Mrs. HAGAN. Mr. President, today I rise in support of a bill that builds upon the health care reform legislation that was signed into law yesterday.

The new—and historic—law combined with the bill the Senate is now considering, will reform our health care system to reduce costs and improve patient care for North Carolina families and families across America.

In 1996, the average family premium was $6,000. Today it is $12,000. Without health care reform, premiums would skyrocket to $24,000 by 2016—or half of the average North Carolina family income.

Without reform, health care costs were projected to reach 20 percent of GDP, or $4.3 trillion, by 2017. This trajectory was simply unsustainable.

After decades of working to fix a broken health care system, President Obama yesterday signed into law a reform bill that controls exploding costs, increases access to health care and reduces our long-term deficit by as much as $1.2 trillion within 20 years.

By passing this bill, we will reduce the deficit, for a total savings of $143 billion by 2019.

In addition to containing costs, health care reform will improve access and quality of health care for millions of Americans. 1.7 million North Carolinians without insurance will now have access to a family doctor.

It will provide immediate benefits to small businesses, middle class families, and seniors in North Carolina.

While small businesses make up 98 percent of North Carolina's private sector employers, in 2008, only 38 percent offered health insurance.

Small business owners I talk to want to provide coverage for their employees, but costs are prohibitive. This month, I received an e-mail from a small chiropractic practice in eastern North Carolina that had to drop its health insurance plan for employees because rates were doubled over 2 years. Most of the practice's employees are young women under 30.

But starting today, 112,000 North Carolina small businesses will be eligible for tax credits to provide health care to employees.

Within the next 6 months, hard-working, middle-class families will be able to add their children up to age 26 onto their health plans. This will benefit about 877,000 young adults in North Carolina.

This year, insurance companies will no longer be able to deny coverage to a child for a preexisting condition, like asthma or diabetes.

Health care reform means people can access preventive care without being saddled with copays or deductibles. This includes well-child visits and seasonal flu immunizations.

I recently heard a story about a North Carolinian who, as a junior in college, had terrible stomachaches. But he could not afford a colonoscopy. He learned of his colon cancer too late for the doctors to save him. Health care reform means this young man would have had a chance.

Health care reform means people with chronic illnesses will no longer have to fear losing their insurance because of an arbitrary, insurance company-set lifetime cap.

And it means insurance companies will no longer be able to drop your coverage because you get sick or file too many claims.

Seniors also will see immediate benefits. In North Carolina, 1.4 million seniors will receive preventive services with no additional costs, and 247,000 seniors will have their drug costs in the ''donut hole'' immediately reduced and eventually eliminated.

I am proud of these immediate benefits and our efforts to reform the health care system for the long term.

This reform effort contains provisions that I have championed since coming to the Senate. In the United States, 23 million adults and children suffer from diabetes, and in North Carolina, diabetes costs our State $5.3 billion per year in medical interventions, lost productivity, and premature mortality.

Given these dire numbers, I added to the health care reform bill the second

piece of legislation I introduced as a U.S. Senator—The Catalyst to Better Diabetes Care Act. The Senator from Texas, Mr. CORNYN, cosponsored the bill last July. It creates a national and State-by-State level diabetes report card to track progress at beating the disease. It also requires the promotion of physician education on properly completing birth and death certificates, and requires that recommendations be made on appropriate levels of diabetes medical education that should be completed prior to medical licensing and board certification.

I also worked with the Senior Senator from Colorado, Mr. UDALL, to add a section to health care reform to improve access to health care in rural areas. The section we added will help medical schools establish programs designed to increase the number of graduates who practice in rural areas. It will give schools resources to recruit students from rural areas who have an interest in practicing medicine in their communities, and it provides for additional training in pediatrics, emergency medicine, obstetrics and behavioral health.

I also want to take this opportunity to discuss how the bill the Senate is currently considering will help make college affordable for our families.

One of the most significant provisions for our students in this legislation is the over $2.5 billion investment over the next 10 years in historically Black colleges and universities.

There are 10 outstanding HBCUs in North Carolina. HBCUs graduate 40 percent of African Americans with degrees in science, technology, engineering and mathematics; 50 percent of African-American teachers; and 40 percent of African-American health professionals.

North Carolina A&T, an HBCU in my hometown of Greensboro, graduates more African Americans with PhDs in engineering than any other school in the country.

This is a milestone week for the State of North Carolina. I am working with my colleagues to send this bill to the President's desk to further reduce costs for North Carolina's families and small businesses.

This health care reform effort would not have been possible without the work of some tenacious Capitol Hill staff, and I want to personally thank my two incredible health care staffers, Michelle Adams and Tracy Zvenyach, who worked countless hours for reform in our country.

Mr. CARDIN. Mr. President, I rise today in full support of the Health Care and Education Affordability Reconciliation Act of 2010. I assert that the investment we make in education with this bill is an investment in America's economic future.

For too long, we have allowed America to lag behind other nations in education, specifically in the number of college graduates we produce. No more. Now is the time to train our workforce to compete in the global economy. Now is the time to provide affordable, accessible, quality educational opportunities so that America will shine as a beacon of ingenuity and prosperity once again. This bill answers the call by making college more affordable and accessible.

Perhaps most significantly, the bill invests in and protects the Pell grant scholarship. It provides $36 billion over 10 years for this program which allows so many to attend college who would not otherwise have the opportunity. This includes funding to cover a shortfall due to demand. The failing economy has spurred a dramatic increase the number of those students who are eligible for Pell grants. In 2007, there were 5 million Pell grant recipients. In 2009–2010, there were 8.3 million. The bill also provides an increase in the maximum annual award which will ultimately be indexed to the Consumer Price Index and thus linked to increases in the cost of living.

In Maryland, over 85,000 students depend on Pell grants to help them attend college. With the additional funding, that number is expected to rise to 100,000. That is 15,000 additional students who have the opportunity to share in the American dream! Students like Morris Johnson from Baltimore. Morris is a double major in sociology and communications at Goucher College with a 3.5 grade point average. Morris credits those who believed in him and his academic promise for keeping his dream of attending college alive. But without financial aid, including a Pell grant, that dream would have been out of reach.

For those who find it necessary to borrow to finance their education, the bill solidifies a mechanism for obtaining high-quality student loans. The direct loan program is a reliable lender and cost-effective mechanism for taxpayers. Beginning in July of this year, all new student loans will be originated through the direct loan program. This will bring an end to the costly federally-guaranteed student loan program that generated billions of dollars in subsidies for banks—at the expense of additional financial aid for more deserving students. Instead, direct loans will be serviced by contracted private lenders. Further, direct loans can only be serviced in the United States, thereby preserving American jobs.

The bill also makes it easier for new borrowers after 2014 to repay Federal loans by lowering the existing cap on monthly Federal student loan payments from 15 percent to 10 percent of discretionary income. The legislation provides $1.5 billion for this income-based repayment program.

Just paying for college, however, isn't enough. We need to make sure our students succeed in college and graduate. To that end, the bill supports additional key investments:

The bill dramatically increases funding for the College Access Challenge Grant program. This program funds innovative financial literacy and retention projects. This will increase the number of low-income students who are adequately prepared for the financial challenges of paying for college and related expenses.

The bill underscores the role of minority-serving institutions in educating the Nation's low-income and minority students by providing $2.5 billion to support these institutions. This funding represents a significant investment in Maryland where we have four outstanding Historically Black Colleges and Universities. The bill also recognizes the role of community colleges and provides $2 billion for a competitive grant program to develop and improve career training programs.

I said the time for making college more accessible and affordable has come and I believe that. But we also have to be fiscally responsible. This bill is both. It makes historic investments in Federal financial aid and yet comes at no cost to the taxpayers. This is possible by switching all Federal loans to the direct loan program. Doing so saves taxpayers a huge amount in subsidies that were going to the banks. According to the Congressional Budget Office, this savings will amount to $61 billion over 10 years. Even with the improvements, these education provisions in the legislation will reduce the deficit by $10 billion over 10 years, at least.

The education provisions in this legislation make college more affordable and accessible. It's necessary for America's students and for America's future.

Ms. MIKULSKI. Mr. President, I am proud today to support the student loan reform provisions in the Health Care and Education Affordability Reconciliation Act of 2010. I've said this often, we in this country enjoy many freedoms: the freedom of speech, the freedom of the press, the freedom of religion. But there is an implicit freedom our Constitution doesn't lay out in writing, and its promise has excited the passions, hopes, and dreams of people in this country since its founding. The freedom to take whatever talents God has given you, to fulfill whatever passion is in your heart, to learn so you can earn and make a contribution—the freedom to achieve.

When I was a young girl at a Catholic all-girls school, my mom and dad made it clear they wanted me to go to college. But, right around graduation, my family was going through a rough time because my dad's grocery store had suffered a terrible fire. I offered to put off college and work at the grocery store until the business got back on its feet. My dad said, ''Barb, you have to go. Your mother and I will find a way because no matter what happens to you, no one can ever take that degree away from you. The best way I can protect you is to make sure you can earn a living all of your life.'' My father gave me the freedom to achieve. And the provisions in this bill will give millions of

Americans that same freedom without adding a dime to the deficit.

For too long, banks have gotten a free ride from the U.S. Department of Education by offering federally guaranteed student loans. The provisions in this bill will stop wasteful and unnecessary subsidies to lenders and put that money where it is needed most—in students' pockets. By reforming the Federal student loan program, we will save over $60 billion in the next 10 years. Many of those savings will go to increase the Pell grant, which has made college a reality for students of modest means for nearly half a century. But we also make critical investments in institutions that help our most underserved students: community colleges and Minority Serving Institutions, particularly Historically Black Colleges and Universities, HBCUs.

I have fought alongside my colleagues for years to increase funding for these programs and there was a point where Democrats had to fight tooth-and-nail just to keep Pell funding from being cut. Now we are in a position where we can guarantee increases in the Pell grant, which helps more than 90,000 students in my home State of Maryland. My colleagues have spoken eloquently about the importance of the much-needed investments in this bill, but I would like to take a moment to highlight the investments in HBCUs. I am the only senior Democrat on the HELP committee that has HBCUs in their State, and I have been a long-standing champion for these schools in both my work as an authorizer on the HELP committee and as an appropriator through my chairmanship of the Commerce, Justice, and Science Appropriations Subcommittee.

I am proud that Maryland has four public HBCUs which provide an incredible benefit to African-American students and the communities they serve. Few people know, but HBCUs produce nearly a quarter of our Nation's African-American public school teachers. They also produce almost 40 percent of African-American graduates in physics, math, biology, and environmental sciences.

Some of my colleagues might argue that HBCUs shouldn't be getting Federal funding based primarily on the racial makeup of their student bodies and, further, that there is no longer any place for these institutions in this day and age. What I would tell them is that Congress has been providing direct Federal support for HBCUs for more than 50 years mainly for two reasons. First, Congress recognizes the historical and cultural importance of HBCUs and their benefit to students who are often the first in their families to go to college. Second, the emergence of these institutions was a direct result of Federal action permitting the segregation of students in public education based on race.

During those dark days, HBCUs were often the only pathways to college for African Americans; they were able to open the doors of opportunity that were so often shut. But these institutions are historically under-resourced, and their students are by and large underserved. For that reason they have had to fight for representation, respect, and recognition since they were established. They've had to urge lawmakers to act ''now'' on behalf of their students when so many have told them to ''wait.'' So I am here to make sure that the more than 20,000 students at Maryland's HBCUs get the resources they deserve by supporting the $850 million investment in HBCUs over 10 years enabled through this reconciliation bill. Maryland is slated to get $65 million, and I am confident that the presidents of Morgan State University, Coppin State University, the University of Maryland Eastern Shore, and Bowie State University will be good stewards of this landmark Federal investment.

Our work isn't done when it comes to equity in access for higher education, but this bill helps us get there.

Mr. KAUFMAN. Mr. President, after decades of efforts and a year of extensive debate, Americans will finally have a health care system that controls costs, reduces the deficit, improves access, adds more protections for seniors and curbs insurance company abuses. The President has signed meaningful health care reform into law that will extend immediate benefits to millions of American families and small businesses.

In implementing this comprehensive legislation, the Department of Health and Human Services will be called upon, as will other Federal agencies, and the States, to make assessments in a variety of contexts as to whether the marketplace is functioning properly, or whether abuses are occurring. In making these assessments, and in deciding on appropriate steps to address any abuses or dysfunction, the Federal agencies and the States can benefit greatly from competitive analysis provided by the Department of Justice's Antitrust Division and the Federal Trade Commission.

One example where this advice would be particularly beneficial is in implementing the mandate to establish State and/or regional health exchanges. At present, many State health insurance markets are characterized by their extreme concentration. According to the American Medical Association, in 2007, at least one insurer had a combined HMO/PPO market share of 50 percent or greater in 64 percent (200) of the local markets (or Metropolitan Statistical Areas) of the United States. And the two top insurers accounted for at least 60 percent of enrollment in almost 75 percent of these markets. High concentration and barriers to entry reduce price competition and customer choice.

The law just passed contains an antitrust savings clause, which clarifies that Congress did not intend health care reform to erode the reach of the antitrust laws in any way. To restore true competition however, more than a savings clause is needed.

I am pleased that the law vests in State exchange regulators the power to address competition failures in the market, including the root causes of industry concentration. This means curbing anticompetitive practices designed to keep prices high and choices low, and also encouraging new market participants by mitigating barriers to entry. Obvious market abuses, such as tying agreements, predatory practices and the like, must be stopped. But success also requires that the regulators get the more delicate issues right: does a preferred rate agreement constitute a de facto boycott? Will a regulation or exchange adversely impact the ability of a new participant to gain public trust? How does a proposed rule impact the ability of young insurance companies to develop a comprehensive network of health care providers?

These are difficult questions and we should not expect State regulators to develop an expertise in them overnight. But our Federal antitrust agencies, have, through years of experience, developed just this expertise. I urge the exchange regulators, as well as the Department of Health and Human Services and other responsible agencies, to make full use of their assistance.

Mr. NELSON of Florida. Mr. President, I rise today in support of two amendments, S.A. 3574 and S.A. 3575, offered by the junior senator from Florida. I am concerned the student loan reforms in the bill will lead to a substantial loss of jobs in my State. That is why I recently led a group of six Senators in asking Majority Leader REID to consider alternative ways to reduce the cost of student loans. Unfortunately, that has not happened. The provisions in this bill could prove detrimental to thousands of employees who serve in the student loan industry throughout this country, about 700 who are located in Panama City, FL. Therefore, Mr. President, I urge the Senate to pass this amendment.

Mrs. FEINSTEIN. Mr. President, I rise in support of the education provisions in the reconciliation legislation that reforms Federal student loan programs and will help our Nation's neediest students afford college by providing $35.5 billion for the critical Pell grant program.

Nearly 700,000 students in California right now receive Pell grants of up to $5,550 out of over 8 million students nationwide. The majority of these students come from families where the average income is less than $40,000.

The Pell grant funds in the bill will help prevent cuts to students' grants of up to 60 percent and prevent nearly 600,000 students from losing their grant entirely.

It will also help 63,000 more students in California receive a Pell grant so they can afford to go to college during this tough economic time.

Specifically, the legislation will allow the current Federal Direct Loan

Program, backed by the U.S. Treasury, to be the sole originator of all federal student loans; save $61 billion over 10 years by eliminating the Federal Family Education Loan Program, FFELP, which provides unnecessary subsidies to private lenders and banks for originating student loans.

Of the $61 billion in savings, it directs $10 billion to help reduce the Federal deficit, and the remainder towards important education programs, such as $35.5 billion for Pell grants to help students afford college; direct $22.5 billion of the total $35.5 billion in new Pell Grant funds to increase the maximum award amount—from the current $5,550 to about $6,000 to help with rising college costs.

The economic downturn has resulted in increased enrollment at colleges and universities, and increased eligibility in Federal student aid, with the number of Pell grant recipients increasing by 1 million students in the past two years alone.

In my home state of California, these important provisions are supported by the University of California, UC, California State University, CSU, and California's public community college system—which together serve approximately 500,000 Pell grant students.

I urge my colleagues to support these provisions that are critically important to our Nation's students.

PUERTO RICO

Mr. MENENDEZ. Mr. President, I want to thank the chairman and his staff for taking the time and effort to ensure the 4 million residents in Puerto Rico are treated fairly in our health care system.

Throughout my time in Congress, first in the House, and now here in the Senate, I have worked to see the people of Puerto Rico are not forgotten. The health care reform package we are debating today has several outstanding provisions for Puerto Rico. It is an example of the good we can do for its nearly 4 million U.S. citizens—who pay Social Security and Medicare taxes.

But there is one issue I want to raise and that is the Medicare Advantage program on the island. Approximately 83 percent of the eligible Medicare beneficiaries in Puerto Rico participate in Medicare Advantage, compared to 25 percent in the States. This can be tracked to the fact that eligible seniors in Puerto Rico are not automatically enrolled in Medicare Part B when they turn 65. As a result, it is more beneficial for seniors in Puerto Rico to enroll in Medicare Advantage to receive all of their Medicare services.

However, the fee-for-service, FFS, cost calculation for Puerto Rico is inaccurate and under counts expenditures per Medicare beneficiary. Last year the Medicare Payment Advisory Commission, MedPAC, alerted Congress to this and recommends that the Centers for Medicare & Medicaid Services, CMS, should expeditiously use its authority to employ an alternative calculation method . . .'.

The fee-for-service cost calculation is important because it will soon be the basis for Medicare Advantage rates throughout the country and Puerto Rico. I strongly believe CMS should take a look at the under count. If there is validation that the FFS expenditures are too low, I believe the HHS Secretary and CMS should use current authority and adjust the calculations appropriately.

I am asking HHS and CMS to look at the under count because there is a very real chance we could do harm to Medicare Advantage in Puerto Rico if we don't get the FFS costs accurate. I hope the chairman agrees with me.

Mr. BAUCUS. I thank the Senator for bringing attention to this issue. He is a true champion for Puerto Rico and a constructive member of the Finance Committee.

I share his concern about the possible under count of fee-for-service costs in areas like Puerto Rico. That is why we included a provision in the Medicare Improvements for Patients and Providers Act of 2008 to have MedPAC study the accuracy of the calculation and report to Congress. As he points out, MedPAC recommends that CMS alter the FFS cost calculation so that such under counts do not exist, particularly in areas like Puerto Rico where Medicare Advantage provides benefits to over 80 percent of its seniors.

I strongly agree with him that CMS should promptly use its authority to correct any and all under counts that might exist in areas like Puerto Rico. The island has unique circumstances that could affect Medicare expenditures and spill over to Medicare Advantage. Moving forward I will continue to work with the Senator closely to monitor and correct this issue as expeditiously as possible.

Mr. MENENDEZ. I thank the Chairman for his leadership and commitment on this issue.

PEOS

Mr. NELSON of Florida. Mr. President, I would like to ask the chairman of the Committee on Finance and its ranking member a question on the application of the legislation to Professional Employer Organizations or PEOs.

As they know, there are millions of individuals throughout our country who are working for small businesses which are in PEO arrangements. The clear objective of this legislation is to create incentives for health care coverage and not to provide disincentives. I would like the chairman to clarify that, for purposes of the application of section 2716 of the Public Health Service Act (Prohibition on Discrimination in Favor of Highly Compensated Individuals) and for purposes of Internal Revenue Code sections 45R (Credit for Employee Health Insurance Expenses of Small Businesses) and 4980H (Shared Responsibility for Employers), to any health plans sponsored by a Professional Employer Organization, PEO, or a PEO client organization, the rules would be applied to each client organization separately and eligibility for the small business tax credits and employer shared responsibilities would also apply to each client organization separately, and not at the PEO level.

Mr. BAUCUS. If the individual providing services to the PEO client organization pursuant to the PEO arrangement continues to be an employee of the PEO client organization, the Senator from Florida is correct.

Mr. GRASSLEY. I agree with the chairman.

Mr. BAUCUS. Mr. President, I want to talk a moment about one of the only retroactive tax provisions in the Patient Protection and Affordable Care Act, Section 9016. This one deals with the special deductions given to the many nonprofit Blue Cross Blue Shield organizations which are no longer exempt from Federal income tax.

Under section 833 of the Internal Revenue Code, these organizations receive a 25 percent deduction for claims and expenses and an exception from the—otherwise applicable—20 percent reduction in the deduction for unearned premium reserves. Effective January 1 of this year, these non-profit Blue Cross Blue Shield organizations must now meet a medical loss ratio of 85 percent or higher in order to take advantage of the tax benefits of section 833. This provision was included to ensure that recipients of this special deduction actually spend out most of their premium income on the people they insure and not on administrative fees or executive compensation.

But I want to clarify two issues here. First, it was our intention that, in calculating the medical loss ratios, these entities could include both the cost of reimbursement for clinical services provided to the individuals they insure and the cost of activities that improve health care quality. Determining the medical loss ratio under this provision using those two types of costs is consistent with the calculation of medical loss ratios elsewhere in the legislation. This determination would be made on an annual basis and would only affect the application of the special deductions for that year.

Second, it was our intention that the only consequence for not meeting the medical loss ratio threshold would be that the 25 percent deduction for claims and expenses and the exception from the 20 percent reduction in the deduction for unearned premium reserves would not be allowed. The entity would still be treated as a stock property and casualty insurance company.

It is my understanding that the Joint Committee on Taxation scored this provision consistent with the policy I just outlined. We intend to clarify these two issues in a technical corrections bill as soon as possible.

Mr. President, I want to speak concerning the accounting treatment of one of the tax provisions that passed in the Patient Protection and Affordable

Care Act, Section 9008, and that is proposed to be modified in the Health Care and Education Reconciliation Act. This deals with the annual fee on pharmaceutical manufacturers which, as passed, is to go into effect this year. It is our hope that Congress will delay the implementation of this fee by 1 year, to 2011, by passing the reconciliation bill which we are discussing today on the floor. This will give the government reporting agencies more time to establish systems to report the drug sales to the Secretary of the Treasury as required by health care reform.

As a reminder of how the fee works: our legislation sets an aggregate, annual fee that is to be apportioned among the relevant companies based on their market share of branded U.S. prescription drug sales made to or funded by specified government programs. The U.S. Treasury will allocate this annual fee to each company based on its relative market share for the prior year.

Now, we understand that there have been questions about the nature of this fee that are affecting how the fee should be treated for accounting purposes. It was our intent that the fee is assessed in the year that it is due. A fee is assessed on an entity in any given calendar year only if the entity is engaged in the business of manufacturing or importing branded prescription drugs and has sales to the specified government programs in that calendar year. The reference in the legislation to sales for the preceding calendar year is for the sole purpose of providing the method of calculating market share. It would be difficult to calculate market share and impose and collect the fee in the same year, so we decided to look back to a completed year as a proxy of market share. But it is not intended that a manufacturer or importer would be assessed an annual fee in a calendar year in which it had no branded prescription drug sales to the government programs. This is regardless of whether the manufacturer or importer had any relevant sales in the preceding year.

As an example, suppose a pharmaceutical company made sales in 2011 but in November 2011 shut down its U.S. operations and had no further sales to the specified government programs. In 2012, that pharmaceutical company would not be subject to the fee. Instead, the 2012 aggregate fee would be allocated among those companies selling drugs in 2012 to the specified government programs.

These same accounting questions may also be raised under the annual fee on health insurance providers—section 9010 of the Patient Protection and Affordable Care Act, as amended. On these issues, our intent as to the treatment of the fees is the same.

We anticipate that the Secretary of the Treasury will provide guidance on how to determine the fees in situations involving mergers, acquisitions, business divisions, bankruptcy, or other situations where it may be difficult to account for sales taken into account in determining market share. We intend to work with the IRS and the affected groups to further clarify the law consistent with the policy I have just outlined.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. There is 1 minute 48 seconds remaining.

Mr. BAUCUS. First, I thank all of my colleagues on both sides of the aisle. This has been a very civil discussion, very heartfelt feelings on both sides, and I appreciate that.

Let me also say it is interesting that this is the first time in recent memory that a reconciliation bill has all amendments on one side only. These are clearly amendments designed to kill the reconciliation and therefore kill health care reform. So I very much hope that all of these amendments are defeated.

I note there are 23 amendments pending. It is going to take 7 or 8 hours, hopefully less. There will be many more amendments offered tonight. It is our expectation that we will continue voting on all amendments until we finally vote on all amendments and we can get reconciliation passed, and therefore all of the measures surrounding health care reform will be enacted and we can proceed.

Mr. GRAHAM. Mr. President, I rise today with great disappointment in both the substance and process of this legislation.

We should be working from a long held medical premise; first, do no harm. Instead, Americans know this government takeover of the health care system is bad and the tactics that have been used to do it are even worse. The policies contained in the recently passed health care bill combined with this reconciliation package will raise costs, lower the quality of care in our country, shift a new unfunded mandate onto the States, and will result in health care rationing.

The reasons Democrats passed this bill on a party-line vote in the Senate on Christmas Eve and late this past Sunday night in the House are because of a slew of backroom deals and arm twisting to buy up last minute votes. Now we take up the reconciliation bill to remove some of these deals so the President can claim to have clean hands.

There are many other reasons to oppose this bill, aside from the unsavory deals made to secure its passage. In both its scope and reach, the combination of health care legislation and reconciliation is unprecedented. It raises $644 billion in taxes and cuts $525 billion from Medicare. The Democrats' bill contains accounting gimmicks that would make Bernie Madoff proud.

The Congressional Budget Office found that savings generated from Medicare will not be reinvested in the program, but rather will be used to pay for new programs, putting even more strain on the long-term viability of Medicare.

There is no guarantee this plan lowers health care costs for consumers. What is sure is that 80 percent of Americans will find themselves in some form of government-run, government-controlled health care. The remaining 20 percent will soon be asked, if not required, to follow.

Historically, large-scale social legislation has passed with great bipartisan support. Social Security legislation passed in 1935 with 77 bipartisan votes. Medicare passed with 68 votes, and the Americans with Disabilities Act passed with 76 votes. Never before have we acted in a manner that would affect one-sixth of our economy on the whims of a single political party. The combination of tactics used to pass the health care bill and amend it through reconciliation moves us into uncharted territory.

Even previous budget reconciliation measures cited by my colleagues on the other side have passed with large, bipartisan margins. The law that created the COBRA insurance program, often cited by my friends, achieved final passage in the Senate on a voice vote in 1985. In addition, welfare reform was supported by 78 Senators and SCHIP passed the Senate with a whopping 85 votes.

While there are a number of things that Republicans and Democrats agree on when it comes to reforming the health care system, Democrats have chosen to pursue a winner take all strategy that leaves them in the position of having to clean up a messy bill through the process of reconciliation. They have adopted a hard-line ideological approach and continue to push a plan that will put us one giant step closer to the single-payer government run health care system they have long desired.

Speaking of a federal takeover; if you want a federal takeover of the student loan industry, then your ship has come in. Every student in the country who needs to borrow money for college will now have to come to the Federal Government for a loan, which will make the United States Department of Education one of the Nation's largest banks. A portion of the proceeds from these loans, about $9 billion, will then be used to finance new health care spending instead of being put back into education programs. Students will be caught in the middle in terms of health care financing. Not only will their loan interest go to finance an unpopular health care proposal, but they will be paying higher taxes when they graduate and get a job.

I am afraid that by dealing Republicans out of the game, Democrats have done great harm to comity in the Senate. I have never hesitated to work across the aisle on tough issues and try to reach consensus. After this maneuver, I fear that bipartisanship may be a

thing of the past for the foreseeable future. While there may have been the chance to work together on important topics, I believe Republicans must now pursue a strategy of repeal and replace. Repeal this damaging legislation and replace it with programs that promote fair tax treatment of health care, encourage innovation, reward wellness, and help those in need.

I will be voting against this reconciliation bill because I believe that combined with the recently passed health care bill, it will do more harm than good for health care and higher education in America.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. How much time do we have on our side?

The PRESIDING OFFICER. There is 4 minutes remaining.

Mr. GREGG. Mr. President, a lot has been talked about here. A lot has been discussed. I don't want to get in an expansive discussion of the issue of the underlying bill. It has been fully aired. But this concept to vote down every amendment, that you have to do that in order to save this bill, seems to reject the concept of a constitutional process.

Think about this for a moment. The whole series of amendments here are being offered to fulfill the statements made by the President of the United States. For example, Senator MCCAIN has offered an amendment to take out the sweetheart deals. The President said the sweetheart deals would be taken out. Senator BARRASSO has offered an amendment which says that if premiums go up, certain parts of this bill will not go into force. The President said premiums will not go up on working Americans. Senator CRAPO has offered an amendment which says that if there are taxes on people earning less than $200,000, those taxes won't go into force. That is what the President promised. I have offered an amendment which says that if there are Medicare cuts in this bill, the cuts should go to Medicare and make Medicare more solvent—a promise also made from the other side of the aisle.

All of these are amendments which are substantive and the purpose of which is to put forward the policies which the other side of the aisle represented they were going to have in their original bill. This is called the fix-it bill. Well, we are suggesting you fix it so it meets the conditions set out by the President and by the Democratic leadership. Yet now we hear that every amendment should be voted down. Why? Because the idea of sending the bill back to the House is anathema to the Democratic Party. Did I miss something? Isn't the House of Representatives controlled by the Democratic Party with a supermajority? You mean they couldn't survive the idea of knocking out the sweetheart deals, sending it back to the House, and coming back here? That is going to somehow fundamentally undermine this bill? That argument is absurd on its face. It is absurd on its face.

I think the only answer is that the other side of the aisle has decided to proceed on this bill in a most arrogant process. From the beginning of the core of this bill being put together in a hidden room behind a hidden room behind a hidden door of the majority leader's office suite, brought to this floor on a Saturday afternoon, the tree was filled and we were told we had to vote on it on Christmas Eve. No amendments were allowed. Then it was taken over to the House, and the Speaker worked out the deals in the back rooms of her offices behind hidden doors without any public input, without C–SPAN there, as was represented it would be. And what happened? It passed the House without any amendments being allowed.

Now, for the first time, we have a chance to offer amendments, and the position on the other side of the aisle is no amendments allowed even if they are good amendments.

So, I guess, obviously, they consider their promises to be an inconvenience. Obviously, they presume the Republican Party is an inconvenience. The Democratic process is an inconvenience. It also appears, considering the opposition to this out in America, that the American people are an inconvenience and that amendments which make sense aren't going to be allowed to be passed because they don't want to send it back to the House of Representatives. It makes no sense to me, and I don't think it is going to make much sense to the American people.

This bill is fundamentally flawed. It needs to be repealed and it needs to be replaced. We have suggested a whole series of amendments which will significantly improve this bill, and I hope some will be supported by the other side of the aisle since they are the policies of the other side of the aisle.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. Mr. President, make no mistake——

Mr. GREGG. Mr. President, point of order. Is there time remaining on the bill?

The PRESIDING OFFICER. There is 53 seconds remaining for the majority.

Mr. BAUCUS. Mr. President, make no mistake, the intent of every single one of the amendments offered on the other side of the aisle is to kill health care reform. That is the sole purpose of each of those amendments. That was the sole purpose of the amendments in the Finance Committee last year—to kill health care reform. It was the sole purpose in the HELP Committee, except for a few benign amendments—to kill health care reform. It was the sole purpose on the floor of the Senate when we took it up. Every amendment was to kill health care reform.

A Senator on the other side of the aisle stood up and said that this is hopefully the President's Waterloo. They want to kill health care reform. It is clear they want to kill health care reform.

The other side has said repeatedly in campaign statements in the other body that they want to repeal health care reform. They have orchestrated legislatures to repeal health care reform.

Each amendment offered here is intended to kill health care reform, and that is why each amendment should fail.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. REID. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I direct this comment through the Chair to my distinguished colleague, the Republican leader. All time has expired. Under the rules in the Senate, we start our vote-athon now, as the Republican leader knows. I would ask my friend, is it the desire of the minority that there be time before each amendment and a response to that?

Mr. MCCONNELL. Yes. I would say to my friend the majority leader, since the voting will all occur during the so-called vote-arama, if we could have a minute or so before each amendment simply to describe what it is, that would be helpful.

Mr. REID. Mr. President, I say again through the Chair to my colleague and those Members of this body, we do not have to agree to 1 minute, but we want everyone to understand we have tried to be as fair as we can through this whole process. There are some who said: Why should we waste—there would be 43 minutes or 46 minutes. I think there are 23 amendments pending, so that would be 46 minutes. But we want to be fair. In recent years, we have agreed by unanimous consent to have 1 minute to explain the amendment and 1 minute to disagree with the amendment. I think that is the appropriate thing to do. We want to make sure everyone is treated fairly.

But I alert everyone: The Chair is going to enforce—we are not waiting for the Parliamentarian—the Chair is going to enforce that to the letter of the law. Every time the Presiding Officer is here, there will be 1 minute—if this consent agreement is agreed to—there will be 1 minute to explain the amendment and 1 minute to disagree with the amendment.

Mr. MCCONNELL. Would my friend yield for an observation?

Mr. REID. Yes.

Mr. MCCONNELL. Even though allowing that, as the majority leader suggested, is certainly optional, it has been the custom of both sides, when we have been in these vote-arama situations in the past, to allow the time on

each side, and I appreciate the willingness of the majority leader to do that.

Mr. REID. Mr. President, I ask unanimous consent, as I directed, or asked, that there be 1 minute to explain the amendment and 1 minute to disagree with the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I also ask unanimous consent that after the first amendment, on which we will do our normal 15 minutes with 5 minutes of time after that, all votes thereafter be 10 minutes. I ask unanimous consent that prior to each vote there be 2 minutes of debate equally divided and controlled in the usual form; that upon use or yielding back of that time, the Senate proceed to vote in relation to the amendments and the motions in the order they have been offered—I think that is the fair way to go so we are not trying to catapult over other amendments people may have offered at an earlier time—with no intervening amendments or motions in order prior to a vote; further, that after the first vote in this sequence, the succeeding votes be limited to 10 minutes each.

The reason I suggest 10 minutes is I have been told by Senator MCCONNELL and others they want an opportunity to offer amendments, and this will maybe allow them to offer a few more.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I also note that with just the amendments that have been proposed, if we are fortunate, it will probably take 9 hours or so, maybe more than that, to get rid of those. There will be continuous votes without any breaks. We are not going to have any breaks unless something untoward happens. Senators should be advised that they should remain close to the floor during this process. If people are not here at the end of the time, we are going to close it up. We need to move on. We have other things we have to do prior to the recess. I have to work with the Republican leader. It has taken an enormous amount of time to do this. Everybody stay here. It works a lot better if my colleagues stay close to their seats and, hopefully, we will have an orderly process as much as possible during the vote-arama.

The PRESIDING OFFICER. The minority leader.

Mr. MCCONNELL. Mr. President, I am going to take a few minutes of my leader time before we begin the vote.

The PRESIDING OFFICER. The leader has that right.

Mr. MCCONNELL. Mr. President, the administration and some in Congress wish this debate to be over. They want the American people to sit down and quiet down. That has been their approach to health care for an entire year.

Well, Republicans think Congress serves the people, not the other way around.

We have fought on behalf of the American people this week, and we will continue to fight until this bill is repealed and replaced with commonsense ideas that solve our problems without dismantling the health care system we have and without burying the American dream under a mountain of debt.

That is what we have been doing all week in the Senate. While Democratic lawmakers and staffers threw a party for themselves at the White House yesterday, Republicans were here at the Capitol fighting a 150-page postscript that Democrats added at the last minute to the health care bill. This add-on took a terrible health spending bill and made it even worse.

If you thought the tax hikes in the original bill were bad, this bill raised them even higher. If you thought the Medicare cuts were bad, this bill made them even deeper. If you thought the first bill cost too much, this bill made it even more expensive. If you did not like the special deals in the first bill, they slipped more into this one. The whole thing was one last slap in the face of Americans across the country who have been howling at Democrats for the past year to stop this bill and to work instead across party lines on reforms that would actually drive costs down.

Today Republicans will give Democrats one last chance to reject the horrible impact the underlying bill and this last-minute add-on will have on our country. Unfortunately, we already know that they plan to turn the other way.

We will offer an amendment to direct the Medicare cuts in this bill back into Medicare, to preserve and strengthen it for future generations. They will reject it.

We will offer an amendment to strike all the new sweetheart deals in this bill. They will reject it.

We will offer an amendment that would have obliged the President to keep his pledge that families earning under $250,000 will not see any tax hikes as a result of this bill. They plan to reject it.

We will offer an amendment requiring HHS to certify that this bill does not increase premiums. They will reject it.

We will offer an amendment to strike a job-killing mandate on business. They will reject it.

While the White House is trying to sell this health spending bill to a skeptical public, Senate Democrats today will speak loudly and they will speak clearly about the things in this bill the White House does not want people to know and vote to endorse them: massive cuts to Medicare for seniors; job-killing mandates and business tax hikes; higher insurance premiums; sweetheart deals; tax hikes on middle-class families. This is the real story of health care reform.

Americans may not be hearing about it from the White House, but I assure you, they will be feeling the pain. Americans know this and they want to know that somebody is fighting for them in Washington to make their voices heard. That is what Republicans have been doing on this issue for the past year. That is what we have been doing this week. That is what we will be doing tonight. And that is what we will keep doing until those voices are heard. We are not giving up.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, USA Today-Gallup reported that the people of America, the citizens of America, favor what we did by a score of 49 to 40. That is a pretty significant majority. People support this legislation. Why? Because they are tired of being treated by the insurance industry the way they have been treated.

My friend talks about the mountain of debt of this bill. We have rules and guidelines in this body, in this Congress, and one of them is we have an independent body that has been set up, not by Republicans, not by Democrats, but by us. It is independent. It is not partisan. That agency, the Congressional Budget Office, determined this bill over the first 10 years will save about $140 billion; over the next 10 years, $1.3 trillion. This is make-believe they talk about all these things that are going to cost so much—$1.3 trillion.

I also have to comment on this. My friend, the Republican leader, talks about how hard they were working yesterday when we were at a 45-minute meeting at the White House while the President made history signing for the first time in 100 years major health care reform in this country. They were working so hard here. They were working so hard today that they refused to let committees meet to hold sensitive, important hearings for our country.

CARL LEVIN had to cancel a meeting because the Republicans refused to allow that meeting to go forward, dealing with the safety and security of this Nation. CLAIRE MCCASKILL, with her subcommittee, had to cancel a hearing dealing with having police officers trained in Afghanistan. Canceled. Working hard, they are, to throw a monkey wrench in everything we are trying to do for the American people.

To in any way denigrate, as has been done this afternoon, Chairman MAX BAUCUS and Chairman CHRIS DODD and the work done by the man replacing Ted Kennedy is an outrage. MAX BAUCUS devoted his life to this legislation for the last 2 years: the number of roundtable discussions with Finance Committee members and invited guests, 3; the number of papers outlining health care reform, significant, important papers that were distributed to everybody around the country interested in health care, 4; the number of meetings of the Gang of 6—three Republicans and three Democrats—31 meetings; the number of member meetings on health care reform, 141.

These are not back-room deals. This is how business is conducted in the Senate.

The number of days in the Finance Committee the bill was available before the markup even took place, 6; the total number of amendments posted online before the markup, 564. They were public. Everyone in America could read them. The number of amendments considered during the markup, 135; the number of days the committee spent marking up the bill, 8; the number of days the final bill was available before the vote, 11.

There is more, but you get the picture.

Chairman DODD conducted the longest markup in the history of the HELP Committee. On what subject? Health care. Public meetings, many of them on C–SPAN.

There is no bill anymore. It was signed into law yesterday. The work that we did here on Christmas Eve, through the storms of 2010, is now the law of this country. We are going to start in just a few minutes making that law even better.

In my State of Nevada, 600,000 people will be able to have insurance who have never had it before; 24,000 small businesses will be eligible for a subsidy for people they employ to have health insurance. They did not have health insurance because they were cheap or mean; they could not afford it. If they would get a palsy, they would cancel when somebody got sick or hurt.

Now someone who is 26 years old can go to college or do whatever they want to do and not worry about losing their insurance until they establish themselves.

This legislation extends Medicare for 9 years as a healthy entity. Medicare is not a perfect program, but it is a good program.

My first elective job was a countywide job in Las Vegas, the metropolitan areas Clark County. When I went on that hospital board, the largest district in Nevada, 40 percent of seniors who came into that hospital had no health insurance. Their sons, their daughters, their mothers, their brothers, their cousins, their neighbors signed for them that they would be responsible for that bill. We had a large collection agency in that hospital. We went after those people.

Not anymore. Now everybody who is a senior citizen who comes into that hospital is taken care of because of Medicare. We extend the life of that program for about 9 years.

I had a letter written to me by a man from Nevada. He wrote to me and he said: Senator, I have a son who has diabetes, but it has become more complicated. Now he has Addison's disease. I lost my job. We have no health insurance. When I go to bed at night and say my prayers, I don't know whether to die or stay alive to help my son. That is how desperate he is.

People such as this man from Nevada are no longer going to have to be desperate. No longer are we going to have 750,000 people file for bankruptcy, 70 percent of them because of health care costs and 80 percent of the 70 percent have health insurance.

The bill that is now the law of this country dealing with health care is a wonderful bill, and we are going to improve it tonight.

AMENDMENT NO. 3567, AS MODIFIED

The PRESIDING OFFICER. There will be 2 minutes of debate equally divided prior to a vote on the Gregg amendment, as modified. Who yields time?

Mr. GREGG. Mr. President, this amendment fulfills the obligation to our senior citizens. This bill reduces on its face $520 billion in Medicare by cutting Medicare beneficiaries through reducing providers and by eliminating or significantly reducing the Medicare Advantage Program. That number actually, when fully implemented, is $1 trillion over the first 10 years. That is $1 trillion of reductions in Medicare.

That money is then taken and used to create new entitlements for people who are not seniors and who have, for the most part, not paid into the Medicare trust fund. That is wrong. Medicare is in serious trouble. We should use the Medicare savings in this bill for the purposes of making Medicare more solvent.

That is exactly what this amendment does. It keeps Medicare savings in the Medicare trust fund and uses them to make Medicare more solvent.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, without being dramatic, this is a killer amendment, pure and simple. Why? Because it is basically designed to prevent spending. That means it will take away tax credits to middle Americans to help them buy insurance. This amendment would take it away. It would kill the assistance to seniors for prescription drugs. It would take that away. It would take away assistance to States. That is why it is a killer amendment.

I proudly support this bill. Why? This bill reduces insurance costs for working-class and middle-class Americans, expands Medicare prescription drug coverage to more than 3 million seniors, provides immediate tax credits for nearly 4 million small businesses, stops $6 billion in annual government subsidies for banks, and puts money into college grants for students and their families.

In contrast, our friends on the other side do not want to do that. They want to kill this bill. I think that is patently against the wishes of the American people.

Mr. President, I move to table the Gregg amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 64 Leg.]

YEAS—56

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (OH)	Kerry	Sanders
Burris	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Whitehouse
Feingold	Menendez	Wyden
Feinstein	Merkley	

NAYS—42

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Webb
Cornyn	Lugar	Wicker

NOT VOTING—2

Byrd	Isakson

The motion was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, we are going to cut the votes off after 10 minutes. We are going to move these as quickly as we can. We want to get through this series of votes as rapidly as we can, and it is going to take hours to do that. People should stay close here. We are not going to take time for fun and games. We have to move through this process. It makes it so much easier if you are here to vote; otherwise, some people are going to miss the votes.

AMENDMENT NO. 3570

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 3570, offered by the Senator from Arizona, Mr. MCCAIN.

The Senator from Arizona.

Mr. MCCAIN. Mr. President, the amendment removes the following items from the legislation: additional Medicaid funding for Hawaii hospitals; additional Medicaid funding for Tennessee hospitals; provides special Medicaid funding for Louisiana; special Medicaid funding primarily for reclassified hospitals in Michigan and Connecticut; $100 million for a Connecticut hospital; frontier funding provision provided in new Medicare money for

Montana, South Dakota, North Dakota, and Wyoming; a provision allowing for certain residents in Libby, MT.

I do not argue whether these are worthwhile or needed projects. I do argue the method in which they were inserted in this legislation—the one for Tennessee being as recently as yesterday or the day before—is the wrong process.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I think it is important to recognize this amendment for what it is. It is basically a political stunt at the expense of a lot of victimized people. One is victims of Hurricane Katrina, another is victims of asbestos in Libby, MT; it is at the expense of rural Americans; it is an attempt to derail the bill and force the House to have to vote again, therefore force, probably, the Senate to go through another vote-arama, go back and forth. It makes no sense whatsoever.

Let's not forget the underlying legislation passed recently and signed by the President yesterday reduces insurance costs for working and middle-class Americans. This amendment would have the effect of taking that away if passed. If passed, it would take away Medicare prescription drug coverage for more than 3 million seniors. If passed, it would have the effect of taking away immediate tax credits for small businesses, and I could go on and on.

I urge Members to support my motion to table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion to table.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) and the Senator from West Virginia (Mr. BYRD) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 65 Leg.]

YEAS—54

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown (OH)	Kaufman	Rockefeller
Burris	Kerry	Sanders
Cantwell	Klobuchar	Schumer
Cardin	Kohl	Shaheen
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Conrad	Leahy	Tester
Dodd	Levin	Udall (CO)
Dorgan	Lieberman	Udall (NM)
Durbin	McCaskill	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden

NAYS—43

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Graham	Risch
Brown (MA)	Grassley	Roberts
Brownback	Gregg	Sessions
Bunning	Hatch	Shelby
Burr	Hutchison	Snowe
Chambliss	Inhofe	Thune
Coburn	Johanns	Vitter
Cochran	Kyl	Voinovich
Collins	LeMieux	Wicker
Corker	Lincoln	
Cornyn	Lugar	

NOT VOTING—3

Begich	Byrd	Isakson

The motionm was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote.

Mr. CARDIN. Mr. President, I move to lay that motion upon the table.

The motion to lay upon the table was agreed to.

CRAPO MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to the motion to recommit offered by the Senator from Idaho, Mr. CRAPO.

Mr. CRAPO. Mr. President, the two health care bills, the one the President has already signed into law plus this one we are considering will spend another $2.6 trillion over the next 10 years.

In order to pay for it, one of the things that these bills include is over $600 billion in new taxes. The President has pledged there would be no taxes on the middle class, and he defined that to be anybody who makes less than $200,000 as an individual or $250,000 as a couple or a family.

All this motion to commit does is say: Let's take those taxes out of these bills. There are 73 million Americans who fall squarely in the middle class who make less than $200,000 a year as an individual or $250,000 as a couple who will pay the burden of these taxes if we do not make this change.

It is time for this Congress——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CRAPO. To help the President keep his pledge.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I don't want to be dramatic about this, but it is a fact that this amendment is a killer amendment. That is why we cannot adopt it. I remind colleagues that the underlying bill the President signed yesterday is a very large tax cut. It has tax credits in the neighborhood of about $400-some billion. That is a big tax cut for Americans who today are having a hard time buying insurance, a tax credit that enables middle and lower income Americans to buy insurance. I think we should keep that in mind. A vote for this amendment would, in fact, prevent all the benefits this bill provides for forming a health insurance market, stopping preexisting conditions. It would prevent about $17 billion in tax credits that otherwise would go to small business.

I strongly urge colleagues to support my motion to table this motion.

I move to table the motion to commit and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is agreeing to the motion to table the motion to commit.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 66 Leg.]

YEAS—56

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Byrd	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Dodd	Lieberman	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	

NAYS—43

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Cantwell	Hutchison	Snowe
Chambliss	Inhofe	Thune
Coburn	Johanns	Vitter
Cochran	Kyl	Voinovich
Collins	LeMieux	Wicker
Corker	Lincoln	
Cornyn	Lugar	

NOT VOTING—1

Isakson

The motion was agreed to.

Mr. BAUCUS. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ENZI MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to the motion to commit offered by the Senator from Wyoming, Mr. ENZI.

The Senator from Wyoming.

Mr. ENZI. Mr. President, this is not a killer amendment. This just kills a bad part of the bill.

The reconciliation bill makes a bad employment situation even worse. It imposes $52 billion in new taxes on employers who cannot afford to provide health insurance to their workers. The

new employer tax will result in lower wages and lost jobs.

According to CBO:

Requiring employers to offer health insurance—or pay a fee if they do not—is likely to reduce employment.

Low-income workers are particularly hard hit by the employer mandate in the reconciliation bill. CBO says an employer mandate ''could reduce the hiring of low-wage workers'' and would ''increase incentives for firms to replace full-time workers with more part-time or temporary workers.''

The Nation's unemployment rate is 9.7 percent, and in many States the unemployment rate is well into the teens. We should be doing everything possible to create new jobs, but the employer mandate in the reconciliation bill does the opposite.

The job-killing taxes in the bill will slash wages and cut jobs.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ENZI. I urge my colleagues to protect Americans' jobs by supporting my motion.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Montana.

Mr. BAUCUS. Mr. President, sending the bill to committee sounds like killing the bill to me. I have never heard of a motion to commit that is not, in effect, a motion to kill the bill.

We are all in this together in America in enacting health care reform—all groups: business groups, consumers, labor, and so forth. We have consulted with business groups. They are an integral part of this. Business groups want to work with us and have worked with us to get health care reform passed.

I might also remind my colleagues there are tax credits in here for small business to the tune of—I think it is $17 billion. Firms with fewer than 50 employees are totally exempt from any penalty.

This clearly is a motion to kill the bill. Therefore, it would result in taking away all these provisions enacted.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. Mr. President, I move to table the motion to commit and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table the motion to commit.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 67 Leg.]

YEAS—58

Akaka	Franken	Nelson (NE)
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Byrd	Kohl	Specter
Cantwell	Landrieu	Stabenow
Cardin	Lautenberg	Tester
Carper	Leahy	Udall (CO)
Casey	Levin	Udall (NM)
Conrad	Lieberman	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	Wyden
Feingold	Mikulski	
Feinstein	Murray	

NAYS—41

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Wicker
Cornyn	Lincoln	

NOT VOTING—1

Isakson

The motion was agreed to.

Mr. CARDIN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3582

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 3582 offered by the Senator from Wyoming, Mr. BARRASSO.

The Senator from Wyoming.

Mr. BARRASSO. Mr. President, my amendment protects families and protects small businesses from dramatic increases in insurance premiums. My amendment directs the Department of Health and Human Services to certify that insurance premiums will not rise faster under the new health care law than they would have if the law had not been passed. If they find that premiums are higher, then the new law would sunset.

This month in Pennsylvania, the President said the Senate bill would reduce most people's premiums. I say to my friends on the other side of the aisle, if you believe the President and you believe that this bill lowers premiums, prove it. Vote for this amendment.

This is a reasonable, straightforward amendment. It holds the President and it holds the Members of Congress accountable to the American people for promises made.

Thank you, Mr. President.

Mr. BAUCUS. Mr. President, all things being equal, I choose to believe the President. Second, I choose to believe the Congressional Budget Office. The Congressional Budget Office has concluded that premiums under this legislation will, all things equal, be reduced for big business as much as 3 percent. Small businesses will see a decrease of 11 percent if you factor in the small business tax credits for coverage. Individuals who receive tax credits in the exchange will find a 57-percent reduction in premiums; again, all things being equal.

Will someone find an increase in premium? Somebody might buy a very expensive health insurance policy. Maybe that person's premiums might go up.

Obviously, this is designed to kill the bill, and I strongly urge my colleagues not to support it. It prevents passage of the bill. It undermines the bill. It repeals the bill, in effect, that has already been signed by the President.

So I move that this amendment be tabled, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. KAUFMAN) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 68 Leg.]

YEAS—57

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown (OH)	Kerry	Rockefeller
Burris	Klobuchar	Sanders
Byrd	Kohl	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Conrad	Lieberman	Udall (CO)
Dodd	Lincoln	Udall (NM)
Dorgan	McCaskill	Warner
Durbin	Menendez	Webb
Feingold	Merkley	Whitehouse
Feinstein	Mikulski	Wyden

NAYS—41

Alexander	Cornyn	Lugar
Barrasso	Crapo	McCain
Bayh	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Risch
Brown (MA)	Graham	Roberts
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burr	Hatch	Snowe
Chambliss	Hutchison	Thune
Coburn	Inhofe	Vitter
Cochran	Johanns	Voinovich
Collins	Kyl	Wicker
Corker	LeMieux	

NOT VOTING—2

Isakson Kaufman

The motion was agreed to.

Mr. BAUCUS. I move to reconsider the vote.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3564

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3564, offered by the Senator from Iowa, Mr. GRASSLEY.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, my amendment would require the President, the Vice President, Cabinet members, and White House staff to use exchanges created in this bill. It would also fix a loophole so that the committee and leadership staff are also required to obtain coverage in these exchanges.

Today, after seeing my amendment, the White House announced that President Obama will voluntarily participate in the health insurance exchange that starts in 2014.

This is a little presumptuous since he has another election before 2014, but it is still effectively an endorsement of my amendment to make sure that political leaders live under the laws they pass for everyone else. But the principle should not be voluntary for political leaders. Congress and President Clinton confirmed that in 1995 by enacting the Congressional Accountability Act that Senator LIEBERMAN and I sponsored. It is a matter of not having a double standard.

I urge my colleagues to support my amendment and make sure we are living under the same laws.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I could be mistaken, but it is my understanding that the underlying amendment, which also includes Members of Congress in the exchange, is language that was drafted on a bipartisan basis in the HELP Committee. I don't see Senator DODD here. It is an amendment Senator COBURN worked on and was agreed to in the HELP Committee. It covered Members of Congress and who all should be included.

Frankly, I don't think it is wise at this point to try to negotiate who should additionally be covered in the exchanges and who should not. It was agreed to before. I say to my good friend from Iowa—he has been my very good friend—I don't think it is intended to embarrass the President and the executive branch people, but I think it is inappropriate.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. I say to my friend, he can be happy when Northern Iowa beats Michigan State this Friday. It will make him happy.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. I make a point of order that the pending amendment violates section 313(b)(1)(C) of the Congressional Budget Act of 1974.

Mr. GRASSLEY. Mr. President, pursuant to section 904(c) of the Congressional Budget Act of 1974, I move to waive section 313 of the Budget Act for the consideration of the pending amendment.

Mr. BAUCUS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 43, nays 56, as follows:

[Rollcall Vote No. 69 Leg.]

YEAS—43

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Graham	Risch
Brown (MA)	Grassley	Roberts
Brownback	Gregg	Sessions
Bunning	Hatch	Shelby
Burr	Hutchison	Snowe
Chambliss	Inhofe	Thune
Coburn	Johanns	Vitter
Cochran	Kyl	Voinovich
Collins	LeMieux	Wicker
Corker	Lincoln	
Cornyn	Lugar	

NAYS—56

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bingaman	Inouye	Reid
Boxer	Johnson	Rockefeller
Brown (OH)	Kaufman	Sanders
Burris	Kerry	Schumer
Byrd	Klobuchar	Shaheen
Cantwell	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Dodd	Lieberman	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	

NOT VOTING—1

Isakson

The PRESIDING OFFICER. On this vote, the yeas are 43, the nays are 56. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained, and the amendment falls.

ALEXANDER MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, we will have 2 minutes of debate equally divided prior to a vote on the motion to commit offered by the Senator from Tennessee, Mr. ALEXANDER.

The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, this is an effort to stop the Federal Government from overcharging 19 million college students to help pay for the health care bill. It would reduce from 6.8 percent to 5.3 percent the interest on their loans. It would save $1,700 to $1,800 on the average of a $25,000 loan over 10 years.

Why are we talking student loans during a health care bill? Because we can't trust the other side with the Yellow Pages. If they find it in there, they think the government ought to be doing it. They have taken over the Federal student loan program, and they are running up the debt $½ trillion to do it. They are firing 31,000 people by July 1. They are going to borrow money at 2.8 percent and loan it to students at 6.8 percent and use the rest to help pay for health care and for the government. CBO has said this is $8.7 billion of overcharging students to pay for health care. So a ''yes'' means don't overcharge.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ALEXANDER. A ''no'' means savings to students.

Mr. HARKIN. The last time we took up higher education, in 2007, we lowered interest rates on student loans and crafted the interest-based repayment program. In this bill, we lower that down even more—from 15 percent to 10 percent—and we make a historic investment in Pell grants.

I would agree, I am all for lowering interest rates. I would just note that my friend from Tennessee didn't take to the floor to complain when Sallie Mae was charging over 20 percent interest on its loans to students. I didn't see that.

This amendment is not about lowering interest rates. What it is about is continuing a $61 billion subsidy to the big banks in this country. We take that money and give it to students in Pell grants.

Mr. President, I move to table the motion to commit, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 70 Leg.]

YEAS—58

Akaka	Dorgan	Leahy
Baucus	Durbin	Levin
Bayh	Feingold	Lieberman
Begich	Feinstein	Lincoln
Bennet	Franken	McCaskill
Bingaman	Gillibrand	Menendez
Boxer	Hagan	Merkley
Brown (OH)	Harkin	Mikulski
Burris	Inouye	Murray
Byrd	Johnson	Nelson (FL)
Cantwell	Kaufman	Pryor
Cardin	Kerry	Reed
Carper	Klobuchar	Reid
Casey	Kohl	Rockefeller
Conrad	Landrieu	Sanders
Dodd	Lautenberg	Schumer

Shaheen	Udall (CO)	Whitehouse
Specter	Udall (NM)	Wyden
Stabenow	Warner	
Tester	Webb	

NAYS—41

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Wicker
Cornyn	Lugar	

NOT VOTING—1

Isakson

The motion was agreed to.

AMENDMENT NO. 3586

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes equally divided prior to a vote in relation to amendment No. 3586 offered by the Senator from Florida, Mr. LEMIEUX.

The Senator from Florida is recognized.

Mr. LEMIEUX. Mr. President, I have heard my friends on the other side of the aisle talk about 30 million new people in America having health care. What they are not talking about is 16 million of those folks are going into Medicaid. Medicaid is a program that doesn't work. Forty percent of physicians according to MedPac no longer will see Medicaid patients. Pharmacies will not fill prescriptions. You cannot find a specialist.

I have also heard our friends on the other side of the aisle come to the Senate floor and say the people of America should have the same great health care that we have in this body. The corollary should be true as well. We should have the same health care that we are willing to put 16 million new Americans in and 50 million Americans in total. We should all be on Medicaid.

My amendment says 535 Members of Congress, as well as the Vice President of the United States, will go into Medicaid. If it is good enough for them, it should be good enough for us. We talk the talk around here a lot, now let's see if we will walk the walk.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I don't think this is really a serious amendment that requires all Members of Congress to withdraw from their Federal health insurance plan, and it requires all Members of Congress to be in Medicaid. Medicaid is a safety net for vulnerable Americans. It should not be the subject for political gamesmanship like this amendment. It is a slap in the face of vulnerable, poor Americans.

Ironically, this killer amendment will have the effect of reducing payments to States which are in the underlying bill. It would take that away. I don't think that is the intent of the author of the amendment.

Mr. President, I make a point of order the pending amendment violates section 313(b)(1)(C) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Florida.

Mr. LEMIEUX. Pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(G)(3) of the statutory pay-as-you-go act of 2010, I move to waive all applicable sections of those acts for purposes of my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 40, nays 59, as follows:

[Rollcall Vote No. 71 Leg.]

YEAS—40

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Risch
Brown (MA)	Graham	Roberts
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burr	Hatch	Snowe
Chambliss	Hutchison	Thune
Coburn	Inhofe	Vitter
Cochran	Johanns	Voinovich
Collins	Kyl	Wicker
Corker	LeMieux	
Cornyn	Lugar	

NAYS—59

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (OH)	Kerry	Sanders
Burris	Klobuchar	Schumer
Byrd	Kohl	Shaheen
Cantwell	Landrieu	Specter
Cardin	Lautenberg	Stabenow
Carper	Leahy	Tester
Casey	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	

NOT VOTING—1

Isakson

The PRESIDING OFFICER. On this vote, the yeas are 40, the nays are 59. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

The point of order is sustained, and the amendment falls.

HATCH MOTION TO COMMIT

Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to the motion to commit offered by the Senator from Utah, Mr. HATCH.

Mr. HATCH. Mr. President, I urge my colleagues to support my motion to commit.

Simply put, this motion protects the 11 million Medicare beneficiaries, both seniors and the disabled, currently participating in the Medicare Advantage program.

If the HHS actuary certifies that the Medicare Advantage cuts included in the health reform law would result in 1 million Medicare Advantage beneficiaries losing current health benefits, those Medicare Advantage cuts would not go into effect.

Medicare Advantage makes a tremendous difference in the lives of beneficiaries. They have told me over and over again how important it is for them to have lower deductibles, premiums, and copayments.

And what a difference it makes to have dental and vision benefits.

The Medicare Advantage cuts in the health reform law would take away those benefits. For that reason, I strongly oppose these cuts and urge my colleagues to support my motion to commit and do the right thing for Medicare beneficiaries, seniors and disabled individuals, across America.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, as a motion to commit, this clearly is designed to kill the bill. All motions to commit have that intent and effect. Let's remind ourselves, the underlying bill protects all Medicare beneficiaries. All statutory benefits are guaranteed in the underlying legislation. Second, the underlying bill reforms Medicare Advantage which rewards high performance Medicare Advantage programs, those providing value, whereas under current law that is not the case. In addition, if this amendment passes, fee-for-service Medicare beneficiaries would have to pay a $90-a-year penalty to pay for the excess subsidy of Medicare Advantage plans. For lots of reasons, this motion should not prevail.

I move to table the motion to commit and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table the motion to commit.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 72 Leg.]

YEAS—56

Akaka	Cantwell	Feinstein
Baucus	Cardin	Franken
Bayh	Carper	Gillibrand
Begich	Casey	Hagan
Bennet	Conrad	Harkin
Bingaman	Dodd	Inouye
Boxer	Dorgan	Johnson
Brown (OH)	Durbin	Kaufman
Burris	Feingold	Kerry

Klobuchar	Merkley	Shaheen
Kohl	Mikulski	Specter
Landrieu	Murray	Stabenow
Lautenberg	Nelson (FL)	Tester
Leahy	Pryor	Udall (CO)
Levin	Reed	Udall (NM)
Lieberman	Reid	Warner
Lincoln	Rockefeller	Whitehouse
McCaskill	Sanders	Wyden
Menendez	Schumer	

NAYS—42

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Webb
Cornyn	Lugar	Wicker

NOT VOTING—2

Byrd	Isakson

The motion was agreed to.

AMENDMENT NO. 3556

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3556, offered by the Senator from Oklahoma, Mr. COBURN.

The Senator from Oklahoma.

Mr. COBURN. Mr. President, this amendment saves $6.5 billion over the next 10 years for what it does on fraudulent Medicaid prescriptions—$6.5 billion—$650 million a year on fraudulent prescriptions. It also creates a prohibition so that erectile dysfunction drugs are not paid for by the American taxpayers to convicted rapists, those convicted of sexual assault, and pedophiles in this country.

You can say a lot of things about a lot of amendments. This is not a game amendment; it actually saves money. All the States are struggling with Medicaid. This is a way to spread $650 million a year to the States.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this legislation is about filling the doughnut hole for seniors. It is about providing health care for working families, for children. It is about reducing our national debt. It is a serious bill. It deserves serious debate.

The amendment offered by the Senator from Oklahoma makes a mockery of this Senate, the debate, and the American people. It is not a serious amendment. It is a crass political stunt aimed at making 30-second commercials, not public policy.

I urge my colleagues to oppose the amendment.

I move to table the amendment, and ask for the yeas and nays.

Mr. COBURN. Mr. President, do I have time remaining?

The PRESIDING OFFICER. The Senator from Oklahoma still has time.

The Senator from Oklahoma.

Mr. COBURN. I would make the following point: The vast majority of Americans do not want their taxpayer dollars paying for this kind of drug for those kind of people.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I move to table the amendment, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 42, as follows:

[Rollcall Vote No. 73 Leg.]

YEAS—57

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown (OH)	Kaufman	Rockefeller
Burris	Kerry	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—42

Alexander	Cornyn	Lugar
Barrasso	Crapo	McCain
Bayh	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Wicker

NOT VOTING—1

Isakson

The motion was agreed to.

Mr. CARDIN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3608

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 3608 offered by the Senator from Texas, Mrs. HUTCHISON.

Mrs. HUTCHISON. Mr. President, we are hearing from State leaders all over our country begging Congress to abandon this bill that is an unconstitutional preemption of States rights, State innovation, and State prerogatives. Thirteen States have already filed suit against this bill.

My amendment would restore the 10th amendment rights reserved to the States by allowing State legislatures to pass legislation to allow them to opt out of this bill, opt out of the job-killing taxes, opt out of the cuts to Medicare, opt out of the unfunded Medicaid mandates, when our States are hurting already. They are not balancing their budgets right now. This is going to make it worse.

This is an easy ''yes'' vote, and I hope our colleagues will help our States to opt out of this bill if they choose.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is another in a long series of killer amendments. Clearly, allowing States to opt out of any or all provisions of the underlying health care reform bill would have that result. States could decide not to abide by health care market reforms, preexisting conditions, provisions against rescissions, et cetera. States could decide not to provide health care coverage to their citizens. One State versus the national program. States could decide they are not going to pay the fees, enact the fees that are required on State pharmaceuticals or insurance industries. States could make all kinds of decisions which basically would have the effect of killing this bill.

So I urge my colleagues to not support the amendment of the Senator from Texas.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 74 Leg.]

YEAS—58

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Byrd	Kohl	Specter
Cantwell	Landrieu	Stabenow
Cardin	Lautenberg	Tester
Carper	Leahy	Udall (CO)
Casey	Levin	Udall (NM)
Conrad	Lieberman	Warner
Dodd	Lincoln	Webb
Dorgan	McCaskill	Whitehouse
Durbin	Menendez	Wyden
Feingold	Merkley	
Feinstein	Mikulski	

NAYS—41

Alexander	Bunning	Corker
Barrasso	Burr	Cornyn
Bennett	Chambliss	Crapo
Bond	Coburn	DeMint
Brown (MA)	Cochran	Ensign
Brownback	Collins	Enzi

Graham	LeMieux	Sessions
Grassley	Lugar	Shelby
Gregg	McCain	Snowe
Hatch	McConnell	Thune
Hutchison	Murkowski	Vitter
Inhofe	Nelson (NE)	Voinovich
Johanns	Risch	Wicker
Kyl	Roberts	

NOT VOTING—1

Isakson

The motion was agreed to.

Mr. INOUYE. I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3638

The PRESIDING OFFICER. There will now be 2 minutes of debate prior to a vote in relation to amendment No. 3638, offered by the Senator from Maine, Ms. COLLINS.

The Senator from Maine.

Ms. COLLINS. Mr. President, just last week we passed the HIRE Act, which included a tax credit offered by Senator SCHUMER and Senator HATCH to encourage companies to hire unemployed workers. It makes no sense for any of us to have voted for that bill and then not to support the amendment that I have offered.

The amendment I am offering would waive the onerous fines that are in this bill for small businesses that hire unemployed workers. If you voted for the HIRE Act giving a tax credit, why in the world would you support a policy of imposing penalties on businesses that hire unemployed workers?

Mr. President, I urge support of the amendment.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this amendment basically has the intent of creating a group of second-class employees. It is very similar to the issue of subminimum wage. It makes all the sense in the world to distinguish the two, between the HIRE Act and this amendment.

The HIRE Act gave incentives for firms to hire new employees. This amendment creates a group of second-class employees. It says you can hire employees so long as they do not have health insurance. I think that is wrong. I do not think we should have a second class of employees, which is the effect of the amendment. I urge it be defeated.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER (Mr. CASEY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 75 Leg.]

YEAS—58

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Byrd	Kohl	Specter
Cantwell	Landrieu	Stabenow
Cardin	Lautenberg	Tester
Carper	Leahy	Udall (CO)
Casey	Levin	Udall (NM)
Conrad	Lieberman	Warner
Dodd	Lincoln	Webb
Dorgan	McCaskill	Whitehouse
Durbin	Menendez	Wyden
Feingold	Merkley	
Feinstein	Mikulski	

NAYS—41

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Wicker
Cornyn	Lugar	

NOT VOTING—1

Isakson

The motion was agreed to.

Mrs. MURRAY. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3639

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3639, offered by the Senator from South Dakota, Mr. THUNE.

Mr. THUNE. Mr. President, this amendment gets at the issue of the student loan program and what this bill would propose to do to that program.

Under this bill, students in this country would have one option to get a student loan—the Federal Government. Today, there are 2,000 lenders across this country that make student loans. A recent article in the Wall Street Journal pointed out that the shift to government lending would mean lending would now be operated by the Department of Education, which is ''distinguished in its Soviet-style customer service.''

There are 30,000 to 35,000 jobs in this country that are associated with the student loan program. At a time of record-high unemployment levels, we need to ensure that moving student lending to the Department of Education does not place more Americans on unemployment. As our economy recovers, we should be focused on ways to increase jobs in the private sector, not ending those positions in favor of adding more government bureaucrats in Washington.

This amendment would require the Secretary of Education to certify that no State would experience a net job loss as a result of the Federal Family Education Student Loan Program being terminated.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mrs. MURRAY. I move to table.

The PRESIDING OFFICER. A motion to table is not in order.

There is not a sufficient second at this time.

The Senator from Iowa.

Mr. HARKIN. Mr. President, this amendment is not about protecting jobs, because the bill already does that. We carve out a role for nonprofit lenders to service loans. We provided $50 million in this bill to incentivize companies—private companies, too—to keep jobs in the same towns and cities where they are now. Private lenders will continue to service the $450 billion in outstanding private loan volume.

Let me say this also about Sallie Mae. They took a couple thousand jobs out of this country. Guess what. They are bringing them back because they get to service the loans. Under Treasury rules, in order for them to service the loans, it has to be done in this country. So Sallie Mae is bringing jobs back to America.

This amendment is not about protecting jobs. It is about killing the bill and leaving the subsidies to the big banks, where they are today.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 76 Leg.]

YEAS—55

Akaka	Gillibrand	Murray
Baucus	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Dodd	Lieberman	Warner
Dorgan	Lincoln	Webb
Durbin	McCaskill	Whitehouse
Feingold	Menendez	Wyden
Feinstein	Merkley	
Franken	Mikulski	

NAYS—43

Alexander	Crapo	McConnell
Barrasso	DeMint	Murkowski
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Nelson (FL)
Bond	Graham	Risch
Brown (MA)	Grassley	Roberts
Brownback	Gregg	Sessions
Bunning	Hatch	Shelby
Burr	Hutchison	Snowe
Chambliss	Inhofe	Thune
Coburn	Johanns	Vitter
Cochran	Kyl	Voinovich
Collins	LeMieux	Wicker
Corker	Lugar	
Cornyn	McCain	

NOT VOTING—2

Byrd	Isakson

The motion was agreed to.

AMENDMENT NO. 3640

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 3640, offered by the Senator from South Dakota, Mr. THUNE.

Mr. THUNE. Mr. President, this amendment would strike the CLASS Act from the bill. The CLASS Act, as we all know, is a new entitlement program. We have two entitlement programs that are already destined to be bankrupt that have unfunded liabilities in the neighborhood of $60 trillion. It does not make a lot of sense to add a third one.

Here is what everybody said about this. One of our Democratic colleagues has called the CLASS Act ''a Ponzi scheme of the first order, the kind of thing that Bernie Madoff would be proud of.''

Even the Washington Post described it as a ''gimmick . . . designed to pretend that health care is fully paid for.''

The administration's Chief Actuary said ''there is a significant risk of failure, there is a significant risk that the problem of adverse selection would make the CLASS program unsustainable,'' and the CBO said the additional deficit increases would amount to ''the order of tens of billions of dollars for each 10-year period'' after 2029.

We know what this is. This is a gimmick. It is a budgetary gimmick used to make this bill look like it is paid for when it is not. We ought to strike it from the bill, and I hope my colleagues will support this amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, the CLASS Act is a voluntary, self-funded insurance program, with enrollment for people who are presently employed. There are no taxpayer dollars involved whatsoever.

The statement that the Senator referred to was made before we made sure it was paid for. It is all paid for. In fact, the Senator from New Hampshire in our committee offered an amendment that made sure it was fully funded for 75 years. The Congressional Budget Office has certified this will be solvent for 75 years. Plus, it will save taxpayers money.

By letting people put some money aside, so if they become disabled they can stay at home rather than going to a nursing home, we save Medicaid dollars. This saves taxpayer dollars from paying more into Medicaid in the future.

Mr. President, I raise a point of order that the Thune amendment violates section 310(D)(2) of the Congressional Budget Act.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(G)(3) of the statutory Pay-As-You-Go Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of my amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 43, nays 55, as follows:

[Rollcall Vote No. 77 Leg.]

YEAS—43

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Graham	Risch
Brown (MA)	Grassley	Roberts
Brownback	Gregg	Sessions
Bunning	Hatch	Shelby
Burr	Hutchison	Snowe
Chambliss	Inhofe	Thune
Coburn	Johanns	Vitter
Cochran	Kyl	Voinovich
Collins	LeMieux	Wicker
Corker	Lieberman	
Cornyn	Lugar	

NAYS—55

Akaka	Gillibrand	Nelson (FL)
Baucus	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murray	

NOT VOTING—2

Byrd	Isakson

The PRESIDING OFFICER. On this vote, the yeas are 43, the nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained, and the amendment falls.

CORNYN MOTION TO COMMIT

Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to the motion to commit offered by the Senator from Texas, Mr. CORNYN.

The Senator from Texas.

Mr. CORNYN. Mr. President, mine is a motion to commit the reconciliation bill back to the Finance Committee to report the bill back without the brandnew, whopping 3.8 percent tax on investment and savings. This is a $123 billion mistake. It will discourage savings and investment and decrease the standard of living for millions of Americans. Simply put, increasing taxes on investment income and savings income is a job killer. It is just one of many job-killing provisions of this bill, $100 billion of new taxes and fees on health care consumers, an employer mandate that will kill jobs.

My motion will also make sure the bill does not break another one of the President's promises when he pledged that everyone in America will pay lower taxes than they would under the rates Bill Clinton had in the 1990s.

I ask my colleagues for their support.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is an honest, straightforward amendment which is concerned about people making more than $200,000. The effect of some amendments prior to this moment have been trying to protect people making less than $200,000. This amendment is the exact opposite; it is only concerned about people making more than $200,000 in income.

The bill itself also provides that people whose investment income is above $200,000 should contribute to the Medicare trust fund. Currently, they do not. Only taxes on wages contribute to the Medicare trust fund. The thought is that people with unearned income should also contribute. This tax only applies to those who make above $200,000. There is a passthrough exemption, subchapter S. Other passthroughs are exempted. Retirement income is exempted. It doesn't make sense that people making over $200,000 should be exempt.

I move to table the motion to commit and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table the motion to commit.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 46, as follows:

[Rollcall Vote No. 78 Leg.]

YEAS—52

Akaka	Gillibrand	Murray
Baucus	Hagan	Reed
Begich	Harkin	Reid
Bennet	Inouye	Rockefeller
Bingaman	Johnson	Sanders
Boxer	Kaufman	Schumer
Brown (OH)	Kerry	Shaheen
Burris	Klobuchar	Specter
Cardin	Kohl	Stabenow
Carper	Landrieu	Tester
Casey	Lautenberg	Udall (CO)
Conrad	Leahy	Udall (NM)
Dodd	Levin	Warner
Dorgan	Lieberman	Webb
Durbin	McCaskill	Whitehouse
Feingold	Menendez	Wyden
Feinstein	Merkley	
Franken	Mikulski	

NAYS—46

Alexander	Crapo	McConnell
Barrasso	DeMint	Murkowski
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Nelson (FL)
Bond	Graham	Pryor
Brown (MA)	Grassley	Risch
Brownback	Gregg	Roberts
Bunning	Hatch	Sessions
Burr	Hutchison	Shelby
Cantwell	Inhofe	Snowe
Chambliss	Johanns	Thune
Coburn	Kyl	Vitter
Cochran	LeMieux	Voinovich
Collins	Lincoln	Wicker
Corker	Lugar	
Cornyn	McCain	

NOT VOTING—2

Byrd Isakson

The motion was agreed to.

Mr. DURBIN. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3579

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 3579, offered by the Senator from Kansas, Mr. ROBERTS.

The Senator from Kansas.

Mr. ROBERTS. Mr. President, included in the new taxes in this health reform is a tax hike of $20 billion on medical devices. The nonpartisan Congressional Budget Office and Joint Committee on Taxation both confirmed these excise taxes will not—will not—be borne by the medical device industry but, instead, are passed on to patients in the form of higher prices and higher insurance premiums.

Who are these folks who will bear the burden of this new tax? People with disabilities, diabetics, amputees, people with cancer, just to name some of the people—and more—who will see their costs go up because of this tax. We do not want to do this. Why should we want to do this on those who are most vulnerable?

This amendment would prevent this new tax from raising the already high costs for this group and a tax that will stifle the Medicaid device technology and innovation of this country.

I urge my colleagues to support this amendment. It is offset by an amendment similar to that offered by Senator SCHUMER in the Finance Committee so it must be bipartisan.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, how have Kansas and Kansas State done lately?

This is a very simple amendment. This health care bill is premised on the assumption that all groups should participate in finding the correct health care solution for our health care system. That includes hospitals, pharmaceuticals, and it also includes device manufacturers. This amendment would exclude one section: device manufacturers.

How is it paid for? It is paid for by reducing the number of people who would otherwise get tax credits to help pay for their health insurance. I do not think that is what we want to do. We do not want to reduce the number of people who have health insurance. This amendment would reduce coverage for people who need help buying insurance.

So I move to table this amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 79 Leg.]

YEAS—56

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (OH)	Kerry	Sanders
Burris	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden
Franken	Mikulski	

NAYS—42

Alexander	Cornyn	Lugar
Barrasso	Crapo	McCain
Bayh	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Wicker

NOT VOTING—2

Byrd Isakson

The motion was agreed to.

Mr. NELSON of Nebraska. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3588

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3588 offered by the Senator from Oklahoma, Mr. INHOFE.

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, we just heard from Senator ROBERTS about the medical devices. I think he pointed out very clearly that there is kind of another hidden tax in this legislation of some $20 billion on medical devices. I think it is important to listen to what Senator ROBERTS said, that it was not—it is not the device companies that will be paying this; it will be the individuals who would be paying it.

Now, the difference between my amendment and Senator ROBERTS' amendment is that mine excludes those devices for children and those with disabilities. For example, some of our troops coming home have lost limbs, and they have prosthetic devices. This is for them. This is for the 8-year-old whose heart quit beating in the middle of the night and they put a pacemaker in and it saved his life. It is for incubators and this type of thing. It is the same thing. It is the same offset as Senator ROBERTS and Senator SCHUMER had, and I would ask that you seriously consider this amendment. This is for the children and those with disabilities.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, two subjects. First, I wish to correct the record. I mistakenly stated that the Kansas Wildcats were not in the Sweet 16. That was an error. The Kansas State Wildcats are very much in the Sweet 16, and my apologies to coach Frank Martin of the Wildcats. I wish them very well in the tournament.

Mr. ROBERTS. Will the chairman yield?

Mr. BAUCUS. Well, I don't have much time, but I will do my very best.

Mr. ROBERTS. I am just so sorry that Montana lost in the first round.

Mr. BAUCUS. I would say to my good friend, he isn't nearly as sorry as I am.

Basically, this is like the last amendment—two flaws. It exempts a certain group from the shared responsibility in helping to finance health care reform. The second flaw is that it reduces coverage by changing the income threshold. This is not a way to do business.

I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 80 Leg.]

YEAS—57

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (OH)	Kerry	Sanders
Burris	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—41

Alexander	Crapo	McCain
Barrasso	DeMint	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Wicker
Cornyn	Lugar	

NOT VOTING—2

Byrd	Isakson

The motion was agreed to.

AMENDMENT NO. 3644

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3644, offered by the Senator from Utah, Mr. HATCH.

The Senator from Utah.

Mr. HATCH. Mr. President, there is a tax hike of $20 billion on medical devices in this bill. These taxes are passed on to patients in the form of higher prices and higher insurance premiums.

My amendment would prevent this new tax from raising costs or hurting access for American soldiers and veterans by exempting medical devices used by the TRICARE Program and the Veterans Health Program.

We need to protect our wounded warriors who rely on these medical devices for recovery and to live a normal life.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this amendment is very similar to the past two amendments we voted on. It seeks to exempt a sympathetic group of individuals from the excise tax on medical device manufacturers. The amendment is misplaced. We already exempt retail purchases of medical devices, such as Band-Aids, glasses—all those kinds of items. The tax only applies to large manufacturers. The government negotiates with the large manufacturers. The government is large enough to exact a better price. It does not pass that on to individuals, not on our military, not on our vets who already receive prescribed health care coverage.

Second, this amendment is paid for by increasing the number of uninsured. I do not think we want to increase the number of uninsured. We want to decrease the number of uninsured.

I reserve the remainder of my 15 seconds so the Senator from Utah can finish.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I feel deeply about this. I do not think we should leave these wounded warriors without access to the best medical devices, and I do not think we should be assessing them extra costs. This is a simple amendment. This is one we all ought to vote for.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, very simply, this will not be passed on. The government is a large payer. They will be able to negotiate for better prices.

I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—54

Akaka	Feinstein	Merkley
Baucus	Franken	Mikulski
Bayh	Gillibrand	Murray
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown (OH)	Kerry	Rockefeller
Burris	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Whitehouse
Feingold	Menendez	Wyden

NAYS—44

Alexander	DeMint	McConnell
Barrasso	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Graham	Risch
Brown (MA)	Grassley	Roberts
Brownback	Gregg	Sessions
Bunning	Hagan	Shelby
Burr	Hatch	Snowe
Chambliss	Hutchison	Tester
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Webb
Cornyn	Lugar	Wicker
Crapo	McCain	

NOT VOTING—2

Byrd	Isakson

The motion was agreed to.

Mr. DURBIN. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3651

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3651, offered by the Senator from New Hampshire, Mr. GREGG.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, this amendment addresses what is a core problem we have with our health care system, which is the fact that every year we cut our doctors' pay—those doctors who deliver Medicare services. This year, it will be cut 21 percent. This amendment restores that pay so that those cuts don't occur for a period of 3 years. This is known as the doctors fix.

It should have been in the bill to begin with. The reason it wasn't in the bill was because the other side wanted to not put it in the bill because of its cost, because it scores at $280 billion over 10 years. The other side didn't want to absorb that score because it would have thrown the entire bill out of whack relative to the budget.

We have come up with a way to address this doctor problem that pays for it for 3 years. Let's do it. Let's take care of these doctors who are delivering these services so they can continue to deliver services to Medicare recipients.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from New Hampshire and I kid each other about this. The fact is, this is another killer amendment, and it is apparent it is designed to kill this bill. Why do I say that? Because on October 21 of last year, the sponsor of this amendment, and every other Senator on the other side of the aisle, voted against invoking cloture on a bill to accomplish the very same thing they profess to desire at this point.

Also, we have been advised by the Congressional Budget Office that it is not paid for. According to CBO—they recently sent us a note—the Gregg amendment would increase the deficit by $65 billion over the next 5 years.

We will solve the SGR problem at the appropriate time. This body will then decide at that time the degree to which we want to pay for the SGR. This is not the time or the place. This is a killer amendment.

According to CBO, it increases the deficit by $65 billion over the next 5 years; therefore, I raise a point of order that the Gregg amendment violates section 310(d)(2) of the Congressional Budget Act.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, parliamentary inquiry: This amendment pays for the doctors fix for 3 years, does it not?

The PRESIDING OFFICER. The Chair is unaware.

Mr. GREGG. I withdraw the inquiry.

Pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(G)(3) of the Statutory Pay-As-You-Go Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 42, nays 56, as follows:

[Rollcall Vote No. 82 Leg.]

YEAS—42

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brown (MA)	Graham	Nelson (NE)
Brownback	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Snowe
Cochran	Johanns	Thune
Collins	Kyl	Vitter
Corker	LeMieux	Voinovich
Cornyn	Lincoln	Wicker

NAYS—56

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Dodd	Lieberman	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	

NOT VOTING—2

Byrd Isakson

The PRESIDING OFFICER. On this vote, the yeas are 42; the nays are 56. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained, and the amendment falls.

Mr. LEVIN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3652

The PRESIDING OFFICER. There will now be 2 minutes, equally divided, prior to a vote in relation to the amendment No. 3652, offered by the Senator from North Carolina, Mr. BURR.

Who yields time?

Mr. BURR. Mr. President, my amendment is quite simple. In the rush to finish this bill, there were some errors. One of the errors was clarifying the status of some veterans programs, specifically the TRICARE program, the VA spina bifida program—that is the children of Agent Orange exposure from Vietnam—and the last one is the CHAMPVA program.

What this amendment simply does is set the minimum essential coverage as met on these programs, so the veterans' families, the children of veterans, are not at risk of determining that their insurance does not meet the minimum essential coverage, therefore, exposing them to fines.

Some might suggest it does not need to be fixed. The House went back very quickly and fixed TRICARE but not CHAMPVA or spina bifida. It is my belief we should act on that on the appropriate mechanism, which is this fix-it bill.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WEBB. Mr. President, I would suggest to my colleague from North Carolina and my colleagues on the other side of the aisle that if we want to fix this problem, we can fix it right now and we should fix it right now.

We should not allow things to be tied up in the separate melodrama of the moment. I introduced a bill on Monday which passed the House unanimously on Saturday to fix the TRICARE part of this. The chairman of the Veterans' Committee introduced a bill today to fix the spina bifida problem.

I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 3148, a bill to amend the Internal Revenue Code to provide for the treatment of Department of Defense health coverage as minimal essential coverage, sponsored by myself; further, that the Senate proceed to its immediate consideration en bloc, along with the bill introduced earlier today by Senator AKAKA, S. 3162, a bill to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage; that all Democratic Senators be added as cosponsors to this measure; that the bills be read a third time and passed en bloc, and the motions to reconsider be laid upon the table en bloc, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection? The Senator from Oklahoma.

Mr. COBURN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. We got this 1½ minutes ago to see the language. You have an amendment on the floor that actually accomplishes everything you want to do. Why are we doing this? Because you do not want to mess up a package that is clean. It has every application, the Burr amendment, to this.

With that, and the fact that this is exactly the kind of shenanigans the American people do not want, I object.

Mr. WEBB. Let the American people understand, the Republicans objected to a matter that could have been fixed by law tomorrow.

The PRESIDING OFFICER. Objection is heard.

The Senator from Hawaii.

Mr. AKAKA. Mr. President, I move that we table the Burr amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 83 Leg.]

YEAS—54

Akaka	Feinstein	Mikulski
Baucus	Franken	Murray
Bayh	Gillibrand	Nelson (FL)
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Dodd	Lieberman	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden

NAYS—44

Alexander	Chambliss	Ensign
Barrasso	Coburn	Enzi
Bennett	Cochran	Graham
Bond	Collins	Grassley
Brown (MA)	Corker	Gregg
Brownback	Cornyn	Hagan
Bunning	Crapo	Hatch
Burr	DeMint	Hutchison

Inhofe	McConnell	Shelby
Johanns	Murkowski	Snowe
Kyl	Nelson (NE)	Thune
LeMieux	Pryor	Vitter
Lincoln	Risch	Voinovich
Lugar	Roberts	Wicker
McCain	Sessions	

NOT VOTING—2

Byrd	Isakson

The motion was agreed to.

Mr. DURBIN. I move to reconsider the vote.

Mrs. MURRAY. I move to reconsider and to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3553

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3553 offered by the Senator from Louisiana, Mr. VITTER.

The Senator from Louisiana.

Mr. VITTER. Mr. President, this amendment is very straightforward. It would repeal the ObamaCare bill. That bill is fatally flawed in terms of its core, and we do need to repeal and replace it with a very different, more targeted, focused, step-by-step approach. What is that core? It is more than $½ trillion in Medicare cuts on our seniors, which is wrong; over $½ trillion of tax increases, including on middle-class families, which is wrong; increasing health care costs rather than doing the opposite, decreasing them. That is what the CBO says, nonpartisan. That will result in increased individual health care premiums, 10 to 13 percent, and government getting even more involved in our lives, including over 16,000 new IRS agents.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I give a prize to the Senator from Louisiana. This is very transparent. It is very straightforward. It is totally honest. It is not dressed up. It is not camouflaged. It is straight repeal of health care reform.

Therefore, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Georgia (Mr. ISAKSON) and the Senator from Missouri (Mr. BOND).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 84 Leg.]

YEAS—58

Akaka	Gillibrand	Nelson (NE)
Baucus	Hagan	Nelson (FL)
Bayh	Harkin	Pryor
Begich	Inouye	Reed
Bennet	Johnson	Reid
Bingaman	Kaufman	Rockefeller
Boxer	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Burris	Kohl	Shaheen
Cantwell	Landrieu	Specter
Cardin	Lautenberg	Stabenow
Carper	Leahy	Tester
Casey	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murray	

NAYS—39

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Brown (MA)	Enzi	Murkowski
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Inhofe	Thune
Collins	Johanns	Vitter
Corker	Kyl	Voinovich
Cornyn	LeMieux	Wicker

NOT VOTING—3

Bond	Byrd	Isakson

The motion was agreed to.

Mrs. MURRAY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3577

The PRESIDING OFFICER. There are 2 minutes now evenly divided before a vote with respect to the Roberts amendment.

The Senator from Kansas.

Mr. ROBERTS. Mr. President, this amendment protects the rural health care delivery system by exempting critical access hospitals from dangerous payment cuts by the Independent Payment Advisory Board. This board is an unelected and unaccountable body, nefarious to be sure, with unprecedented power to set payment rates and make other Medicare policy changes.

While most hospitals are exempt from the board's cuts by virtue of the special deals they cut with the administration—for shame—critical access hospitals, which are among the most vulnerable in the country, are not exempt.

I do not know why critical access hospitals were let out of this exemption—perhaps a drafting error; I do not know—but I can think of no other more deserving providers than critical access hospitals throughout our rural areas—in Montana and in Kansas—to be spared from the Independent Payment Advisory Board's cuts. Save the rural health care delivery system.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I agree—Kansas, Montana, anywhere—critical access hospitals should be treated the same way as other hospitals. And when we get to that point, I say to my good friend from Kansas, I will work with him, and I know he will with me, so we can exempt critical access hospitals from this commission.

However, the Parliamentarian tells us it is not permissible to amend programs subject to fast-track rules such as this commission in a reconciliation bill. Critical access hospitals are not in. It is a technical error, oversight—there are all kinds of reasons why it should be in, but they are not, and I cannot, at this point, agree with my friend to take them out now. I will at a later date, but we cannot now.

Mr. ROBERTS. Surely, you are not going to raise a point of order?

Mr. BAUCUS. Mr. President, surely I have to do the right thing. The right thing is to raise a point of order. I raise a point of order that the Roberts amendment violates section 313(b)(1)(D) of the Congressional Budget Act.

Mr. ROBERTS. Mr. President, I take it the chairman has raised the point of order, so we are at regular order.

Mr. BAUCUS. We are, and the Senator can make his motion.

Mr. ROBERTS. I thank the Senator. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(g)(3) of the statutory Pay-As-You-Go-Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of my amendment in saving rural hospitals, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 42, nays 54, as follows:

[Rollcall Vote No. 85 Leg.]

YEAS—42

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Brown (MA)	Graham	Nelson (NE)
Brownback	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Snowe
Cochran	Johanns	Thune
Collins	Kyl	Vitter
Corker	LeMieux	Voinovich
Cornyn	Lincoln	Webb
Crapo	Lugar	Wicker

NAYS—54

Akaka	Feinstein	Merkley
Baucus	Franken	Murray
Bayh	Gillibrand	Nelson (FL)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bingaman	Inouye	Reid
Boxer	Johnson	Rockefeller
Brown (OH)	Kaufman	Sanders
Burris	Kerry	Schumer
Cantwell	Klobuchar	Shaheen
Cardin	Kohl	Specter
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Conrad	Leahy	Udall (CO)
Dodd	Levin	Udall (NM)
Dorgan	Lieberman	Warner
Durbin	McCaskill	Whitehouse
Feingold	Menendez	Wyden

NOT VOTING—4

Bond	Isakson
Byrd	Mikulski

The PRESIDING OFFICER (Mr. BROWN of Ohio). On this vote, the yeas are 42, the nays are 54. Three-fifths of the Senators being duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained, and the amendment falls.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. PRYOR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ROBERTS MOTION TO COMMIT

The PRESIDING OFFICER. There is now 2 minutes equally divided before the vote with respect to the Roberts motion to commit.

The junior Senator from Kansas.

Mr. ROBERTS. Thank you, Mr. President.

This motion commits the bill back to the Finance Committee with instructions to repeal ''the four rationers'' of health care reform. These four horsemen of the rationing apocalypse are the Patient Center Outcomes Research Institute, already conducting research that will be used to deny coverage and ration care; the CMS Innovation Center, which will grant new powers to CMS—that should be a pleasant thought by any beleaguered hospital administrator—the U.S. Preventive Services Task Force, which is given new powers—that is the outfit that said women should not have mammograms until age 50—wonderful—and the Independent Payment Advisory Board, vested with extraordinary power to set Medicare payment rates and make policy decisions.

These rationers comprise the infrastructure for the ''Brave New World'' of big government intrusion into health care decisions of all Americans, and they must be repealed.

Start over. Put patient care first. Get them back in the corral. Support the amendment.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, saying it doesn't make it so. It is not at all as it has been described.

We very much in this country have to work to control health care costs. Doctors and hospitals—especially doctors—want to practice evidence-based medicine, even more than they do now. They want the evidence. They want the information. They want to know which procedures and medicine, et cetera, work better than others. These commissions will help them get that information. Then, they make the decisions alone, independently, with their patients as to what to do. But they want more evidence so they can make more evidence-based decisions.

Second, I am not going to sugarcoat it. This independent advisory board is very important to help improve quality of care and to control costs. It does have some teeth in it. But I say to my colleagues, if we really want to do something about health care costs in this country, this is a start. CBO says this does score positively. I, therefore, move to table the motion, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The question is on agreeing to the motion to table the motion to commit.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 37, as follows:

[Rollcall Vote No. 86 Leg.]

YEAS—59

Akaka	Franken	Nelson (NE)
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Snowe
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Collins	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Murray	

NAYS—37

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Thune
Coburn	Inhofe	Vitter
Cochran	Johanns	Voinovich
Corker	Kyl	Wicker
Cornyn	LeMieux	
Crapo	Lugar	

NOT VOTING—4

Bond	Isakson
Byrd	Mikulski

The motion was agreed to.

Mr. REID. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we have finished the first tranche of amendments and motions, some 23 in number, all of which were amendments pending at the end of the 20 hours. I think it is time we pause for a minute and find out where we are and where we need to go.

First of all, I congratulate the entire Senate. I think the decorum of the Senate has been maintained in the highest standards. The debate has been good. I especially appreciate the work of the staff, the professionals they always are.

We have handled, as I indicated, 23 amendments and motions. Not a single one has been adopted. All of the amendments and motions have been offered by the minority, which is their right. The average, according to CRS, number of amendments offered during this same type of proceeding is 21. We are two over that now.

I want, of course, to congratulate my friend, Senator GREGG, who has managed these budget-type proceedings on many occasions and is always a gentleman, easy to work with. There could have been a lot of controversy. There has been none. There has been no reading of amendments. There has been agreement that time would be allowed to speak on behalf of amendments.

I think, though—I am speaking to my chairs: HARKIN, BAUCUS, DODD, CONRAD—they agree unanimously we need to just continue. The House of Representatives worked all weekend moving this issue along, and I think we need to move this along and find out if they have to take any action on this tomorrow, which is today.

I say to my colleague, my counterpart, the Republican leader, through the Chair that I think we would like to know what the plans are. We are not going to offer any amendments. We would like to know if there is some indication from the Republican side as to how many more amendments we are going to deal with this morning.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I say to my friend the majority leader, I agree, I think the process has been well handled today. The top number of amendments that have been offered on past reconciliation bills is 53. We have offered 23.

We have had a number of discussions off the floor, I say for the benefit of everyone in the Chamber, about some process to complete this bill and to complete the next bill that will be brought up by the majority after we finish this bill. I think there is a chance we might be able to reach some agreement on the disposition of this bill and that bill. I think we should

continue to discuss it. I will be happy to continue those discussions with the majority leader. In the meantime, it strikes me we can either continue voting tonight or we could set a reasonable time in the morning after everybody has had a chance to get some sleep, continue voting and discussing and see if we can't wrap up both this measure and the next one in the not too distant future.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, my focus is on this legislation, and I know there are other things we have to deal with before we leave, but I am not concerned about those at this stage. I want to finish this legislation, and I want to do that as quickly as we can.

So I would ask that we just proceed. I hope there aren't that many more amendments, but we are here for the duration.

I would note—and I am certainly in no way trying to denigrate those amendments that have been offered, but we have to understand that not a single one has been adopted. I don't know what we are trying to accomplish. We have listened intently. Most of the comments from our side have been from the chairman of the Finance Committee because most of these issues deal with the jurisdiction he has. But it is very clear there is no attempt to improve the bill. There is an attempt to destroy this bill.

We already have a law in place. It is the bill that we passed on Christmas Eve 2009. That is the law of this land. This is a matter to improve that, and I have to suggest that we are going to continue down this road. I am not sure it is a good picture for the American people, to have all these amendments and not a single one of them having enough votes to pass, but that judgment is not mine. We are here to try to move this along.

The House of Representatives is waiting for us to act, as we speak. I think they have proven they are willing to work hard, as indicated this past weekend and over the last several weeks. So let's continue forward in the same spirit we have gotten this far. But I would hope that my friends understand I think it would be to the benefit of most everyone if we could get out of here at a decent hour today. If it is not, if we are going to keep going, that is the way it is. I am an old marathoner, and getting older every day.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. I would just add that there are some obvious disadvantages to the minority to be in a reconciliation contest, but one of the advantages is that we have had more amendment votes today than we had in the entire month of December on the previous health care bill. So the majority leader may not think we are serious about changing the bill, but we would like to change the bill. And with a little help from our friends on the other side, we could improve this bill significantly.

But rather than subject all of our Members to listening to the majority leader and myself go back and forth, I would simply suggest it might be a better use of his and my time for us to continue the discussions we have been having off the floor, continue to offer the amendments, and see if we can reach an accommodation that satisfies both sides. Maybe the best way to do that would be for Senator REID and myself to continue our discussions while we will keep voting, if that is what the majority would like.

The PRESIDING OFFICER. The junior Senator from Kentucky is recognized.

AMENDMENT NO. 3681

Mr. BUNNING. Mr. President, I would like to call up Bunning amendment No. 3681.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Kentucky [Mr. BUNNING] proposes an amendment numbered 3681.

Mr. BUNNING. Mr. President, I ask unanimous consent to dispense with the reading of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To allow individuals to elect to opt out of the Medicare part A benefits)

At the end of subtitle B of title I, add the following:

SEC. ___. ALLOWING INDIVIDUALS TO ELECT TO OPT OUT OF THE MEDICARE PART A BENEFIT.

Notwithstanding any other provision of law, in the case of an individual who elects to opt out of benefits under part A of title XVIII of the Social Security Act, such individual shall not be required to—

(1) opt out of benefits under title II of such Act as a condition for making such election; and

(2) repay any amount paid under such part A for items and services furnished prior to making such election.

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. BUNNING. Mr. President, I rise to offer a very important amendment to many of our seniors. My amendment would allow individuals to voluntarily opt out of Medicare Part A benefits. Right now, if you don't want to have Medicare Part A, you have to forego Social Security checks and you also have to repay any Medicare benefits that have been paid on your behalf. I don't think that is fair.

If a senior doesn't want Part A, they shouldn't be forced to take it. My amendment says that anyone who opts out of Part A will not have to give up their Social Security benefits and would not have to repay Medicare payments that have already been made on their behalf. This amendment does not allow anyone to opt out of paying their Medicare taxes. Instead, it just allows them to not take Medicare benefits without being penalized.

I think this is a fairness issue, and I hope Members can support it.

The PRESIDING OFFICER. The time has expired.

The senior Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, since 1965, Medicare has provided security and health to millions of seniors. Along with Social Security, it is one of the two most successful and best social programs this country has adopted. Now, after 45 years of success, what does this amendment seek to do? It seeks to undermine the foundation of our social insurance program.

It is a two-tiered system. The wealthy can take care of themselves. Then, when they leave Medicare, it leaves a second-class seniors health care system remaining in Medicare. It is unthinkable, frankly, that we would have a two-tiered system for our seniors under Medicare. I therefore move to table the Bunning amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 36, as follows:

[Rollcall Vote No. 87 Leg.]

YEAS—61

Akaka	Gillibrand	Nelson (FL)
Baucus	Hagan	Pryor
Bayh	Harkin	Reed
Begich	Inouye	Reid
Bennet	Johnson	Rockefeller
Bingaman	Kaufman	Sanders
Boxer	Kerry	Schumer
Brown (OH)	Klobuchar	Shaheen
Burris	Kohl	Snowe
Cantwell	Landrieu	Specter
Cardin	Lautenberg	Stabenow
Carper	Leahy	Tester
Casey	Levin	Udall (CO)
Collins	Lieberman	Udall (NM)
Conrad	Lincoln	Voinovich
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feingold	Mikulski	Wyden
Feinstein	Murray	
Franken	Nelson (NE)	

NAYS—36

Alexander	Crapo	LeMieux
Barrasso	DeMint	Lugar
Bennett	Ensign	McCain
Brown (MA)	Enzi	McConnell
Brownback	Graham	Murkowski
Bunning	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Wicker

NOT VOTING—3

Bond	Byrd	Isakson

The motion was agreed to.

Mr. CONRAD. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

AMENDMENT NO. 3699

Mr. GRASSLEY. I send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], proposes an amendment numbered 3699.

Mr. GRASSLEY. I ask unanimous consent that reading of the amendment be dispensed with.

Mr. BAUCUS. Mr. President, I object. I object.

The PRESIDING OFFICER. The Senator from Montana objects.

The assistant legislative clerk continued with the reading of the amendment.

Mr. BAUCUS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide a temporary extension of certain programs)

At the end of the bill, insert:

TITLE III—TEMPORARY EXTENSION OF CERTAIN PROGRAMS

SEC. 300. SHORT TITLE.

This title may be cited as the ''Continuing Extension Act of 2010''.

SEC. 301. EXTENSION OF UNEMPLOYMENT INSURANCE PROVISIONS.

(a) IN GENERAL.—(1) Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(A) by striking ''April 5, 2010'' each place it appears and inserting ''May 5, 2010'';

(B) in the heading for subsection (b)(2), by striking ''APRIL 5, 2010'' and inserting ''MAY 5, 2010''; and

(C) in subsection (b)(3), by striking ''September 4, 2010'' and inserting ''October 2, 2010''.

(2) Section 2002(e) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438), is amended—

(A) in paragraph (1)(B), by striking ''April 5, 2010'' and inserting ''May 5, 2010'';

(B) in the heading for paragraph (2), by striking ''APRIL 5, 2010'' and inserting ''MAY 5, 2010''; and

(C) in paragraph (3), by striking ''October 5, 2010'' and inserting ''November 5, 2010''.

(3) Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444), is amended—

(A) by striking ''April 5, 2010'' each place it appears and inserting ''May 5, 2010''; and

(B) in subsection (c), by striking ''September 4, 2010'' and inserting ''October 2, 2010''.

(4) Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking ''September 4, 2010'' and inserting ''October 2, 2010''.

(b) FUNDING.—Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) by inserting after subparagraph (D) the following new subparagraph:

''(E) the amendments made by section 2(a)(1) of the Continuing Extension Act of 2010; and''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 2 of the Temporary Extension Act of 2010 (Public Law 111–144).

SEC. 302. EXTENSION AND IMPROVEMENT OF PREMIUM ASSISTANCE FOR COBRA BENEFITS.

Subsection (a)(3)(A) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), as amended by section 3(a) of the Temporary Extension Act of 2010 (Public Law 111–144), is amended by striking ''March 31, 2010'' and inserting ''April 30, 2010''.

SEC. 303. INCREASE IN THE MEDICARE PHYSICIAN PAYMENT UPDATE.

Paragraph (10) of section 1848(d) of the Social Security Act, as added by section 1011(a) of the Department of Defense Appropriations Act, 2010 (Public Law 111–118) and as amended by section 5 of the Temporary Extension Act of 2010 (Public Law 111–144), is amended—

(1) in subparagraph (A), by striking ''March 31, 2010'' and inserting ''April 30, 2010''; and

(2) in subparagraph (B), by striking ''April 1, 2010'' and inserting ''May 1, 2010''.

SEC. 304. EHR CLARIFICATION.

(a) QUALIFICATION FOR CLINIC-BASED PHYSICIANS.—

(1) MEDICARE.—Section 1848(o)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(o)(1)(C)(ii)) is amended by striking ''setting (whether inpatient or outpatient)'' and inserting ''inpatient or emergency room setting''.

(2) MEDICAID.—Section 1903(t)(3)(D) of the Social Security Act (42 U.S.C. 1396b(t)(3)(D)) is amended by striking ''setting (whether inpatient or outpatient)'' and inserting ''inpatient or emergency room setting''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of the HITECH Act (included in the American Recovery and Reinvestment Act of 2009 (Public Law 111–5)).

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the amendments made by this section by program instruction or otherwise.

SEC. 305. ELIMINATION OF A SWEETHEART DEAL THAT INCREASES MEDICARE REIMBURSEMENT JUST FOR FRONTIER STATES.

Effective as if included in the enactment of the Patient Protection and Affordable Care Act, section 10324 of such Act (and the amendments made by such section) is repealed.

SEC. 306. EXTENSION OF USE OF 2009 POVERTY GUIDELINES.

Section 1012 of the Department of Defense Appropriations Act, 2010 (Public Law 111–118), as amended by section 7 of the Temporary Extension Act of 2010 (Public Law 111–144), is amended by striking ''March 31, 2010'' and inserting ''April 30, 2010''.

SEC. 307. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.

(a) EXTENSION.—Section 129 of the Continuing Appropriations Resolution, 2010 (Public Law 111–68), as amended by section 8 of Public Law 111–144, is amended by striking ''by substituting'' and all that follows through the period at the end and inserting ''by substituting April 30, 2010, for the date specified in each such section.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be considered to have taken effect on February 28, 2010.

SEC. 308. SATELLITE TELEVISION EXTENSION.

(a) AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.—

(1) IN GENERAL.—Section 119 of title 17, United States Code, is amended—

(A) in subsection (c)(1)(E), by striking ''March 28, 2010'' and inserting ''April 30, 2010''; and

(B) in subsection (e), by striking ''March 28, 2010'' and inserting ''April 30, 2010''.

(2) TERMINATION OF LICENSE.—Section 1003(a)(2)(A) of Public Law 111–118 is amended by striking ''March 28, 2010'', and inserting ''April 30, 2010''.

(b) AMENDMENTS TO COMMUNICATIONS ACT OF 1934.—Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended—

(1) in paragraph (2)(C), by striking ''March 28, 2010'' and inserting ''April 30, 2010''; and

(2) in paragraph (3)(C), by striking ''March 29, 2010'' each place it appears in clauses (ii) and (iii) and inserting ''May 1, 2010''.

SEC. 309. COMPENSATION AND RATIFICATION OF AUTHORITY RELATED TO LAPSE IN HIGHWAY PROGRAMS.

(a) COMPENSATION FOR FEDERAL EMPLOYEES.—Any Federal employees furloughed as a result of the lapse in expenditure authority from the Highway Trust Fund after 11:59 p.m. on February 28, 2010, through March 2, 2010, shall be compensated for the period of that lapse at their standard rates of compensation, as determined under policies established by the Secretary of Transportation.

(b) RATIFICATION OF ESSENTIAL ACTIONS.—All actions taken by Federal employees, contractors, and grantees for the purposes of maintaining the essential level of Government operations, services, and activities to protect life and property and to bring about orderly termination of Government functions during the lapse in expenditure authority from the Highway Trust Fund after 11:59 p.m. on February 28, 2010, through March 2, 2010, are hereby ratified and approved if otherwise in accord with the provisions of the Continuing Appropriations Resolution, 2010 (division B of Public Law 111–68).

(c) FUNDING.—Funds used by the Secretary to compensate employees described in subsection (a) shall be derived from funds previously authorized out of the Highway Trust Fund and made available or limited to the Department of Transportation by the Consolidated Appropriations Act, 2010 (Public Law 111–117) and shall be subject to the obligation limitations established in such Act.

(d) EXPENDITURES FROM HIGHWAY TRUST FUND.—To permit expenditures from the Highway Trust Fund to effectuate the purposes of this section, this section shall be deemed to be a section of the Continuing Appropriations Resolution, 2010 (division B of Public Law 111–68), as in effect on the date of the enactment of the last amendment to such Resolution.

SEC. 310. USE OF STIMULUS FUNDS TO OFFSET SPENDING.

The unobligated balance of each amount appropriated or made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) (other than under title X of division A of such Act) is rescinded pro rata such that the aggregate amount of such rescissions equals $9,200,000,000 in order to offset the net increase in spending resulting from the provisions of, and amendments made by, sections 2 through 10. The Director of the Office of Management and Budget shall report to each congressional committee the amounts so rescinded within the jurisdiction of such committee.

SEC. 311. ELIMINATION OF ADVANCE REFUNDABILITY OF EARNED INCOME CREDIT.

(a) IN GENERAL.—Section 3507, subsection (g) of section 32, and paragraph (7) of section 6051(a) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 6012(a) is amended by striking paragraph (8) and by redesignating paragraph (9) as paragraph (8).

(2) Section 6302 is amended by striking subsection (i).

(c) EFFECTIVE DATE.—The repeals and amendments made by this section shall apply to taxable years beginning after December 31, 2010.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 1 minute.

Mr. GRASSLEY. This amendment is based largely on the extenders package that passed the House last week. It includes a 30-day extension for unemployment insurance, COBRA coverage, and the SGR Medicare physicians payment fix. It includes provisions on Federal poverty guidelines, national flood insurance, satellite television and compensation for highway programs.

There is one very important difference between my amendment and the House bill. My amendment is fully offset. We can do this without adding to the deficit. I urge its passage and reserve the remainder of my time.

The PRESIDING OFFICER. The senior Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, there is discussion in progress on how to deal with extenders that is ongoing with the majority leader and minority leader. In fact, the minority leader referred to it when he spoke just about a half hour ago. I think it is best to continue that process. More important, I think, this amendment is a killer amendment designed to send the reconciliation bill back to the House and let it go all over again. It is paid for by repealing some stimulus dollars. It is paid for by cutting back on the fundability of the EITC—clearly nonstarters. I might say, too, there are other pay-fors in here that are not going to fly, frankly.

I raise a point of order the Grassley amendment violates section 313(b)(1)(C) of the Congressional Budget Act.

Mr. GRASSLEY. Do I have time left?

The PRESIDING OFFICER. The Senator from Iowa has 20 seconds.

Mr. GRASSLEY. Yes? Mr. President, let's wake up. This has to be passed. It has to be passed before the end. One of the problems we always have is that it is not offset. It was included in the Baucus-Grassley bill way back in February. The leader had the chutzpah to dump his own chairman aside and go ahead with a partisan bill. Then the other side complained about the Bunning filibuster, and we have an opportunity now to avoid all that. We ought to avoid it and move on.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAUCUS. I raise the point of order that the Grassley amendment violates section 313(b)(1)(C) of the Congressional Budget Act.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(G)(3) of the statutory pay-as-you-go act of 2010, I move to waive all applicable provisions of those acts and applicable budget resolutions for purposes of my amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 40, nays 56, as follows:

[Rollcall Vote No. 88 Leg.]

YEAS—40

Alexander	DeMint	McConnell
Barrasso	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Wicker
Cornyn	Lugar	
Crapo	McCain	

NAYS—56

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Leahy	Tester
Casey	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	

NOT VOTING—4

Bond	Isakson
Byrd	Lautenberg

The PRESIDING OFFICER. On this vote, the yeas are 40, the nays are 56. Three-fifths of the Senators duly chosen and sworn having not voted in the affirmative, the motion is not agreed to, the point of order is sustained, and the amendment falls.

Mr. REID. Mr. President, I move to reconsider the vote and lay that motion upon the table.

The motion to lay upon the table was agreed to.

The PRESIDING OFFICER. The junior Senator from Utah is recognized.

AMENDMENT NO. 3568

Mr. BENNETT. I call up my amendment No. 3568.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself, Mr. WICKER, Mr. BROWNBACK, Mr. HATCH, Mr. ROBERTS, Mr. INHOFE, and Mr. CORNYN, proposes an amendment numbered 3568.

Mr. BENNETT. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To protect the democratic process and the right of the people of the District of Columbia to define marriage)

At the end of subtitle B of title I, add the following:

SEC. _____. RIGHT OF THE PEOPLE OF THE DISTRICT OF COLUMBIA TO DEFINE MARRIAGE.

(a) FINDINGS.—Congress finds that—

(1) a broad coalition of residents of the District of Columbia petitioned for an initiative in accordance with the District of Columbia Home Rule Act to establish that ''only marriage between a man and a woman is valid or recognized in the District of Columbia'';

(2) this petition anticipated the Council of the District of Columbia's passage of an Act legalizing same-sex marriage;

(3) the unelected District of Columbia Board of Elections and Ethics and the unelected District of Columbia Superior Court thwarted the residents' initiative effort to define marriage democratically, holding that the initiative amounted to discrimination prohibited by the District of Columbia Human Rights Act; and

(4) the definition of marriage affects every person and should be debated openly and democratically.

(b) REFERENDUM OR INITIATIVE REQUIREMENT.—Notwithstanding any other provision of law, including the District of Columbia Human Rights Act, the government of the District of Columbia shall immediately suspend the issuance of marriage licenses to any couple of the same sex until the people of the District of Columbia have the opportunity to hold a referendum or initiative on the question of whether the District of Columbia should issue same-sex marriage licenses.

Mr. BENNETT. Mr. President, with eight other cosponsors, we have offered a bill that would allow the people of the District of Columbia to exercise the same right that has been exercised by 31 States with respect to the issue of whether there would be gay marriage in their jurisdiction.

This bill does not take any position with respect to gay marriage, simply allows the District to hold a referendum. The Home Rule Charter, which is a constitution for the District, guarantees the people the right to challenge acts passed by the District Council by referendum, and the District Council has repeatedly ignored that right. It is in an effort to restore that that we offer this amendment.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, no matter where you are on the issue of marriage, no matter where you are on the issue of DC home rule, we ought to be able to agree that neither issue has anything to do with this bill, neither one. Therefore, I raise a point of order that the amendment is not germane and thus violates section 305(b)(2) of the Congressional Budget Act.

Mr. BENNETT. Pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(g)(3) of the statutory Pay-as-you-go Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of my amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Georgia (Mr. ISAKSON), and the Senator from Ohio (Mr. VOINOVICH).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 36, nays 59, as follows:

[Rollcall Vote No. 89 Leg.]

YEAS—36

Alexander	Crapo	LeMieux
Barrasso	DeMint	Lugar
Bennett	Ensign	McCain
Brown (MA)	Enzi	McConnell
Brownback	Graham	Murkowski
Bunning	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Wicker

NAYS—59

Akaka	Franken	Nelson (NE)
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Snowe
Cardin	Landrieu	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feingold	Mikulski	Wyden
Feinstein	Murray	

NOT VOTING—5

Bond	Isakson	Voinovich
Byrd	Lautenberg	

The PRESIDING OFFICER. On this vote, the yeas 36, the nays are 59. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

The senior Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, just so people know, on our side the order we are going to proceed on is that the next amendment will be by the Senator from Idaho, followed by the Senator from Texas, followed by the Senator from Louisiana, then the Senator from South Carolina, and then the Senator from Oklahoma. That is the next group of five amendments.

The PRESIDING OFFICER. The junior Senator from Idaho is recognized.

Mr. RISCH. Oh, thank you so much, Mr. President.

AMENDMENT NO. 3645

I call up amendment No. 3645 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Idaho [Mr. RISCH], for himself, and Mr. CRAPO, proposes an amendment numbered 3645.

Mr. RISCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To repeal the limitation on itemized medical expense deductions)

At the end of subtitle E of title I, insert the following:

SECTION ___. REPEAL OF LIMITATION ON ITEMIZED DEDUCTIONS FOR MEDICAL EXPENSES.

(a) IN GENERAL.—Section 9013 of the Patient Protection and Affordable Care Act is hereby repealed effective as of the date of the enactment of such Act and any provisions of law amended by such section are amended to read as such provisions would read if such section had never been enacted.

(b) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

(c) APPLICATION OF PROVISION.—The amendment made by subsection (b) shall apply as if included in the Patient Protection and Affordable Care Act.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 1 minute.

Mr. RISCH. Thank you, Mr. President.

Fellow Senators, I cannot imagine anyone wanting to vote against this amendment. Let me tell you what we have here. It is very simple. Apparently, you made an error when you drafted the original bill because what you did was you levied a tax on people who make less than $200,000 a year. Very simply, what this amendment does is it corrects that.

Right now, under the bill the President signed on Monday, it raised the threshold to 10 percent from 7.5 percent at which you can deduct medical expenses. That tax falls on the most vulnerable people in America—mostly the elderly, mostly very low income. And it raises taxes on 14.7 million people who make less than $200,000 a year. The President of the United States said—he told us, he committed—he would not raise taxes on people who make less than $200,000 a year. I am sure he was just confused when he signed the bill on Monday.

Let's adopt this amendment and get the bill corrected.

Thank you, Mr. President. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, the goal of health care reform is to increase coverage so more people have health insurance. That is the goal of health care reform. What does this amendment do? It goes in the opposite direction. Compared with the bill that was just signed by the President, this amendment will cause many more people to lose health insurance. Why? Because it lowers the income threshold from 8 percent down to 5 percent. That is going to mean fewer Americans get tax credits to pay for health insurance. That means fewer Americans are going to have health insurance compared with current law. That is the main reason we should vote against this amendment, because it expands the number of people who are uninsured rather than expand the number of people who would be insured.

The provision the Senator talks about, frankly, was changed under current law because with health insurance people have less need for that deduction and less need for catastrophic coverage because health insurance will not pay for it.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. Mr. President, I move to table the Risch amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Georgia (Mr. ISAKSON), and the Senator from Ohio (Mr. VOINOVICH).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 40, as follows:

[Rollcall Vote No. 90 Leg.]

YEAS—55

Akaka	Feinstein	Merkley
Baucus	Franken	Mikulski
Begich	Gillibrand	Murray
Bennet	Hagan	Nelson (NE)
Bingaman	Harkin	Nelson (FL)
Boxer	Inouye	Pryor
Brown (OH)	Johnson	Reed
Burris	Kaufman	Reid
Cantwell	Kerry	Rockefeller
Cardin	Klobuchar	Sanders
Carper	Kohl	Schumer
Casey	Landrieu	Shaheen
Conrad	Leahy	Specter
Dodd	Levin	Stabenow
Dorgan	Lieberman	Tester
Durbin	McCaskill	
Feingold	Menendez	

Udall (CO)	Warner	Whitehouse
Udall (NM)	Webb	Wyden

NAYS—40

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bayh	Ensign	McConnell
Bennett	Enzi	Murkowski
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Wicker
Corker	LeMieux	
Cornyn	Lincoln	

NOT VOTING—5

Bond	Isakson	Voinovich
Byrd	Lautenberg	

The motion was agreed to.

The PRESIDING OFFICER. The senior Senator from Texas.

AMENDMENT NO. 3635

Mrs. HUTCHISON. Mr. President, I call up amendment No. 3635 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] proposes an amendment numbered 3635.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To repeal the sunset on marriage penalty relief and to make the election to deduct State and local sales taxes permanent)

At the end of subtitle F of title I, add the following:

SEC. 15___. PERMANENT TAX RELIEF PROVISIONS.

(a) REPEAL OF SUNSET ON MARRIAGE PENALTY RELIEF.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to sections 301, 302, and 303(a) of such Act (relating to marriage penalty relief).

(b) PERMANENT EXTENSION OF ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES.—Subparagraph (I) of section 164(b)(5) of the Internal Revenue Code of 1986 is amended by striking '', and before January 1, 2010''.

(c) RESCISSION OF STIMULUS FUNDS.—Any amounts appropriated or made available and remaining unobligated under division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 115) (other than under title X of such division A), are hereby rescinded.

The PRESIDING OFFICER. The Senator from Texas is recognized for 1 minute.

Mrs. HUTCHISON. Mr. President, this is a very simple amendment. It would just make relief from the marriage penalty and the sales tax deduction permanent. If we don't act, people across our country are going to start getting the marriage penalty tax once again. This was corrected under previous tax law, but that is going out of existence at the end of this year. Sales tax deduction is something that affects eight States that do not have a State income tax. It just gives people everywhere in America, if they have either an income tax or a sales tax, the ability to choose what they deduct from their Federal income taxes.

We need to make this law permanent, and I hope everyone will support this amendment.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I would remind my colleagues that the Hutchison amendment uses as its offset rolling back the Recovery Act; that is, rolling back stimulus funds. That is taking stimulus funds to permanently pay for the marriage penalty relief as well as sales tax relief.

With unemployment as high as it is, hovering around 10 percent, it makes no sense to cut back stimulus dollars. Stimulus dollars are a proven job creator. All mainstream economists and the CBO tell us that.

I think we should continue to create jobs by using the stimulus dollars. I, therefore, urge my colleagues to not support the Hutchison amendment.

In addition to that, there are funds not within the jurisdiction of reconciled committees. For that reason, I raise a point of order that the Hutchison amendment violates section 313(B)1(C) of the Congressional Budget Act.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(G)(3) of the Statutory Pay-As-You-Go Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Georgia (Mr. ISAKSON), and the Senator from Ohio (Mr. VOINOVICH).

The PRESIDING OFFICER (Mr. FRANKEN). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 40, nays 55, as follows:

[Rollcall Vote No. 91 Leg.]

YEAS—40

Alexander	Coburn	Grassley
Barrasso	Cochran	Hatch
Bayh	Collins	Hutchison
Bennett	Corker	Inhofe
Brown (MA)	Cornyn	Johanns
Brownback	Crapo	Kyl
Bunning	DeMint	LeMieux
Burr	Ensign	Lugar
Cantwell	Enzi	McCain
Chambliss	Graham	McConnell
Murkowski	Sessions	Vitter
Nelson (NE)	Shelby	Wicker
Risch	Snowe	
Roberts	Thune	

NAYS—55

Akaka	Gregg	Nelson (FL)
Baucus	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cardin	Kohl	Specter
Carper	Landrieu	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden
Franken	Mikulski	
Gillibrand	Murray	

NOT VOTING—5

Bond	Isakson	Voinovich
Byrd	Lautenberg	

The PRESIDING OFFICER. On this vote, the yeas are 40 and the nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

The Senator from Louisiana.

AMENDMENT NO. 3668

Mr. VITTER. Mr. President, I call up amendment No. 3668 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. VITTER] proposes an amendment numbered 3668.

Mr. VITTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To increase women's access to breast cancer screenings)

At the end of subtitle F of title I, add the following:

SEC. 15___. REFUNDS OF FEDERAL MOTOR FUEL EXCISE TAXES FOR FUEL USED IN MOBILE MAMMOGRAPHY VEHICLES.

(a) REFUNDS.—Section 6427 of the Internal Revenue Code of 1986 (relating to fuels not used for taxable purposes) is amended by inserting after subsection (f) the following new subsection:

''(g) FUELS USED IN MOBILE MAMMOGRAPHY VEHICLES.—Except as provided in subsection (k), if any fuel on which tax was imposed by section 4041 or 4081 is used in any highway vehicle designed exclusively to provide mobile mammography services to patients within such vehicle, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of the tax imposed on such fuel.''.

(b) EXEMPTION FROM RETAIL TAX.—Section 4041 of such Code is amended by adding at the end the following new subsection:

''(n) FUELS USED IN MOBILE MAMMOGRAPHY VEHICLES.—No tax shall be imposed under this section on any liquid sold for use in, or used in, any highway vehicle designed exclusively to provide mobile mammography services to patients within such vehicle.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Mr. VITTER. Mr. President, a short time ago the distinguished majority leader urged there to be amendments to improve the bill, not to do any harm to the broader ObamaCare bill. This is exactly such an amendment.

This amendment would pass my Mobile Mammography Act, S. 2051. This amendment would allow mobile mammography units to purchase fuel without the Federal excise tax. This is exactly similar to an existing exemption for blood centers. These units are very important to give access to women for breast cancer screening. And this only scores $1 million, so there is no significant budget impact. This does improve the bill. This does nothing to the underlying ObamaCare bill.

This reconciliation bill is already going back to the House, so I urge a bipartisan vote in support of this good idea.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. VITTER. Mr. President, I ask unanimous consent to have printed in the RECORD two letters relating to my amendment.

There being no objection, the material was ordered to be printed in the Record, as follows:

LSU HEALTH SCIENCES CENTER,
October 23, 2009.

Re Mobile Mammography Promotion Act

HON. DAVID VITTER: I am writing in support of the Mobile Mammography Act which will eliminate the Federal Excise tax on fuel for mobile mammography vehicles. At the LSU Health Sciences Center in Shreveport, Feist-Weiller Cancer Center, this year we have put our mobile mammography vehicle into service. We perform free mammograms for the uninsured and underinsured in North Louisiana. As you know this is an expensive operation and fuel costs can be significant. Any savings in fuel cost will allow us to reach more patients in our service area.

Mobile Mammography is especially important in Louisiana, which according to 2005 SEER statistics has the highest breast cancer mortality of all the states. The rural areas in Louisiana are particularly underserved as 40% of the parishes in North Louisiana have no mammography facilities; and those parishes with mammography are often unaffordable to our lower income patients.

On behalf of the women in Louisiana. I applaud your efforts and support for a vital resource—mobile mammography.

Sincerely,

JERRY W. MCLARTY, PH.D.,
Professor of Medicine, Director, Cancer Prevention & Control.

MOBILE HEALTH CLINICS NETWORK,
October 29, 2009.

Hon. DAVID VITTER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR VITTER: We are writing to support for your proposed amendment to the IRS Code of 1986 to allow refunds of Federal motor fuel excise taxes on fuels used in Mobile Mammography vehicles.

Most of the nearly 200 Mobile Mammography programs throughout the U.S. are nonprofits organizations; many provide screenings for medically underserved women. In the past year, non-profits have been struggling due to the economic downturn, resulting in a decrease in donor dollars. Because of the downturn, there are also more and more Americans that need to access the services we provide, and it is very difficult to predict when the benevolence of Americans who can give will be restored to previous levels. Thus, every cost savings that we can realize makes a difference in our ability to continue the vital health services that we offer. The change that you propose to the tax code may be the difference between continued operations and closing services for some programs, and with Mobile Healthcare, our continuation gives us the opportunity to further impact lives, and in some cases, saving lives of Americans across the nation. We encourage the passage of this important amendment, cited as the ''Mobile Mammography Promotion Act of 2009''.

It is our sincere hope that the impact from this change will be great enough to encourage you and your colleagues in the Senate and the House to consider expanding the application of the amendment to include all Mobile Healthcare programs. There are approximately 2,000 Mobile Health programs operating in the U.S., serving millions of women, men, and children—many of whom have no other access to affordable preventive and primary care, mammography screenings, and oral healthcare. It is widely recognized that Mobile Healthcare programs yield improved health outcomes for the underserved and save the healthcare system billions of dollars.

Mobile Health Clinics Network (MHCN) is a nationwide, membership-based association of Mobile Health programs primarily operated by non-profit entities such as community health clinics, hospitals, and university schools of medicine, nursing and dentistry. MHCN completed its Fifth Annual Mobile Health Clinics Forum this past April, and we are pleased to send you (under separate mail) a copy of the official Program Binder. It will certainly offer you a view toward the breadth and scope of Mobile Healthcare programs that now operate in the U.S. and internationally.

On behalf of Mobile Mammography and Mobile Health clinics across the nation, we thank you for your efforts toward introducing the IRS amendment and for your continued attention to making positive impacts that will support continued operation of these unique healthcare delivery systems. Early detection is the most effective method to preventing and treating disease, and for Americans who rely on Mobile Health services for these critical interventions, this tax change could ensure many more years of access to a healthcare system that provides potentially life-saving services.

SINCERELY,

ANTHONY VAVASIS, MD,
Advisory Board Chair, Mobile Health Clinics Network, Clinical Director, Health Outreach to Teens Program, New York, NY.

DARIEN DELORENZO,
CEO & Executive Director, Mobile Health Clinics Network.

MHCN ADVISORY BOARD MEMBERS

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Tina Hembree, MPH, Program Manager, Cancer Detection & Early Prevention, Norton Healthcare, Cancer Institute, Louisville, KY, Chair, MHCN Mammography SIG.

Shirley Hampton, RN, Development Director, Nevada Health Centers, Inc., Carson City, NV.

Karen McInerney, RTRM, Director, Breast Imaging Services, Swedish Medical Center, Seattle, WA.

Leah Berger, MPH, Director, Community Health Programs, Planning & Development, Office of Community Affairs & Health Policy, Tulane University School of Medicine, New Orleans, LA.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I strongly support—I think every Member in this Chamber does—prevention and treatment of breast cancer and women's health generally. And the bill the President signed Tuesday makes great strides to that end. For example, it prohibits gender rating and eliminates the ability of insurers to limit coverage based on preexisting conditions. In addition to the preventive services available to everyone in the exchange, the health reform bill ensures that women have access to the unique preventive services they need, such as wellness exams.

I might also add that the amendment further drains dollars from the highway trust fund. We don't want to go in that direction. Therefore, Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Georgia (Mr. ISAKSON), and the Senator from Ohio (Mr. VOINOVICH).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 92 Leg.]

YEAS—56

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Specter
Cardin	Landrieu	Stabenow
Carper	Leahy	Tester
Casey	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	

NAYS—39

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Brown (MA)	Enzi	Murkowski
Brownback	Graham	Nelson (NE)
Bunning	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Johanns	Thune
Corker	Kyl	Vitter
Cornyn	LeMieux	Wicker

NOT VOTING—5

Bond	Isakson	Voinovich
Byrd	Lautenberg	

The motion was agreed to.

Mr. DURBIN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, it goes without saying we all appreciate everyone's cooperation, having the Senate work so well, yesterday and today. Therefore, after having had long discussions with my friend, the distinguished Senator from Kentucky, I ask unanimous consent that we are going to adjourn in a few minutes; that we will convene at 9:45 a.m. this morning, resume the bill, consider amendments up to 2 p.m., we will dispose of points of order that have been determined—and one is still under review—by 2 p.m. There will be no further amendments after 2 p.m., and the third reading will occur after points of order are disposed of after 2 p.m.

I ask that in the form of a unanimous consent agreement.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO ROSE GORDON

Mr. REID. Mr. President, I rise today to honor Ms. Rose Gordon of Reno, NV. Ms. Gordon is a dedicated social worker and public servant who has devoted much of her life to serving the people of Nevada, especially those who are traditionally underrepresented. Her commitment toassisting Nevadans is shown both by her work as a Washoe County social worker and by her involvement in numerous community organizations.

As a social worker, Ms. Gordon has been known for her endless motivation and the sense of self empowerment she gives to members of her community. For 15 years Ms. Gordon has partnered with local school districts to identify potential high school drop-outs and has worked with them and their families to encourage the student to complete high school and receive their diploma. For her efforts to assist children and families, Rose has been honored by the mayor of Reno.

Ms. Gordon has also worked diligently in the pursuit of civil rights for all individuals. Rose has previously held the positions of president of her local NAACP chapter and vice president of the NAACP Tri-State Conference of Idaho, Nevada, and Utah, and continues to serve as an adviser to the NAACP youth council. She is a member of the People of Color Caucus which focuses on the unequal distribution of wealth and knowledge to underserved populations. Through her participation and leadership in these organizations, Rose has been able to assist many members of her community and help ensure equal opportunities for Nevadans.

Ms. Gordon's selfless dedication to assisting individuals who are often forgotten shows that she is a truly great American. She is a leader in the Reno community and an example of how one person with a sense of duty can positively affect many around them.

I am honored today to recognize Ms. Rose Gordon and thank her for her commitment and for the work she has done to serve the people of Reno, NV.

TRIBUTE TO JUDY TREICHEL

Mr. REID. Mr. President, I rise today to honor the work of Judy Treichel, a true and dedicated public servant. Over two decades ago, the Federal Government decided to dump the country's nuclear waste in the Nevada desert, ignoring the opposition of most Nevadans and their leaders and widespread concern that the project was not scientifically sound. Judy recognized that the government's actions were unjust and decided to help lead the opposition to the Yucca Mountain project. So, she founded a nonprofit organization, the Nevada Nuclear Waste Task Force, and dedicated her career to making sure that the people of Nevada and across the country have access to accurate information on the proposed dump at Yucca Mountain and that they are given the opportunity to be heard.

Since 1987, Judy has attended thousands of meetings, hearings, conferences, and classroom discussions related to nuclear waste and Yucca Mountain. As executive director of the task force, she served as the principal liaison between the public interest community and the relevant Federal Government agencies. She brought a public voice to government hearings, technical meetings, and national conferences, and she provided information to grassroots organizations and individuals on the very technical and complicated issues surrounding Yucca Mountain, which concerned and affected their communities. That is how Judy became one of the leading voices in Nevada on the proposed nuclear waste dump.

I have been honored to work with Judy Treichel over the past 23 years, and I can say from experience, that the people of Nevada have been lucky to have such a dedicated and capable woman fighting on their behalf. That is why I was proud to send Judy a note recently letting her know that, with her help, we have won the fight against Yucca Mountain.

PATIENT PROTECTION AND AFFORDABLE CARE ACT

Mr. LEVIN. Mr. President, I am pleased that the President signed into law today the Patient Protection and Affordable Care Act. This bill included a provision that would extend Medicare wage index reclassifications for hospitals across more than half of the United States, including several in my home State.

The Medicare Modernization Act of 2003 included section 508 which reclassified many hospitals' Medicare wage index to appropriately reflect the wage index of their area. This provision ensures that hospitals are able to compete fairly in that area's labor market. Since the MMA was enacted, section 508 has been extended numerous times. Many hospitals, including some in Michigan, were left out of these subsequent extensions. Consequently, those hospitals, originally included in section 508, required technical corrections so they could continue to be reclassified along with the other original hospitals included in section 508. This is something that we have done in previous years and is nothing new. These technical fixes just ensure that the original intent of section 508 is maintained.

Mr. LEAHY. Mr. President, earlier this week, we saw what I have called the dawn of a new day of hope for tens of millions of Americans who have fallen through the cracks—or who worry with good reason that they may fall through the cracks—of our broken health insurance system. The signing into law of comprehensive health insurance reform by President Barack Obama ranks with the creation of Social Security and Medicare as a defining moment and legislative achievement.

Congress and Presidents from both parties tried to reform the health insurance system for decades. Through an arduous process over the last year, America rose to meet one of its foremost challenges. This effort prevailed through the grueling gauntlet of obstructionism erected by defenders of

the status quo. It took a year of debate, the work of numerous committees and both chambers of Congress to enact health insurance reform and to begin to get a handle on costs by having Americans covered by health insurance.

Now that comprehensive health insurance reform is the law of the land, the Senate is already working on improvements to this legislation. These include making coverage more affordable and creating a more equitable distribution of Medicaid reimbursements to States like Vermont that acted early and correctly on reform.

Some are still in denial, and continue to resist the path to reform. Some in the Senate resist improvements to the aspects of the new law that they had previously criticized. They appear intent on voting against improvements and, in effect, in favor of the aspects of the law they had said raised concerns. Some opponents of reform continue to distort what this reform really means, and continue their misleading arguments and spurious attacks. Some appear to see political gain in trying to attack health care reform with lawsuits. This is an effort to have judges override the legislative decisions of Congress, the elected representatives of the American people. This is an effort to repeal through the courts what they cannot do in Congress. Regardless, health insurance reform is the law of the land.

Every member of Congress takes an oath of office. Ours is to ''support and defend the Constitution of the United States.'' I take this oath very seriously and always have. We took it seriously during the many months of open and public debate of the Patient Protection and Affordable Care Act last year. During Senate debate last December, as chairman of the Senate Judiciary Committee, I responded to arguments about the constitutionality of the bill's requirement that individuals purchase health insurance. During that debate, the Senate rejected a purported constitutional point of order raised by Republicans claiming that the individual responsibility requirement was unconstitutional. The Senate's judgment and mine were that the act was constitutional.

This week the President signed the measure into law. This President has studied the Constitution. He has served in the Senate. He has taught classes on constitutional law. The oath he took when he became President of the United States of America is provided in the Constitution. He swore that he would to the best of his ability ''preserve, protect and defend the Constitution of the United States.'' I know President Obama and know that he takes his oath seriously. I know that when he signed the Patient Protection and Affordable Care Act into law, he understood it to be consistent with the Constitution.

Despite the overheated rhetoric from opponents, the authority of Congress to act is well-established by the text and the spirit of the Constitution, by prior acts of Congress like Social Security and Medicare, by longstanding precedent established by our courts, and by the history of American democracy. These were arguments considered and rejected in congressional committees. They were arguments expressly considered by the Senate. Indeed the findings adopted and contained in the law itself are that the individual responsibility requirement is commercial and economic in nature, has a substantial effect on interstate commerce and is ''essential to creating effective health insurance markets.'' That is the congressional judgment.

Ironically, the so-called individual mandate has long been a Republican proposal. The individual mandate was supported by the senior Senator from Arizona, Mr. MCCAIN, when they opposed health care reform efforts during the Clinton administration. It was a part of the health care reform effort in Massachusetts supported by former Governor Mitt Romney, a Republican.

This individual mandate did not originate with President Obama. In fact, when President Obama was a candidate, as a matter of policy he did not support the individual mandate requirement as part of his initial comprehensive health reform proposal. It was one of the hundreds of Republican health care reform ideas he came to support and that were included in the law as the bill was drafted, developed, debated and passed. Now that the law is enacted, some Republicans have changed their tune in order to undercut these reforms by suggesting that it is unconstitutional.

Although the legislative record supports the constitutionality of the individual mandate, and expert after expert maintain that there is no question about congressional authority, I, again, recall what I set forth last December when the Senate considered this issue, made its findings and reached its determination.

The Constitution of the United States begins with a preamble that sets forth the purposes for which ''We the People of the United States'' ordained and established it. Among the six purposes set forth by the Founders was that the Constitution was established to ''promote the general Welfare.'' It is hard to imagine an issue more fundamental to the general welfare of all Americans than their health.

The authority and responsibility for taking actions to further this purpose is vested in Congress by article I of the Constitution. In particular article I, section 8, sets forth several of the core powers of Congress, including the ''general welfare clause,'' the ''commerce clause'' and the ''necessary and proper clause.'' These clauses form the basis for Congress's power, and include authority to reform health care by containing spiraling costs and ensuring its availability for all Americans.

Any serious questions about congressional power to take comprehensive action to build and secure the social safety net have been settled over the past century. According to article I, section 8: ''The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.'' This clause has been the basis for actions by Congress to provide for Americans' social and economic security by passing Social Security, Medicare and Medicaid. Those landmark laws provide the well-established foundation on which Congress builds with the Patient Protection and Affordable Care Act.

As noted by Tom Schaller, enforcing the individual mandate requirement by a tax penalty is far from unprecedented, despite the claims of critics. Individuals pay for Social Security and Medicare, for example, by payroll taxes collected under the Federal Insurance Contributions Act, FICA. These FICA payments are typically collected as deductions and noted on Americans' paychecks every month. As Professor Schaller recently wrote: ''These are the two biggest government-sponsored insurance programs administered by the [Federal Government], and two of the largest line items in the federal budget. These paycheck deductions are not optional, and for all but the self-employed they are taken out immediately.'' The individual mandate requirement in the Patient Protection and Affordable Care Act is hardly revolutionary when viewed against the background of Social Security and Medicare that have long required individual payments.

Congress has woven America's social safety net over the last three score and 12 years. Congress's authority to use its judgment to promote the general welfare cannot now be in doubt. America and all Americans are the better for it. Growing old no longer means growing poor. Being older or poor no longer means being without medical care. These developments are all due to congressional action.

The Supreme Court settled the debate on the constitutionality of Social Security more than 70 years ago in three 1937 decisions. In one of those decisions, Helvering v. Davis, Justice Cardozo wrote that the discretion to determine whether a matter impacts the general welfare ''is not confided in the courts'' but falls ''within the wide range of discretion permitted to the Congress.'' Turning then to the ''nation-wide calamity that began in 1929'' of unemployment spreading from state to state throughout the Nation, leaving older Americans without jobs and security, Justice Cardozo wrote of the Social Security Act: ''The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.''

The Supreme Court reached its decisions upholding Social Security after the first Justice Roberts—Justice

Owen Roberts in the exercise of good judgment and judicial restraint began voting to uphold the key New Deal legislation. He was not alone. It was Chief Justice Hughes who wrote the Supreme Court's opinion in West Coast Hotel v. Parrish upholding minimum wage requirements as reasonable regulation. The Supreme Court also upheld a Federal farm bankruptcy law, railroad labor legislation, a regulatory tax on firearms and the Wagner Act on labor relations in National Labor Relations Board v. Jones & Laughlin Steel Corporation. The Supreme Court abandoned its judicially-created veto over congressional action with which it disagreed on policy grounds and rightfully deferred to Congress's constitutional authority.

These Supreme Court decisions and the principles underlying them are not in question. As Dean Erwin Chemerinsky of the University of California Irvine School of Law wrote in an op-ed in the Los Angeles Times: ''Congress has broad power to tax and spend for the general welfare. In the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress' power. The ability in particular of Congress to tax people to spend money for health coverage has been long established with programs such as Medicare and Medicaid.'' I included this article in the CONGRESSIONAL RECORD in December.

The opponents of health insurance reform are now going so far as to call into question the constitutionality of America's established social safety net. They would leave American workers without the protections their lifetime of hard work have earned them. They would turn back the clock to the hardships of the Great Depression, and thrust modern American back into the conditions of Dickens' novels. That path should be rejected again now, just as it was when another inspiring President led the effort to confront the economic challenges facing Americans 70 years ago. To strike down principles that have been settled for nearly three-quarters of a century would be wrong and damaging to the Nation, and would stand the Constitution on its head.

For the past year we debated whether or not to pass health insurance reform. Before passing the law, we debated whether to control costs by having all Americans be covered by health insurance. We considered untold numbers of amendments in committees and before the Senate. That is what Congress is supposed to do. We consider legislation, debate it, vote on it and act in our best collective judgment to promote the general welfare. Some Senators agreed and some disagreed, but it was a matter decided by the full Senate. In fact, due to Republican obstruction, it took an extraordinary majority of 60 Senators, not a simple majority of 51, for the Senate's will to be done.

The fact that Senate Republicans disagree with the majority's effort to help hardworking Americans obtain access to affordable health care does not make it unconstitutional. Nor does the fact that some partisans seek to make political gains by attacking the health care reform we have passed. As Justice Cardozo wrote in upholding Social Security: ''[W]hether wisdom or unwisdom resides in the scheme of benefits set forth . . . it is not for us to say. The answer to such inquiries must come from Congress, not the courts.'' I agree. Justice Cardozo understood the separation of powers enshrined in the Constitution and the Supreme Court's precedent.

As Chief Justice Marshall wrote in his landmark decision in McCulloch v. Maryland: ''Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.'' In 1803, our greatest Chief Justice, John Marshall, upheld the constitutionality of the Judiciary Act in Stuart v. Laird, and noted that ''there are no words in the Constitution to prohibit or restrain the exercise of legislation power.'' That is true here, where Congress acted to provide for the general welfare of all Americans.

I believe that Congress was right when it decided that the problems of the lack of availability and affordability of health care and of health insurance and the rising health care costs that burden the American people, is a problem, ''plainly national in area and dimensions,'' as Justice Cardozo wrote of the widespread crisis of unemployment and insecurity during the Great Depression. I believe that it was right for Congress to determine that it is in the general welfare of the Nation to ensure that all Americans have access to affordable quality health care. But whether other Senators agree or disagree with me, none should argue that we should turn back to clock to the Great Depression when conservative activist judges prevented Congress from exercising its powers to make that determination.

In seeking to discredit health insurance reform, the other side relies on a resurrection of long-discredited legal doctrines used by courts a century ago to tie Congress's hands by substituting their own views of property to strike down laws such as those guaranteeing a minimum wage and outlawing child labor. They have to rely on such cases of unbridled conservative judicial activism as Lochner v. New York, Shechter Poultry Corporation v. United States, Reagan v. Farmers Loan and Trust and the infamous Dred Scott case. Those dark days are long gone and better left behind. The Constitution, Supreme Court precedent, our history and congressional action all stand on the side of Congress's authority to enact health insurance reform legislation.

Under article I, section 8, Congress has the power ''to regulate Commerce with foreign Nations, and among the several States.'' Since at least the time of the Great Depression and the New Deal, Congress has been understood and acknowledged by the Supreme Court to have power pursuant to the commerce clause to regulate matters with a substantial effect on interstate commerce. The Supreme Court has long since upheld laws like the Fair Labor Standards Act against commerce clause challenges, ruling that Congress had the authority to outlaw child labor. The days when women and children could not be protected, when the public could not be protected from sick chickens infecting them, when farmers could not be protected and when any regulation that did not guarantee profits to corporations would be voided by the judiciary are long past. The reach of Congress' commerce clause authority has been long established and well settled.

Even recent decisions by a Supreme Court dominated by Republican-appointed justices have affirmed this rule of law. In 2005, the Supreme Court ruled in Gonzales v. Raich that Congress had the power under the commerce clause to prohibit the use of medical marijuana even though it was grown and consumed at home, because of its impact on the national market for marijuana. Surely if that law passes constitutional muster, Congress' actions to regulate the health care market that makes up one-sixth of the American economy meets the test of substantially affecting commerce. Conservatives cannot have it both ways. Nor can they ignore the settled meaning of the Constitution as well as the authority of the American people's elected representatives in Congress.

The regulation of health insurance clearly meets the test from Raich, since the activities ''taken in the aggregate, substantially affect interstate commerce.'' In fact, when the Senate considered the health insurance reform bill in December, it adopted a set of findings related to the impact of the individual mandate on interstate commerce. Among those findings, now the law, were that ''health insurance and health care services are a significant part of the national economy,'' that the individual ''requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased'' and that the ''requirement is essential to creating effective health insurance markets.''

These findings demonstrate that Congress took into account the significant cumulative economic effects on the Nation of the rising costs of health care, with those costs making up a large percentage of our economy and with American businesses struggling to provide benefits to their employees. As set forth in a paper by Georgetown University and the O'Neill Institute for National and Global Health Law, which I discussed in December, the requirement for individuals to purchase health

insurance would address the problem of free riders, millions of Americans who refuse to buy health insurance and then rely on expensive emergency health care when faced with medical problems. This shifts the costs of their health care to people who do have insurance, which in turn has a significant effect on the costs of insurance premiums for covered Americans and on the economy as a whole. A requirement that all Americans have health insurance—like requirements to pay FICA—is within congressional power if Congress determines it to be essential to controlling spiraling health care costs. In passing health care reform, Congress determined that requiring that all Americans to have health insurance coverage, and preventing some from depending on expensive emergency services in place of regular health care, can and will help reduce the cost of health insurance premiums for those who already have insurance.

Addressing these problems is at the core of Congress's powers under the commerce clause. In fact, the Supreme Court expressly addressed this issue 65 years ago, ruling in 1944 that insurance was interstate commerce and subject to Federal regulation. Congress responded to this decision in 1945 with the McCarran-Ferguson Act, which gave insurance companies an exemption from antitrust laws unless Federal regulation was made explicit under Federal law. It is the immunity from Federal antitrust law enacted in McCarran-Ferguson that I have been working to overcome with the Health Insurance Industry Antitrust Enforcement Act of 2009. My proposal would repeal health insurance companies' antiquated exemption from the antitrust laws. These are the pro-competition rules that apply to virtually all other businesses, to help promote vibrant markets and consumer choice. Competition and choice help lower costs, expand access and improve quality.

I launched this effort last fall, built a hearing record to examine its merits and worked to build bipartisan support. House leaders late last year added it to their plan. And last month it became the first stand-alone part of the health reform package to pass on its own, in a strong bipartisan vote of 406 to 19 in the House. To me this is the latest proof that, appearances aside, there is much common ground in the health reform plan—more than partisan opponents or the insurance industry would have the public believe.

Why would this exemption have been necessary if insurance was not interstate commerce? I strongly believe that the exemption in McCarran-Ferguson is wrongheaded. But would anyone seriously contend that it is unconstitutional? Of course not.

Now that we have enacted the Patient Protection and Affordable Care Act, I hope we will soon turn to this reform by taking up and passing the House-passed bill. We should end the health insurance exemption from our precompetitive Federal antitrust laws without delay.

The Constitution contains in article I, section 8, the necessary and proper clause. That, too, provides a basis for congressional action. This clause gives Congress the power ''to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by his Constitution in the United States.'' The Supreme Court settled the meaning of the necessary and proper clause 190 years ago in Justice Marshall's landmark decision in McCullough v. Maryland, during the dispute over the National Bank. Justice Marshall's wrote that ''the clause is placed among the powers of Congress, not among the limitations on those powers.'' The necessary and proper clause goes hand in hand with the commerce clause to ensure congressional authority to regulate activity with a significant economic impact.

Congress has enacted and the President has signed into law the Patient Protection and Affordable Care Act. This landmark legislation addresses our health care crisis and helps provide health care insurance for millions of Americans previously uninsured and seeks to encourage lower costs for Americans who are insured. We have acted to ensure that Americans not risk bankruptcy and disaster with every illness. Americans who work hard their entire lives should not be robbed of their family's security because health care is too expensive. Americans should not lose their life savings because they have the misfortune of losing a job or getting sick. That is not America.

One of the great American successes of the last century was the establishment of a social safety net of which all Americans can be grateful and proud. Through Social Security, Medicare and Medicaid, Congress established some of the cornerstones of American economic security. Comprehensive health insurance reform has now joined them. Congress has acted within its constitutional authority to legislate for the general welfare of all Americans. No conservative activist court, on any level, should overstep the judiciary's role by seeking to turn back the clock and deny a century of progress.

WORLD TUBERCULOSIS DAY

Mr. BROWN of Ohio. Mr. President, I wish today to recognize World Tuberculosis Day.

It is a day that allows us to take stock of how far we have come, and how far we have to go, in the fight against this deadly disease. Claiming about 1.8 million lives each year, TB is a vicious killer that must be stopped in order to protect the global public health.

Today we recognize not only that we must do more, but that, with the technology, medical expertise, and a worldwide commitment, we can do more.

We have waged an aggressive campaign to eliminate TB in the U.S. However, progress toward TB elimination has slackened.

Anywhere from 9 to 14 million Americans are infected with latent TB. Without treatment, about 5 to 10 percent of them will develop active TB. As the global pandemic of drug resistant TB spreads, the disease poses an imminent public health threat to the United States.

According to the World Health Organization, 5 percent of all new TB cases are drug resistant, with estimates of up to 28 percent in some parts of Russia. Of these cases, it is estimated that only 7 percent are being treated.

Over the past decade, the U.S. has had more than 83 cases of an extremely drug resistant strain of TB, known as XDR-TB, which is very difficult and expensive to treat. Because XDR-TB recognizes no borders, these cases will continue to rise unless we adopt control measures on a global scale.

As it stands, drug resistant and extremely drug resistant forms of TB are not easily transmittable; however, should an easily transmittable strain arise, we face the real possibility of a deadly pandemic in our country and across the globe.

TB control is not just an imperative for the developing world; it is an imperative for every nation on this planet.

Our current drugs, diagnostics, and vaccines are out of date and increasingly inadequate to control the spread of TB. The TB vaccine, for instance, provides some protection to children, but provides little to no help to prevent TB in adults.

In addition, the most commonly used TB diagnostic in the world, sputum microscopy, is more than 100 years old and lacks sensitivity to detect TB in most HIV/AIDS patients and in children.

Finally, the course of treatment available today is simply too long, resulting in skipped doses and the development of resistant strains.

New TB drug regimens are long overdue, and Congress must act to help accelerate the development, approval, and delivery of new TB medicines around the globe. We must bring our methods of prevention and treatment into the 21st century so we can fight the new age of the TB epidemic.

Congress has made significant strides toward this goal. The enactment of the Lantos-Hyde Act and the Comprehensive TB Elimination Act reaffirmed our commitment to research, treatment, and prevention.

These laws put the U.S. on the path to successfully treating 4.5 million TB patients and 90,000 new multidrug resistant TB cases by 2013. However, Congress and this administration must not underfund the commitment we made with this legislation.

World Tuberculosis Day provides an opportunity to reflect on the progress made to eradicate TB, acknowledge the

millions of lives this disease takes as it orphans children and destabilizes communities throughout the world, and recommit to fighting TB with the sense of urgency and level of resources this global public health battle requires.

OBJECTION TO JUDICIARY COMMITTEE HEARING

Mr. LEAHY. Mr. President, today the Judiciary Committee was scheduled to welcome two of President Obama's nominees to fill vacancies on the Federal bench in California: Professor Goodwin Liu, nominated to fill a vacancy on the Ninth Circuit, and Magistrate Judge Kimberly Mueller, nominated to a judgeship in the Eastern District of California. However, we will not be able to hear from those nominees today because Senate Republicans have anonymously objected to the hearing. They have continued their ill-advised protest of meaningful health reform legislation by exploiting parliamentary tactics and Senate Rules, to the detriment of the American people and, in today's instance, at the expense of American justice.

I have previously accommodated requests from Judiciary Committee Republicans to delay the committee's hearing to consider Professor Liu's nomination. I had intended to hold this hearing 2 weeks ago but, at the request of Republicans, delayed it until today. We had agreed, instead, to proceed to a hearing for Judge Robert Chatigny, a nominee to the Second Circuit court of appeals, on March 10. Republicans then reversed themselves and asked for additional delay in connection with that March 10 hearing. I, again, accommodated them. Earlier this week I sought to move this afternoon's hearing to the morning, into the 2-hour window of time after the Senate convened, that would not be subject to this arcane objection. Republicans asked that we keep it scheduled for this afternoon because it worked better for the schedules of the Republican members of the committee, and they had planned to participate this afternoon. Now, having objected to holding the hearing this morning, they object to it not being held this afternoon. They pulled the plug on our hearing and put up roadblocks to the committee's process for working to fill judicial vacancies.

It is particularly troubling that Republicans will not allow the committee to hear from Professor Goodwin Liu, a widely respected constitutional law scholar who they targeted for criticism and opposition the moment he was nominated. The day Professor Liu was nominated, committee Republicans declared themselves ''disappointed'' by the President's nomination of Professor Liu and claimed that Professor Liu was ''far outside the mainstream of American jurisprudence.'' Their opposition was instantaneous and the drumbeat has continued. Rather than give Professor Liu a chance to answer their questions and respond to their attacks, Republicans have now prevented Professor Liu from appearing, from answering their questions, and from addressing their concerns. They are being unfair. They are seeking to render him mute by their obstruction while they continue their attacks.

Goodwin Liu, the son of Taiwanese immigrants, has a great American story and sterling credentials. He did not learn English until kindergarten, yet rose to graduate from Stanford University and Yale Law School and become a Rhodes scholar. After law school, Professor Liu clerked for DC Circuit Judge David Tatel and Supreme Court Justice Ruth Bader Ginsburg. He has a brilliant legal mind and is admired by legal thinkers and academic scholars from across the political spectrum. As conceded by a Fox News commentator, Professor Liu's qualifications for the appellate bench are ''unassailable.''

Professor Liu would also bring much-needed diversity to the Federal bench. There are currently no active Asian-American Federal appeals court judges in the country. Judge Denny Chin of New York has been nominated to the Second Circuit, but Senate Republicans have stalled his nomination for over 3 months, despite his unanimous approval by the Senate Judiciary Committee.

Senate Republicans have not given Professor Liu fair consideration. Like their practice of pocket-filibustering more than 60 of President Clinton's judicial nominees in the 1990s, the decision by Republicans to block the hearing today gives Professor Liu no chance to respond to the attacks that they began weeks ago.

Republicans' filibusters and stalling tactics have been evident since President Obama took office. Senate Republicans threatened to filibuster President Obama's judicial nominations before the President had made a single one. They insisted on filibustering the nomination of Judge David Hamilton of Indiana, a well-respected mainstream district court judge who had the support of Indiana Senator DICK LUGAR, the senior Republican in the Senate. They forced the Senate to invoke cloture, a time consuming process, by refusing for months to agree to debate and vote on the nomination of Justice Barbara Keenan of Virginia to the Fourth Circuit. She was then confirmed by a vote of 99 to zero.

The Republicans tactics of obstruction have led to 22 judicial nominations stalled on the Senate's Executive Calendar and only 18 circuit and district court nominations confirmed. That lack of progress stands in stark contrast to this date in 2002, when a Democratic Senate majority had proceeded to confirm 42 of President Bush's judicial nominations. Republicans obstruct virtually every judicial nominee. Even though 15 of the 18 Federal circuit and district court judges confirmed have been without opposition, they have delayed and stalled for weeks and months as Republicans drag out the process and stall Senate consideration by withholding their consent.

During President Bush's first 2 years the Senate confirmed 100 of his judicial nominees. Republican obstruction has us on pace to confirm fewer than 30 Federal circuit and district court nominees before this Congress adjourns. Their approach has led to skyrocketing judicial vacancies, again, like the pocket filibusters they employed during the Clinton Presidency that led to a vacancy crisis in the 1990s. They do a disservice to the American people seeking justice in our overburdened Federal courts. We have to do far more to address the growing crisis of unfilled judicial vacancies, which now top 100. We owe it to the American people to do better.

Sadly, actions like today's objections from Senate Republicans to the consideration of two nominations to fill vacancies on overburdened courts will be viewed as little more than what they are: petty, partisan politics with no regard for the priorities of the American people. I urge them to reconsider and allow this hearing to proceed.

JUSTICE FOR JAMIE LEIGH JONES

Mr. LEAHY. Mr. President, yesterday, I was pleased to learn that a brave young woman, Ms. Jamie Leigh Jones, will finally have her day in court. Ms. Jones testified before the Senate Judiciary Committee last year about how the Supreme Court's interpretation of the Federal Arbitration Act has hampered American employees from having their civil rights protected. Ms. Jones was a compelling witness; her case deserves the attention of every Senator.

When she was just 20 years old and was working overseas for the military contractor, KBR, Ms. Jones was sexually assaulted by her coworkers. She filed suit in Federal court alleging sexual harassment, hostile work environment claims under title VII of the Civil Rights Act of 1964, and several state law tort claims including assault and battery. Both KBR and its former parent company, Halliburton, argued that her claims were subject to forced arbitration under a clause that Ms. Jones was required to sign as a condition of her employment. The district court agreed with the company in part. It dismissed her Federal civil rights claims because it found that they were subject to forced arbitration under her contract. But the court held that Ms. Jones could proceed to trial on some of her tort claims, albeit only after her civil rights claims had been decided in arbitration. Halliburton and KBR appealed to the Fifth Circuit court of appeals, arguing that under her employment contract and the Federal Arbitration Act, all of Ms. Jones's claims were subject to forced arbitration, including her assault and battery claims arising out of her alleged rape. The Fifth Circuit affirmed the district court's decision, and once again the companies appealed.

In the interim, Congress enacted an amendment to the Department of Defense Appropriations Act of 2010, Public Law 111–118. That amendment was sponsored by Senator FRANKEN and supported by Senators from both parties. It prohibited the U.S. Government from entering into contracts with and paying Federal tax dollars to corporations who force their employees to arbitrate their civil rights or tort claims related to sexual assault and harassment or take any action to enforce such forced arbitration clauses. I am pleased that the companies cited this law, which I was happy to support, as a reason for dropping their appeal.

As we examined in our October hearing, however, millions of hard working Americans like Ms. Jones are being denied their civil and constitutional rights and being forced into arbitration merely by accepting a job offer that contains an arbitration clause as a condition of employment. There is no rule of law in arbitration. There are no juries or independent judges in the arbitration industry. There is no transparency or accountability. And unfortunately, there is often no justice.

After more than 5 years of hard won challenges, Ms. Jones will finally be able to seek justice in a courtroom. But this small victory should not have been such a struggle. I will continue to work to ensure that Americans have a meaningful choice about whether or not to enter a predispute arbitration agreement—no American should be forced to forfeit their access to the courts in order to get a job or a product or a service. Arbitration clauses like the one in Ms. Jones's contract strip Americans of the civil rights protections many of us in Congress have fought for so long to enshrine in our law.

Legislation such as Senator FEINGOLD's Arbitration Fairness Act, S. 931, which would make mandatory predispute arbitration clauses in employment, consumer, franchise, or civil rights disputes unenforceable, would correct these practices and restore fairness to the marketplace for jobs and other goods and services. Jamie Leigh Jones's struggle also highlights the importance of the Civilian Extraterritorial Jurisdiction Act of 2010, S. 2979, which I recently introduced. My legislation would fix outdated criminal laws by establishing that all U.S. government employees and contractors who commit crimes while working abroad can be charged and tried in the United States under American law. We must continue to protect victims like Ms. Jones and others who have their civil rights violated. I look forward to the day when justice is the norm, rather than the exception, in all cases like this.

ADDITIONAL STATEMENTS

TRIBUTE TO DOROTHY HEIGHT

● Mr. BURRIS. Mr. President, today I celebrate the 98th birthday of a true civil rights pioneer and social activist: Dorothy Height.

She began her career in the 1930s, as a teacher in Brooklyn, NY. Shortly after it was founded, she became active in the United Christian Youth Movement.

It was this cause that would first carry her to national leadership, though she was quite a young woman at the time.

In 1938, Dorothy was selected by First Lady Eleanor Roosevelt to help plan a World Youth Conference, and later served as a delegate to the World Conference on Life and Work of the Churches.

The same year, she was hired by the YWCA, and quickly began to rise through the ranks of the national organization.

And it was also around this time that she caught the attention of Mary McLeod Bethune, founder and president of the National Council of Negro Women, or NCNW, who recruited young Dorothy to join the fight for women's rights.

She remained deeply involved in the YWCA, and also attained high leadership positions in the Delta Sigma Theta Sorority, the United Civil Rights Leadership, and a number of other organizations.

She helped to guide these pivotal groups through the stormy waters of the civil rights movement, looking always to the future, and maintaining a steadfast dedication to cause and principle.

But it was Dorothy's distinguished leadership of the NCNW that would come to define her career.

In 1957, Dorothy Height was elected fourth national president of NCNW—a position she would hold continuously until 1998.

For more than four decades, she was at the helm of the preeminent leadership council for African-American women.

Thanks to her unrivaled expertise, transcendent vision, and lifelong dedication to this cause and this great organization, when she retired in 1998, she lived in a country that was far more free, more fair, and more equal than the one she knew as a child.

For her extraordinary work, in 2004 this Congress bestowed upon her its highest civilian honor, the Congressional Gold Medal. President Bush presented her with this award on her 92nd birthday.

And so today, as Dorothy turns 98, I ask my colleagues to join with me in honoring the immeasurable contributions she has made to this country. I ask them to reflect upon the leadership she has rendered, the causes she has championed, and the countless lives she has touched.

Without Dorothy Height, America might be a very different place. I thank her immensely for the difference she has made, and for the lifetime of hard work she has devoted to her fellow citizens.

I wish her a wonderful birthday and many happy returns.●

CEDAR FALLS HISTORIC RECOGNITION

● Mr. HARKIN. Mr. President, one of the greatest challenges we face not just in Iowa but all across America is preserving the character and vitality of our small towns. This is about economics, but it is also about our culture and identity. After all, you won't find the heart and soul of Iowa at Wal-Mart or Home Depot out in the strip malls. No, the heart and soul of Iowa is in our family farms and on Main Streets in small communities all across my State. That is why we need to be as generous as possible—and as creative as possible—in keeping our downtowns not just alive but thriving.

As a member of the Senate Appropriations Committee, I am involved in funding many hundreds of programs every year. But the Main Street Iowa program, which provides challenge grants to revitalize downtown buildings across my State, is in a class by itself. It is smart. It is effective. And it touches communities and people in very concrete ways.

For example, the citizens of Cedar Falls, IA, and their Main Street program are making efforts to improve their downtown and spur investment in the area. The Blackhawk Hotel received a Main Street Challenge Grant in 2003 to renovate its historic downtown location. The Blackhawk Hotel, listed in the National Register of Historic Places, is the oldest continuously operating hotel site in Iowa. More recently, another Challenge Grant was awarded for the Bruhn Building to help complete a forward-thinking project that will transform the designated area into a gathering space, entrance, outdoor dining room, and vertical garden on Main Street.

Thanks to these and other projects undertaken by the Cedar Falls community and business leaders, the city was recognized last month by the National Trust for Historic Preservation as one of its ''2010 Dozen Distinctive Designations.'' According to the National Trust, this distinction recognizes ''cities and towns that offer an authentic visitor experience by combining dynamic downtowns, cultural diversity, attractive architecture, cultural landscapes and a strong commitment to historic preservation, sustainability and revitalization.'' I would like to commend the excellent work of all those involved in these economic development efforts in Cedar Falls.

State and Federal programs can provide limited funding and technical assistance to progressive cities like Cedar Falls. But, as we have seen here,

success ultimately comes from local leadership, local teamwork, and homegrown ideas and solutions. When people see one of the anchors of Main Street being renovated or expanded, this can change the whole psychology of a town or community. It offers hope. It serves as a catalyst for a far-reaching ripple effect of positive changes. Cedar Falls is a shining example of the great things that are possible. So I am pleased to congratulate the Main Street program and the citizens of Cedar Falls for formulating a strategy that has reinvigorated its downtown and won accolades from an esteemed national organization like the National Trust. Their vision for a revitalized Cedar Falls is setting a terrific example for other small towns across America.●

RECOGNIZING THE KIRKWOOD HIGH SCHOOL SYMPHONIC ORCHESTRA

● Mrs. MCCASKILL. Mr. President, today I congratulate a special group of students from my home state of Missouri. The Kirkwood High School Symphonic Orchestra has earned the honor of performing in New York City at the 2010 Instrumental Music Festival at Carnegie Hall, which is being held from March 26 through March 29. The Kirkwood High School Symphonic Orchestra is one of three instrumental groups throughout the Nation to be honored with this remarkable opportunity. These students have my admiration and my sincere congratulations. I know they will be great ambassadors for all students in Missouri.

It is clear that this notable achievement is a direct result of the students' discipline and dedication to their musical talent. Under the direction of orchestral program director Patrick Jackson, these young musicians are locally renowned and have earned national acclaim for their work. Particularly noteworthy was their performance at the 2008 Heritage Music Festival in New York City. That performance, which received perfect marks from the judging panel, was so stirring that more than one judge was moved to tears. It is a fitting advance in the storied history the students of the Kirkwood High School Symphonic Orchestra are writing that they would be invited to play in the world-famous Carnegie Hall.

As you can imagine, becoming a member of this elite ensemble is not easy. Members of the Kirkwood High School Symphonic Orchestral Program make a 9-year commitment that begins in 4th grade and continues through the students' senior year in high school. Mr. Jackson has directed the symphonic orchestra for two decades. During that time, participation has grown from 19 students to more than 300. As a testament to Mr. Jackson's commitment to his students, he has been honored by former students in Who's Who Among American High School High School Teachers 17 times.

Moreover, the resounding support for the symphonic orchestra from the communities of Kirkwood and Saint Louis has been inspiring. In order to make the trip, the students reached their fundraising goal of $72,000 with the help of local radio, TV stations, and newspapers promoting their yearlong ''Road to Carnegie Hall.'' Inspired by these young musicians, members of our own Saint Louis Orchestra were moved to volunteer their time and expertise with the students in advance of their performance.

Mr. President, I understand how difficult being a kid in this day and age can be. All too often, we read and hear negative stories about America's children that seem to suggest a generation in crisis. These Kirkwood students make it clear that this is not so. I am proud to shine a light on this group of young people who strive for greatness and embrace the fact that the greatest heights can be achieved through hard work and discipline.

On behalf of myself and the people of Missouri, I congratulate the Kirkwood High School Symphonic Orchestra and wish them the best of luck during their time at Carnegie Hall.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:39 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3976. An act to extend certain expiring provisions providing enhanced protections for servicemembers relating to mortgages and mortgage foreclosures.

H.R. 4592. An act to provide for the establishment of a pilot program to encourage the employment of veterans in energy-related positions.

H.R. 4915. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement programs, and for other purposes.

H.J. Res. 80. A joint resolution recognizing and honoring the Blinded Veterans Association on its 65th anniversary of representing blinded veterans.

At 1:26 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 257. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 3976. An act to extend certain expiring provisions providing enhanced protections for servicemembers relating to mortgages and mortgage foreclosure; to the Committee on Veterans' Affairs.

H.R. 4592. An act to provide for the establishment of a pilot program to encourage the employment of veterans in energy-related positions; to the Committee on Veterans' Affairs.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 3158. A bill to require Congress to lead by example and freeze its own pay and fully offset the cost of the extension of unemployment benefits and other Federal aid.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5189. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2010–0270); to the Committee on the Judiciary.

EC–5190. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2010–0269); to the Committee on the Judiciary.

EC–5191. A communication from the Department of State, transmitting, pursuant to law, a report relative to Israel's Qualitative Military Edge (OSS Control No. 2009–2028); to the Committee on the Judiciary.

EC–5192. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2009–1672); to the Committee on the Judiciary.

EC–5193. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2009–1629); to the Committee on the Judiciary.

EC–5194. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2009–1624); to the Committee on the Judiciary.

EC–5195. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2010–0188); to the Committee on the Judiciary.

EC–5196. A communication from the Department of State, transmitting, pursuant to

law, a report relative to the transfer of detainees (OSS Control No. 2009–1670); to the Committee on the Judiciary.

EC–5197. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Acquisitions in Support of Operations in Iraq or Afghanistan'' (DFARS Case 2008–D002) received in the Office of the President of the Senate on March 22, 2010; to the Committee on Armed Services.

EC–5198. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Export—Controlled Items'' (DFARS Case 2004–AF13) received in the Office of the President of the Senate on March 22, 2010; to the Committee on Armed Services.

EC–5199. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' ((44 CFR Part 65)(Docket No. FEMA–2010–0003)) received in the Office of the President of the Senate on March 23, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5200. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((44 CFR Part 64)(Docket No. FEMA–2008–0020)) received in the Office of the President of the Senate on March 23, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5201. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to Turkey; to the Committee on Banking, Housing, and Urban Affairs.

EC–5202. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program for Consumer Products: Classifying Products as Covered Products'' (RIN1904–AB52) received in the Office of the President of the Senate on March 23, 2010; to the Committee on Energy and Natural Resources.

EC–5203. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Determination of Housing Cost Amounts Eligible for Exclusion or Deduction for 2010'' (Notice No. 2010–27) received in the Office of the President of the Senate on March 22, 2010; to the Committee on Finance.

EC–5204. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tier II Issue—Non-Performing Loans Directive Directive No. 1'' (LMSB–4–0110–003) received in the Office of the President of the Senate on March 22, 2010; to the Committee on Finance.

EC–5205. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2010 Census Count'' (Notice No. 2010–21) received in the Office of the President of the Senate on March 22, 2010; to the Committee on Finance.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. ROCKEFELLER for the Committee on Commerce, Science, and Transportation.

*Michael F. Tillman, of California, to be a Member of the Marine Mammal Commission for a term expiring May 13, 2011.

*Daryl J. Boness, of Maine, to be a Member of the Marine Mammal Commission for a term expiring May 13, 2010.

*Daryl J. Boness, of Maine, to be a Member of the Marine Mammal Commission for a term expiring May 13, 2013.

*Earl F. Weener, of Oregon, to be a Member of the National Transportation Safety Board for the remainder of the term expiring December 31, 2010.

*Jeffrey R. Moreland, of Texas, to be a Director of the Amtrak Board of Directors for a term of five years.

*Larry Robinson, of Florida, to be Assistant Secretary of Commerce for Oceans and Atmosphere.

*Coast Guard nomination of Vice Adm. Robert J. Papp, Jr., to be Admiral.

*Coast Guard nomination of Rear Adm. Sally Brice-O'Hara, to be Vice Admiral.

*Coast Guard nomination of Rear Adm. Manson K. Brown, to be Vice Admiral.

*Coast Guard nomination of Rear Adm. Robert C. Parker, to be Vice Admiral.

Mr. ROCKEFELLER. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORDs on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

*Coast Guard nominations beginning with Joann F. Burdian and ending with Dawn N. Prebula, which nominations were received by the Senate and appeared in the Congressional Record on February 24, 2010.

*Coast Guard nominations beginning with Karen R. Anderson and ending with Steven M. Long, which nominations were received by the Senate and appeared in the Congressional Record on March 10, 2010.

*National Oceanic and Atmospheric Administration nominations beginning with Scott J. Price and ending with Sarah K. Mrozek, which nominations were received by the Senate and appeared in the Congressional Record on February 22, 2010.

*National Oceanic and Atmospheric Administration nominations beginning with Heather L. Moe and ending with Kurt S. Karpov, which nominations were received by the Senate and appeared in the Congressional Record on February 22, 2010.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SPECTER (for himself and Mr. CASEY):

S. 3159. A bill to amend Public Law 101–377 to revise the boundaries of the Gettysburg National Military Park to include the Gettysburg Train Station, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. FEINGOLD (for himself and Mr. SPECTER):

S. 3160. A bill to provide information, resources, recommendations, and funding to help State and local law enforcement enact crime prevention and intervention strategies supported by rigorous evidence; to the Committee on the Judiciary.

By Mrs. SHAHEEN:

S. 3161. A bill to establish penalties for servicers that fail to timely evaluate the applications of homeowners under home loan modification programs; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. AKAKA (for himself, Mr. BAUCUS, Mr. BAYH, Mr. BEGICH, Mr. BENNET, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWN of Ohio, Mr. BURRIS, Mr. BYRD, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. CONRAD, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mrs. HAGAN, Mr. HARKIN, Mr. INOUYE, Mr. JOHNSON, Mr. KAUFMAN, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. REED, Mr. REID, Mr. ROCKEFELLER, Mr. SANDERS, Mr. SCHUMER, Mrs. SHAHEEN, Mr. SPECTER, Ms. STABENOW, Mr. TESTER, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. WARNER, Mr. WEBB, Mr. WHITEHOUSE, and Mr. WYDEN):

S. 3162. A bill to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage; to the Committee on Veterans' Affairs.

By Mr. TESTER:

S. 3163. A bill to amend the Federal Meat Inspection Act to require tracing of meat and meat food products that are adulterated or contaminated by enteric foodborne pathogens to the source of the adulteration or contamination; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WHITEHOUSE (for himself and Mr. REED):

S. Res. 468. A resolution honoring the Blackstone Valley Tourism Council on the celebration of its 25th anniversary; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 405

At the request of Mr. LEAHY, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 405, a bill to amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 654

At the request of Mr. BUNNING, the names of the Senator from Illinois (Mr. BURRIS) and the Senator from Idaho (Mr. RISCH) were added as cosponsors of S. 654, a bill to amend title XIX of the Social Security Act to cover physician services delivered by podiatric physicians to ensure access by Medicaid beneficiaries to appropriate quality foot and ankle care.

S. 1055

At the request of Mrs. BOXER, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1055, a bill to grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.

S. 2129

At the request of Ms. COLLINS, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 2129, a bill to authorize the Administrator of General Services to convey a parcel of real property in the District of Columbia to provide for the establishment of a National Women's History Museum.

S. 2821

At the request of Mr. BROWN of Ohio, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 2821, a bill to require a review of existing trade agreements and renegotiation of existing trade agreements based on the review, to establish terms for future trade agreements, to express the sense of the Congress that the role of Congress in making trade policy should be strengthened, and for other purposes.

S. 3102

At the request of Mr. MERKLEY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 3102, a bill to amend the miscellaneous rural development provisions of the Farm Security and Rural Investment Act of 2002 to authorize the Secretary of Agriculture to make loans to certain entities that will use the funds to make loans to consumers to implement energy efficiency measures involving structural improvements and investments in cost—effective, commercial off-the-shelf technologies to reduce home energy use.

S. 3111

At the request of Mr. LEAHY, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 3111, a bill to establish the Commission on Freedom of Information Act Processing Delays.

S. 3123

At the request of Mr. LEAHY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 3123, a bill to amend the Richard B. Russell National School Lunch Act to require the Secretary of Agriculture to carry out a program to assist eligible schools and nonprofit entities through grants and technical assistance to implement farm to school programs that improve access to local foods in eligible schools.

S. 3148

At the request of Mr. WEBB, the names of the Senator from Florida (Mr. NELSON), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. BOXER), the Senator from Washington (Mrs. MURRAY), the Senator from Hawaii (Mr. AKAKA), the Senator from Montana (Mr. BAUCUS), the Senator from Alaska (Mr. BEGICH), the Senator from Colorado (Mr. BENNET), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Ohio (Mr. BROWN), the Senator from Illinois (Mr. BURRIS), the Senator from West Virginia (Mr. BYRD), the Senator from Washington (Ms. CANTWELL), the Senator from Delaware (Mr. CARPER), the Senator from Pennsylvania (Mr. CASEY), the Senator from North Dakota (Mr. CONRAD), the Senator from Connecticut (Mr. DODD), the Senator from North Dakota (Mr. DORGAN), the Senator from California (Mrs. FEINSTEIN), the Senator from Minnesota (Mr. FRANKEN), the Senator from North Carolina (Mrs. HAGAN), the Senator from Iowa (Mr. HARKIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Delaware (Mr. KAUFMAN), the Senator from Massachusetts (Mr. KERRY), the Senator from Minnesota (Ms. KLOBUCHAR), the Senator from Wisconsin (Mr. KOHL), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Vermont (Mr. LEAHY), the Senator from Michigan (Mr. LEVIN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Missouri (Mrs. MCCASKILL), the Senator from New Jersey (Mr. MENENDEZ), the Senator from Oregon (Mr. MERKLEY), the Senator from Maryland (Ms. MIKULSKI), the Senator from Arkansas (Mr. PRYOR), the Senator from Rhode Island (Mr. REED), the Senator from Nevada (Mr. REID), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Vermont (Mr. SANDERS), the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Michigan (Ms. STABENOW), the Senator from New Mexico (Mr. UDALL), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 3148, a bill to amend the Internal Revenue Code of 1986 to provide for the treatment of Department of Defense health coverage as minimal essential coverage.

S. 3152

At the request of Mr. DEMINT, the names of the Senator from Oklahoma (Mr. COBURN), the Senator from Texas (Mr. CORNYN) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. 3152, a bill to repeal the Patient Protection and Affordable Care Act.

S. RES. 411

At the request of Mrs. LINCOLN, the names of the Senator from Indiana (Mr. LUGAR), the Senator from Georgia (Mr. ISAKSON), the Senator from North Carolina (Mrs. HAGAN) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. Res. 411, a resolution recognizing the importance and sustainability of the United States hardwoods industry and urging that United States hardwoods and the products derived from United States hardwoods be given full consideration in any program to promote construction of environmentally preferable commercial, public, or private buildings.

AMENDMENT NO. 3579

At the request of Mr. ROBERTS, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from South Dakota (Mr. THUNE) were added as cosponsors of amendment No. 3579 proposed to H.R. 4872, an Act to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13).

AMENDMENT NO. 3582

At the request of Mr. BARRASSO, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of amendment No. 3582 proposed to H.R. 4872, an Act to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13).

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER (for himself and Mr. CASEY):

S. 3159. A bill to amend Public Law 10–377 to revise the boundaries of the Gettysburg National Military Park to include the Gettysburg Train Station, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation to incorporate two historically significant properties into the boundary of Gettysburg National Military Park. This expansion effort is consistent with Gettysburg National Military Park's 1999 General Management Plan, the goals of the National Park Service and is supported by the Gettysburg Borough Council.

The bill I have introduced will expand the boundary of the park to include the Gettysburg Railroad Station, also known as the Lincoln Train Station, located in downtown Gettysburg, PA. This train station was built in 1858 and is listed in the National Register of Historic Places. The station served as a hospital during the Battle of Gettysburg and was the departure point for thousands of soldiers who were wounded or killed in battle. The Lincoln Train Station is perhaps most historically significant as the site at which President Abraham Lincoln arrived on November 18, 1863, 1 day before he delivered the Gettysburg Address.

Currently, the station is operated by the National Trust for Historic Gettysburg and is open to the public throughout the year. Additionally, the station

served as the home of the Pennsylvania Abraham Lincoln Bicentennial Commission, which promoted events to commemorate the 200th anniversary year of Lincoln's birth in 2009. I am informed that the borough of Gettysburg had planned for the Lincoln Train Station to be used as an information and orientation center for visitors. Toward that goal, the borough in 2006 completed a rehabilitation of the station funded thought a State grant but has been unable to operate the visitor center due to a lack of funds. Accordingly, I understand that the Gettysburg Borough Council voted in 2008 to transfer the station to the National Park Service.

The legislation I introduced also expands the boundary of Gettysburg National Military Park to include 45 acres of land at the southern end of Gettysburg battlefield. I am informed by National Park officials that there were cavalry skirmishes in this area during the Battle of Gettysburg in July of 1863. Moreover, I am advised that this property is environmentally significant as the home to wetlands and wildlife habitat related to the Plum Run stream that traverses the park. This 45-acre property is adjacent to current park land and was generously donated in April of 2009. Therefore, no federal land acquisition funding will be necessary to obtain this property.

This legislation will help preserve properties and land that are historically and environmentally significant and critically important to telling the story of the Battle of Gettysburg. The Civil War was a defining moment for our Nation and we ought to take steps necessary to preserve historical assets for the benefit of current and future generations.

I urge my colleagues to support this bill.

By Mr. FEINGOLD (for himself and Mr. SPECTER):

S. 3160. A bill to provide information, resources, recommendations, and funding to help State and local law enforcement enact crime prevention and intervention strategies supported by rigorous evidence; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I am pleased to introduce the PRECAUTION Act—the Prevention Resources for Eliminating Criminal Activity Using Tailored Interventions in Our Neighborhoods Act. It is a long name, but it stands for an important principle—that it is better to invest in precautionary measures now than it is to pay the costs of crime—both in dollars and lives—later on. I am pleased that the Senator from Pennsylvania, Senator SPECTER, will again join me as an original cosponsor of this legislation.

The Federal Government has three important roles to play in fighting crime. First, the Federal Government should develop and disseminate knowledge to state and local officials regarding the newest and most effective law enforcement techniques and strategies. Second, the Federal Government should provide financial support for innovations that our State and local partners cannot afford to fund on their own. With that funding, it should also provide guidance, training, and technical assistance to implement those innovations. Third, the Federal Government can help to create and maintain effective partnerships among agencies at all levels of government, partnerships that are crafted to address specific law enforcement challenges.

The PRECAUTION Act is designed to support all three of these important roles. It creates a national commission to wade through the sea of information on crime prevention and intervention strategies currently available to identify those programs that are most ready for replication around the country. Over-taxed law enforcement officials need a simple, accessible resource to turn to that recommends a few, top-tier crime prevention and intervention programs. They need a resource that will single out those existing programs that are truly ''evidence-based'' programs that are proven by scientifically reliable evidence to be effective. The commission created by the PRECAUTION Act will provide just such a report—written in plain language and focused on pragmatic implementation issues—approximately a year and a half after the bill is enacted.

In the course of holding hearings and writing this first report, the commission will also identify some types of prevention and intervention strategies that are promising but need further research and development before they are ready for further implementation. The National Institute of Justice then will administer a grant program that will fund pilot projects in these identified areas. The commission will follow closely the progress of these pilot projects, and at the end of the three-year grant program, it will publish a second report, providing a detailed discussion of each pilot project and its effectiveness. This second report will include detailed implementation information and will discuss both the successes and failures of the projects funded by the grants.

There is particular urgency for this bill as State and Federal budget shortfalls continue and State and local law enforcement are forced to do more with fewer resources. There is no doubt that money is tight, which makes it all the more important that innovative and cost-effective law enforcement strategies that benefit both public safety and the government bottom line are being used in our communities. To help accomplish this, the Federal Government must work in concert with State and local law enforcement, with the nonprofit criminal justice community, and with other branches of State and Federal Government. While we have an obligation to provide leadership and support, we do not have the right to unilaterally take control from the State and local officials on the ground. With these partnerships in place we can invest our resources in crime-fighting measures, confident that they will work. Sometimes, small and careful advances are the ones that yield the most benefit.

The PRECAUTION Act answers a call by police chiefs and mayors from more than 50 cities around the country during a national conference hosted by the Police Executive Research Forum in 2006. According to a report on the event from the Forum, these law enforcement leaders agreed that while there is a desperate need for the law enforcement community to focus on violent crime, ''other municipal agencies and social services organizations—including schools, mental health, public health, courts, corrections, and conflict management groups—need to be brought together to partner toward the common goal of reducing violent crime.'' In the hearings held by the PRECAUTION Act commission, these voices will all be heard. In the reports filed by the commission, these perspectives will be acknowledged. In the pilot projects administered by the National Institute of Justice, these partnerships will be developed and fostered.

The Senate Judiciary Committee highlighted the need for cost saving measures when it held a hearing entitled ''Encouraging Innovative and Cost-Effective Crime Reduction Strategies.'' Chief of Police Michael Schirling of Burlington, Vermont, in response to a question I asked him in conjunction with the hearing, said of the PRECAUTION Act that it would be:

> [A] useful tool for law enforcement that could, if properly implemented, result in long-term cost savings not only for law enforcement, but also for communities as a whole. The manner in which creative initiatives would be studied to validate their effectiveness and then added to a resource library of new ideas seems like a prudent approach to spreading important concepts and ideas to improve the criminal justice system in a meaningful way.

The PRECAUTION Act, though very modest in scope, is an important supplement to the essential financial support the Federal Government provides to our State and local law enforcement partners through programs such as the Byrne Justice Assistance grants and the COPS grants. When State and local law enforcement receive Federal support for policing, they have difficult decisions to make on how to spend those Federal dollars. We all know that prevention and intervention are integral components of any comprehensive law enforcement plan. The PRECAUTION Act not only highlights the importance of these components, but will also help to single out some of the best, most effective forms of prevention and intervention programs. At the same time, it will help to develop additional, cutting-edge strategies that are supported by solid scientific evidence of their effectiveness.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3160

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prevention Resources for Eliminating Criminal Activity Using Tailored Interventions in Our Neighborhoods Act of 2010'' or the ''PRECAUTION Act''.

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) establish a commitment on the part of the Federal Government to provide leadership on successful crime prevention and intervention strategies;

(2) further the integration of crime prevention and intervention strategies into traditional law enforcement practices of State and local law enforcement offices around the country;

(3) develop a plain-language, implementation-focused assessment of those current crime and delinquency prevention and intervention strategies that are supported by rigorous evidence;

(4) provide additional resources to the National Institute of Justice to administer grants, contracts, and cooperative agreements for research and development for promising crime prevention and intervention strategies;

(5) develop recommendations for Federal priorities for crime and delinquency prevention and intervention research, development, and funding that may augment important Federal grant programs, including the Edward Byrne Memorial Justice Assistance Grant Program under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), grant programs administered by the Office of Community Oriented Policing Services of the Department of Justice, grant programs administered by the Office of Safe and Drug-Free Schools of the Department of Education, and other similar programs; and

(6) reduce the costs that rising violent crime imposes on interstate commerce.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) COMMISSION.—The term ''Commission'' means the National Commission on Public Safety Through Crime Prevention established under section 4(a).

(2) RIGOROUS EVIDENCE.—The term ''rigorous evidence'' means evidence generated by scientifically valid forms of outcome evaluation, particularly randomized trials (where practicable).

(3) SUBCATEGORY.—The term ''subcategory'' means 1 of the following categories:

(A) Family and community settings (including public health-based strategies).

(B) Law enforcement settings (including probation-based strategies).

(C) School settings (including antigang and general antiviolence strategies).

(4) TOP-TIER.—The term ''top-tier'' means any strategy supported by rigorous evidence of the sizable, sustained benefits to participants in the strategy or to society.

SEC. 4. NATIONAL COMMISSION ON PUBLIC SAFETY THROUGH CRIME PREVENTION.

(a) ESTABLISHMENT.—There is established a commission to be known as the National Commission on Public Safety Through Crime Prevention.

(b) MEMBERS.—

(1) IN GENERAL.—The Commission shall be composed of 9 members, of whom—

(A) 3 shall be appointed by the President, 1 of whom shall be the Assistant Attorney General for the Office of Justice Programs or a representative of such Assistant Attorney General;

(B) 2 shall be appointed by the Speaker of the House of Representatives, unless the Speaker is of the same party as the President, in which case 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the minority leader of the House of Representatives;

(C) 1 shall be appointed by the minority leader of the House of Representatives (in addition to any appointment made under subparagraph (B));

(D) 2 shall be appointed by the majority leader of the Senate, unless the majority leader is of the same party as the President, in which case 1 shall be appointed by the majority leader of the Senate and 1 shall be appointed by the minority leader of the Senate; and

(E) 1 shall be appointed by the minority leader of the Senate (in addition to any appointment made under subparagraph (D)).

(2) PERSONS ELIGIBLE.—

(A) IN GENERAL.—Each member of the Commission shall be an individual who has knowledge or expertise in matters to be studied by the Commission.

(B) REQUIRED REPRESENTATIVES.—At least—

(i) 2 members of the Commission shall be respected social scientists with experience implementing or interpreting rigorous, outcome-based trials; and

(ii) 2 members of the Commission shall be law enforcement practitioners.

(3) CONSULTATION REQUIRED.—The President, the Speaker of the House of Representatives, the minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult prior to the appointment of the members of the Commission to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

(4) TERM.—Each member shall be appointed for the life of the Commission.

(5) TIME FOR INITIAL APPOINTMENTS.—The appointment of the members shall be made not later than 60 days after the date of enactment of this Act.

(6) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made, and shall be made not later than 60 days after the date on which the vacancy occurred.

(7) EX OFFICIO MEMBERS.—The Director of the National Institute of Justice, the Director of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Community Capacity Development Office, the Director of the Bureau of Justice Statistics, the Director of the Bureau of Justice Assistance, and the Director of Community Oriented Policing Services (or a representative of each such director) shall each serve in an ex officio capacity on the Commission to provide advice and information to the Commission.

(c) OPERATION.—

(1) CHAIRPERSON.—At the initial meeting of the Commission, the members of the Commission shall elect a chairperson from among its voting members, by a vote of ⅔ of the members of the Commission. The chairperson shall retain this position for the life of the Commission. If the chairperson leaves the Commission, a new chairperson shall be selected, by a vote of ⅔ of the members of the Commission.

(2) MEETINGS.—The Commission shall meet at the call of the chairperson. The initial meeting of the Commission shall take place not later than 30 days after the date on which all the members of the Commission have been appointed.

(3) QUORUM.—A majority of the members of the Commission shall constitute a quorum to conduct business, and the Commission may establish a lesser quorum for conducting hearings scheduled by the Commission.

(4) RULES.—The Commission may establish by majority vote any other rules for the conduct of Commission business, if such rules are not inconsistent with this Act or other applicable law.

(d) PUBLIC HEARINGS.—

(1) IN GENERAL.—The Commission shall hold public hearings. The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under this section.

(2) FOCUS OF HEARINGS.—The Commission shall hold at least 3 separate public hearings, each of which shall focus on 1 of the subcategories.

(3) WITNESS EXPENSES.—Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

(e) COMPREHENSIVE STUDY OF EVIDENCE-BASED CRIME PREVENTION AND INTERVENTION STRATEGIES.—

(1) IN GENERAL.—The Commission shall carry out a comprehensive study of the effectiveness of crime and delinquency prevention and intervention strategies, organized around the 3 subcategories.

(2) MATTERS INCLUDED.—The study under paragraph (1) shall include—

(A) a review of research on the general effectiveness of incorporating crime prevention and intervention strategies into an overall law enforcement plan;

(B) an evaluation of how to more effectively communicate the wealth of social science research to practitioners;

(C) a review of evidence regarding the effectiveness of specific crime prevention and intervention strategies, focusing on those strategies supported by rigorous evidence;

(D) an identification of—

(i) promising areas for further research and development; and

(ii) other areas representing gaps in the body of knowledge that would benefit from additional research and development;

(E) an assessment of the best practices for implementing prevention and intervention strategies;

(F) an assessment of the best practices for gathering rigorous evidence regarding the implementation of intervention and prevention strategies; and

(G) an assessment of those top-tier strategies best suited for duplication efforts in a range of settings across the country.

(3) INITIAL REPORT ON TOP-TIER CRIME PREVENTION AND INTERVENTION STRATEGIES.—

(A) DISTRIBUTION.—Not later than 18 months after the date on which all members of the Commission have been appointed, the Commission shall submit a public report on the study carried out under this subsection to—

(i) the President;

(ii) Congress;

(iii) the Attorney General;

(iv) the Chief Federal Public Defender of each district;

(v) the chief executive of each State;

(vi) the Director of the Administrative Office of the Courts of each State;

(vii) the Director of the Administrative Office of the United States Courts; and

(viii) the attorney general of each State.

(B) CONTENTS.—The report under subparagraph (A) shall include—

(i) the findings and conclusions of the Commission;

(ii) a summary of the top-tier strategies, including—

(I) a review of the rigorous evidence supporting the designation of each strategy as top-tier;

(II) a brief outline of the keys to successful implementation for each strategy; and

(III) a list of references and other information on where further information on each strategy can be found;

(iii) recommended protocols for implementing crime and delinquency prevention and intervention strategies generally;

(iv) recommended protocols for evaluating the effectiveness of crime and delinquency prevention and intervention strategies; and

(v) a summary of the materials relied upon by the Commission in preparation of the report.

(C) CONSULTATION WITH OUTSIDE AUTHORITIES.—In developing the recommended protocols for implementation and rigorous evaluation of top-tier crime and delinquency prevention and intervention strategies under this paragraph, the Commission shall consult with the Committee on Law and Justice at the National Academy of Science and with national associations representing the law enforcement and social science professions, including the National Sheriffs' Association, the Police Executive Research Forum, the International Association of Chiefs of Police, the Consortium of Social Science Associations, and the American Society of Criminology.

(f) RECOMMENDATIONS REGARDING INNOVATIVE CRIME PREVENTION AND INTERVENTION STRATEGIES.—

(1) SUBMISSION.—

(A) IN GENERAL.—Not later than 30 days after the date of the final hearing under subsection (d) relating to a subcategory, the Commission shall provide the Director of the National Institute of Justice and the Attorney General with recommendations on qualifying considerations relating to that subcategory for selecting recipients of contracts, cooperative agreements, and grants under section 5.

(B) DEADLINE.—Not later than 13 months after the date on which all members of the Commission have been appointed, the Commission shall provide all recommendations required under this subsection.

(2) MATTERS INCLUDED.—The recommendations provided under paragraph (1) shall include recommendations relating to—

(A) the types of strategies for the applicable subcategory that would best benefit from additional research and development;

(B) any geographic or demographic targets;

(C) the types of partnerships with other public or private entities that might be pertinent and prioritized; and

(D) any classes of crime and delinquency prevention and intervention strategies that should not be given priority because of a preexisting base of knowledge that would benefit less from additional research and development.

(g) FINAL REPORT ON THE RESULTS OF INNOVATIVE CRIME PREVENTION AND INTERVENTION STRATEGIES.—

(1) IN GENERAL.—Following the close of the 3-year period for the evaluation of an innovative strategy under section 5, the Commission shall collect the results of the evaluation and shall submit a public report to the President, the Attorney General, Congress, the chief executive of each State, and the attorney general of each State describing each strategy funded under section 5 and the results of the strategy. The report under this paragraph shall be submitted not later than 5 years after the date of the selection of the chairperson of the Commission.

(2) COLLECTION OF INFORMATION AND EVIDENCE REGARDING RECIPIENTS.—The collection of information and evidence by the Commission regarding each recipient of a contract, cooperative agreement, or grant under section 5 shall be carried out by—

(A) ongoing communications with the grant administrator at the National Institute of Justice and other appropriate officers at other components of the Department of Justice;

(B) visits by representatives of the Commission (including at least 1 member of the Commission) to the site where the recipient of a contract, cooperative agreement, or grant is carrying out the strategy funded under section 5, at least once in the second and once in the third year of the contract, cooperative agreement, or grant;

(C) a review of the data generated by the study monitoring the effectiveness of the strategy; and

(D) other means as necessary.

(3) MATTERS INCLUDED.—The report submitted under paragraph (1) shall include a review of each strategy carried out with a contract, cooperative agreement, or grant under section 5, detailing—

(A) the type of crime or delinquency prevention or intervention strategy;

(B) where the activities under the strategy were carried out, including geographic and demographic targets;

(C) any partnerships with public or private entities through the course of the period of the contract, cooperative agreement, or grant;

(D) the type and design of the effectiveness study conducted under section 5(b)(4) or section 5(c)(2)(C) for that strategy;

(E) the results of the effectiveness study conducted under section 5(b)(4) or section 5(c)(2)(C) for that strategy;

(F) lessons learned regarding implementation of that strategy or of the effectiveness study conducted under section 5(b)(4) or section 5(c)(2)(C), including recommendations regarding which types of environments might best be suited for successful replication; and

(G) recommendations regarding the need for further research and development of the strategy.

(h) PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Commission.

(2) COMPENSATION OF MEMBERS.—Members of the Commission shall serve without compensation.

(3) STAFF.—

(A) IN GENERAL.—The chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(B) COMPENSATION.—The chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) DETAIL OF FEDERAL EMPLOYEES.—With the affirmative vote of ⅔ of the members of the Commission, any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(i) CONTRACTS FOR RESEARCH.—

(1) NATIONAL INSTITUTE OF JUSTICE.—With a ⅔ affirmative vote of the members of the Commission, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties under this Act. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

(2) OTHER ORGANIZATIONS.—Nothing in this subsection shall be construed to limit the ability of the Commission to enter into contracts with other entities or organizations for research necessary to carry out the duties of the Commission under this section.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 to carry out this section.

(k) TERMINATION.—The Commission shall terminate on the date that is 30 days after the date on which the Commission submits the last report required by this section.

(l) EXEMPTION.—The Commission shall be exempt from the Federal Advisory Committee Act.

SEC. 5. INNOVATIVE CRIME PREVENTION AND INTERVENTION STRATEGIES.

(a) IN GENERAL.—The Attorney General may fund the implementation and evaluation of innovative crime or delinquency prevention or intervention strategies though coordinated initiatives, as described in subsection (b), through grants authorized under subsection (c), or a combination of the coordinated initiatives and grants.

(b) COORDINATED INITIATIVES.—

(1) IN GENERAL.—The Attorney General, acting through the Director of the National Institute of Justice, may coordinate efforts between the National Institute of Justice and other appropriate components of the Department of Justice to implement and rigorously evaluate innovative crime or delinquency prevention or intervention strategies.

(2) SELECTION OF STRATEGIES.—The Director of the National Institute of Justice, in consultation with the heads of other appropriate components of the Department of Justice, shall identify innovative crime or delinquency prevention or intervention strategies that would best benefit from additional funding and evaluation, taking into consideration the recommendations of the Commission under section 4(f).

(3) PROGRAM OFFICE ROLE.—The head of any appropriate component of the Department of Justice, as determined by the Attorney General, may provide incentives under a contract, cooperative agreement, or grant entered into or made by the component, including a competitive preference priority and providing additional funds, for a public or private entity to—

(A) implement a strategy identified under paragraph (2); or

(B) participate in the evaluation under paragraph (4) of the strategies identified under paragraph (2).

(4) NATIONAL INSTITUTE OF JUSTICE EVALUATION.—

(A) IN GENERAL.—The Director of the National Institute of Justice may enter into or make contracts, cooperative agreements, or

grants to conduct a rigorous study of the effectiveness of each strategy relating to which an incentive is provided under paragraph (3).

(B) AMOUNT AND DURATION.—A contract, cooperative agreement, or grant under subparagraph (A) shall be for not more than $700,000, and shall be for a period of not more than 3 years.

(C) METHODOLOGY OF STUDY.—Each study conducted under subparagraph (A) shall use a study design that is likely to produce rigorous evidence of the effectiveness of the strategy and, where feasible, measure outcomes using available administrative data, such as police arrest records, so as to minimize the costs of the study.

(c) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Director of the National Institute of Justice may make grants to public and private entities to fund the implementation and evaluation of innovative crime or delinquency prevention or intervention strategies. The purpose of grants under this subsection shall be to provide funds for all expenses related to the implementation of such a strategy and to conduct a rigorous study on the effectiveness of that strategy.

(2) GRANT DISTRIBUTION.—

(A) PERIOD.—A grant under this subsection shall be made for a period of not more than 3 years.

(B) AMOUNT.—The amount of each grant under this subsection—

(i) shall be sufficient to ensure that rigorous evaluations may be performed; and

(ii) shall not exceed $2,000,000.

(C) EVALUATION SET-ASIDE.—

(i) IN GENERAL.—A grantee shall use not less than $300,000 and not more than $700,000 of the funds from a grant under this subsection for a rigorous study of the effectiveness of the strategy during the 3-year period of the grant for that strategy.

(ii) METHODOLOGY OF STUDY.—

(I) IN GENERAL.—Each study conducted under clause (i) shall use an evaluator and a study design approved by the employee of the National Institute of Justice hired or assigned under subsection (e) and, where feasible, measure outcomes using available administrative data, such as police arrest records, so as to minimize the costs of the study.

(II) CRITERIA.—The employee of the National Institute of Justice hired or assigned under subsection (e) shall approve—

(aa) an evaluator that has successfully carried out multiple studies producing rigorous evidence of effectiveness; and

(bb) a proposed study design that is likely to produce rigorous evidence of the effectiveness of the strategy.

(III) APPROVAL.—Before a grant is awarded under this subsection, the evaluator and study design of a grantee shall be approved by the employee of the National Institute of Justice hired or assigned under subsection (e).

(D) DATE OF AWARD.—Not later than 6 months after the date of receiving recommendations relating to a subcategory from the Commission under section 4(f), the Director of the National Institute of Justice shall award all grants under this subsection relating to that subcategory.

(E) TYPE OF GRANTS.—One-third of the grants made under this subsection shall be made in each subcategory. In distributing grants, the recommendations of the Commission under section 4(f) shall be considered.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $18,000,000 to carry out subsections (b) and (c).

(e) DEDICATED STAFF.—

(1) IN GENERAL.—The Director of the National Institute of Justice shall hire or assign a full-time employee to oversee the contracts, cooperative agreements, and grants under this section.

(2) STUDY OVERSIGHT.—The employee of the National Institute of Justice hired or assigned under paragraph (1) shall be responsible for ensuring that recipients of a contract, cooperative agreement, or grant under this section adhere to the study design approved before the contract, cooperative agreement, or grant was entered into or awarded.

(3) LIAISON.—The employee of the National Institute of Justice hired or assigned under paragraph (1) may be used as a liaison between the Commission and the recipients of a contract, cooperative agreement, or grant under this section. The employee shall be responsible for ensuring timely cooperation with Commission requests.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $150,000 for each of fiscal years 2010 through 2014 to carry out this subsection.

(f) APPLICATIONS.—A public or private entity desiring a contract, cooperative agreement, or grant under this section shall submit an application at such time, in such manner, and accompanied by such information as the Director of the National Institute of Justice or other appropriate component of the Department of Justice may reasonably require.

(g) COOPERATION WITH THE COMMISSION.—A person entering into a contract or cooperative agreement or receiving a grant under this section shall cooperate with the Commission in providing the Commission with full information on the progress of the strategy being carried out with a contract, cooperative agreement, or grant under this section, including—

(1) hosting visits by the members of the Commission to the site where the activities under the strategy are being carried out;

(2) providing pertinent information on the logistics of establishing the strategy for which the contract, cooperative agreement, or grant under this section was received, including details on partnerships, selection of participants, and any efforts to publicize the strategy; and

(3) responding to any specific inquiries that may be made by the Commission.

SEC. 6. FUNDING.

Section 524(c) of title 28, United States Code, is amended by adding at the end the following:

''(12) For the first full fiscal year after the date of enactment of the PRECAUTION Act, and each fiscal year thereafter through the end of the fifth full fiscal year after such date of enactment, there is appropriated to the Attorney General from the Fund $4,750,000 to carry out the PRECAUTION Act.''.

By Mrs. SHAHEEN:

S. 3161. A bill to establish penalties for servicers that fail to timely evaluate the applications of homeowners under home loan modification programs; to the Committee on Banking, Housing, and Urban Affairs.

Ms. SHAHEEN. Mr. President, I rise today to introduce the Mortgage Modification Reform Act, which is designed to protect homeowners and communities from big banks who fail to modify mortgages in a timely fashion.

In the past year I have heard from hundreds of families in New Hampshire who have fallen behind on their mortgages. Often, they tell me that they can no longer afford their payments because of circumstances beyond their control. A family member has been laid off or had her hours reduced. Medical bills have started piling up. Higher interest payments kicked in at just the wrong time. And since value of the average home has declined over 15 percent in New Hampshire, they now owe more on their home than it's worth.

But these families want to make it work, so they reach out to their bank or ''mortgage servicer'' to figure out a way to make payments they can afford. Often, when a homeowner comes to a servicer, they can work together to bring the homeowner's payments down to an affordable level. When a servicer modifies a mortgage, everybody wins: the homeowner can stay in their home; the servicer avoids the costly foreclosure process; and communities are spared from the devastating effects that foreclosures have on home values and communities.

That is why these families in New Hampshire and others across the country breathed a sigh of relief when they heard that a new program, called the Home Affordable Modification Program, or HAMP, would provide powerful incentives to servicers to work with borrowers to keep them in their homes.

We were told that HAMP would help 3–4 million homeowners stay in their homes by reducing the amount a family owes each month to 31 percent of its monthly income. The big, national servicer banks who signed up for the program would avoid the foreclosure process and receive incentive payments. Most importantly, communities would have benefitted by stemming the tide of foreclosures, which have so drastically lowered home values and the equity of millions of homeowners.

But a year into the program, it is clear that many of these big banks are unwilling or uninterested in helping people in our communities. The banks routinely lose documents and ask the borrower to send them in again, delaying the process for months at a time. They don't respond to calls and voice messages that are only returned weeks or months later—if they are returned at all. And as homeowners wait for a decision, the banks charge them late fees, which puts them even further behind. When homeowners finally receive modification offers, they often come at the last minute—just days before the borrower's home is set to be auctioned.

As a result of these abuses, instead of helping the millions of homeowners that they promised would be able to stay in their homes, servicers have offered trial modifications to less than 30 percent of eligible homeowners. The banks participating in HAMP have only provided permanent relief to only 116,000 homeowners.

We know that the servicers are capable of success in this program because some servicers have been better than others. According to the latest Servicer Performance Report from the Treasury, some servicers have helped as little as 2 percent of their eligible

borrowers, while others have helped over 50 percent. And it's not surprising that some of the servicers with the worst numbers are the same big banks that were happy to be bailed out by TARP not too long ago.

It is time to tell these big banks that enough's enough. We need protections for homeowners, and we need to penalize the servicers who have failed to offer the help they promised.

That is why I am introducing legislation today, the Mortgage Modification Reform Act, to stop the big banks from abusing homeowners and to start penalizing those who do not live up to their promise to provide homeowners with the relief they need.

The Mortgage Modification Reform Act would charge banks ''late fees'' for every month that they fail to evaluate a homeowner for this program. After 3 months, if a homeowner has not received an answer on whether their mortgage will be modified, the banks' payments will be reduced 10 percent for each month that it fails to evaluate the homeowner. By reducing payments to the banks over time, the bank will be encouraged to evaluate these borrowers earlier and more frequently. This also protects the taxpayer by only rewarding those banks that respond quickly and punishing those that fail to act. Banks will have to perform to get paid, and if they don't, their compensation will stay with to the taxpayer.

This legislation would also require banks to stop the foreclosure process until it determines whether a borrower qualifies. This would also give much-needed peace of mind to homeowners who aren't sure which will come first: the modification they need, or the sale of their home.

In addition, the legislation would prevent banks from imposing fees while they wait for a decision. There is no reason that a bank should charge a homeowner for being delinquent while waiting for evaluation in the program. There is no reason for a homeowner to pay fees for an unnecessary foreclosure process. This legislation would put an end to these abusive practices.

Finally, the Mortgage Modification Reform Act provides a protection for borrowers that has been missing from day one of this program: a way for homeowners to request a review of the bank's decision. Right now, the banks make all the decisions whether a homeowner qualifies for the program or not. There is no way for the homeowner to appeal that decision. But we know that those decisions aren't always right. Many homeowners were originally told that they didn't qualify, but ask their Senator or get legal assistance to ask the servicer to take another look. Often, they did qualify for the program, but the servicer did not evaluate the borrower properly.

But not every homeowner should have to involve their Senator or a lawyer to get their bank to respond. They should be able to make their case on their own to an independent arbiter. This legislation requires the Treasury Department to create a separate, independent review process to allow homeowners who feel they have been wrongly denied the chance to stay in their home. In addition, to ensure transparency, this legislation would require the servicer to submit documentation to the Treasury for each denial that it makes.

Making this program work isn't just important for these homeowners, it's also critical to our economic recovery. With million homeowners across the nation behind on their mortgages and at risk of foreclosure, we need this program achieve its potential of stopping millions of homes from flooding the housing market and further depressing home values.

I urge my colleagues to join me to prevent banks from continuing to abuse this program, and to get it on track to provide help to the millions of homeowners who need it.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3161

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Mortgage Modification Reform Act of 2010''.

SEC. 2. DEFINITIONS.

In this Act—

(1) the term ''covered trial loan modification'' means a trial loan modification—

(A) offered by a servicer to a homeowner under a home loan modification program; and

(B) for which the servicer has received from the homeowner the information required for a trial loan modification;

(2) the term ''home loan modification program'' means a home loan modification program put into effect by the Secretary under title I of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.), including the Home Affordable Modification Program;

(3) the term ''homeowner'' means an individual who applies for a home loan modification under a home loan modification program;

(4) the term ''permanent loan modification'' means any agreement reached between a homeowner and a servicer on a long-term basis, as determined by the Secretary, under a home loan modification program;

(5) the term ''qualified counselor'' means a qualified counselor described in section 255(f) of the National Housing Act (12 U.S.C. 1715z-20(f));

(6) the term ''Secretary'' means the Secretary of the Treasury;

(7) the term ''servicer'' has the same meaning as in section 129 of the Truth in Lending Act (15 U.S.C. 1639a) (relating to the duties of servicers of residential mortgages), as added by section 201(b) of the Helping Families Save Their Homes Act of 2009 (Public Law 111–22; 123 Stat. 1638);

(8) the term ''servicer incentive payment'' means a payment that is made by the Secretary to a servicer—

(A) in exchange, or as an incentive, for making a loan modification under a home loan modification program; and

(B) at the time the servicer makes an offer of a trial or permanent modification to a homeowner; and

(9) the term ''trial loan modification'' means any agreement reached between a homeowner and a servicer on a temporary basis, as determined by the Secretary, under a home loan modification program.

SEC. 3. FORECLOSURE.

A servicer may not initiate or continue a foreclosure proceeding with respect to the mortgage of a homeowner if—

(1) the homeowner submitted an application for a loan modification under a home loan modification program—

(A) before receiving a notice of foreclosure from the servicer; or

(B) not later than 30 days after the homeowner received a notice of foreclosure from the servicer; and

(2) the servicer has not made a determination, as described in section 5(a) that the homeowner does not qualify for a loan modification under a home loan modification program.

SEC. 4. PROCESS FOR REVIEW OF IMPROPER DENIALS.

(a) PROCESS FOR REVIEW.—

(1) IN GENERAL.—The Secretary shall establish a process by which a homeowner may request the Secretary to review a denial by a servicer of an application by the homeowner for a trial loan modification or permanent loan modification.

(2) QUALIFIED COUNSELORS.—The process established under paragraph (1) shall include the use of qualified counselors to report wrongful denials of trial loan modifications and permanent loan modifications.

(3) SUPPORTING DOCUMENTATION.—The Secretary shall require a servicer to submit supporting documentation with respect to any denial by the servicer of an application by a homeowner for a trial loan modification or permanent loan modification that is reviewed by the Secretary under the process established under paragraph (1).

(b) PENALTIES.—If the Secretary determines after a review under the process established under subsection (a) that a servicer has wrongly denied the application of a homeowner for a trial loan modification or a permanent loan modification, the Secretary shall impose a penalty on the servicer.

SEC. 5. PENALTIES FOR SERVICERS THAT DO NOT TIMELY EVALUATE HOMEOWNERS.

(a) TIME FOR EVALUATION OF HOMEOWNERS.—Not later than 3 months after the date on which a homeowner submits an application for a loan modification to a servicer that participates in a home loan modification program, the servicer shall—

(1) evaluate the application of the homeowner; and

(2) notify the homeowner that—

(A) the homeowner is qualified for a trial loan modification or a permanent loan modification under the home loan modification program; or

(B) the servicer has denied the application.

(b) PRIORITY FOR EVALUATING AMENDMENTS.—

(1) PRIORITY.—A servicer that participates in a home loan modification program shall evaluate the applications of homeowners for loan modifications in the order in which the servicer receives the applications.

(2) PROHIBITION.—A servicer that participates in a home loan modification program may not select the order in which the applications of homeowners are evaluated for loan modifications—

(A) on the basis of—

(i) the income of the homeowner that made the application; or

(ii) the value of the loan for which a modification is requested; or

(B) for any reason other than the time at which the servicer receives the applications.

(c) LATE FEES FOR SERVICERS.—

(1) REDUCED SERVICER INCENTIVE PAYMENTS FOR LOANS INDIVIDUAL HOMEOWNERS.—The Secretary shall reduce the amount of any servicer incentive payment with respect to the loan modification of an individual homeowner by 10 percent for each full month that—

(A) follows the date that is 3 months after the date on which the homeowner submits an application for a loan modification to the servicer; and

(B) precedes the date on which the servicer notifies the homeowner under subsection (a)(2).

(2) REDUCED PAYMENTS FOR ALL LOANS.—If the Secretary determines that, on the date that is 3 months after the date of enactment of this Act, less than 75 percent of all homeowners who applied to a servicer for loan modifications under a home loan modification program have been evaluated within 3 months of the date of the application, the Secretary shall reduce by 25 percent the amount of any servicer incentive payment the servicer would otherwise be eligible to receive under the home loan modification program.

(d) DELINQUENCY FEES CHARGED TO HOMEOWNERS.—No servicer may impose a fee on a homeowner due to delinquency during the period beginning on the date on which the homeowner submits an application to the servicer for a loan modification and ending on the date on which the homeowner receives notice under subsection (a)(2).

(e) COLLECTION AND REPORT OF DATA.—

(1) COLLECTION OF DATA.—Each servicer shall report to the Secretary, at such time and in such manner as the Secretary may determine, data relating to the processing by the servicer of applications for loan modifications.

(2) REPORT OF DATA.—The Secretary shall publish a monthly report containing the data collected under paragraph (1).

SEC. 6. REDUCED PAYMENTS FOR FAILURE TO EVALUATE HOMEOWNERS FOR PERMANENT MODIFICATIONS.

If the Secretary determines that, on the date that is 3 months after the date of enactment of this Act, less than 70 percent of all covered trial loan modifications offered by a servicer have been evaluated for conversion to permanent loan modifications before the date that is 3 months after the date on which the servicer and the homeowner entered into an agreement for a trial loan modification, the Secretary shall reduce by 25 percent the amount of any servicer incentive payment the servicer would otherwise be eligible to receive under the home loan modification program. Such reduction shall be in addition to any other reduction in payment that may have been imposed on the servicer for any other violation of this Act.

SEC. 7. RULE OF CONSTRUCTION RELATING TO PAYMENTS TO HOMEOWNERS.

Nothing in this Act may be construed to require a reduction of a payment by the Secretary made on behalf or for the benefit of a homeowner in connection with a loan modification.

By Mr. AKAKA (for himself, Mr. BAUCUS, Mr. BAYH, Mr. BEGICH, Mr. BENNET, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWN, of Ohio, Mr. BURRIS, Mr. BYRD, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. CONRAD, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mrs. HAGAN, Mr. HARKIN, Mr. INOUYE, Mr. JOHNSON, Mr. KAUFMAN, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. REED, Mr. REID, Mr. ROCKEFELLER, Mr. SANDERS, Mr. SCHUMER, Mrs. SHAHEEN, Mr. SPECTER, Ms. STABENOW, Mr. TESTER, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. WARNER, Mr. WEBB, Mr. WHITEHOUSE, and Mr. WYDEN):

S. 3162. A bill to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, as Chairman of the Senate Committee on Veterans' Affairs, concerns have been raised to me about a technical error in the health care reform bill that was recently passed, the Patient Protection and Affordable Care Act, H.R. 3590. In drafting the PPACA, a provision was included which designates health care provided under VA's authority as meeting the minimum required health care coverage that an individual is required to maintain.

However, due to the way this exemption was worded, this definition may exclude children with spina bifida, who are seriously disabled and to whom VA provides reimbursement for comprehensive health care. The underlying bill gave authority to the Secretary of Health and Human Services to designate other care, which could include the VA spina bifida program, as meeting the definition of minimum essential coverage. This bill would simply clarify what was originally intended.

Chapter 18 of title 38 contains the Spina Bifida Health Care Program, which is a health benefit program administered by the Department of Veterans Affairs for Vietnam War and certain Korean War Veterans' birth children who have been diagnosed with spina bifida, except spina bifida occulta. The program provides reimbursement for medical services and supplies.

The legislation I introduce today corrects this small error. Additionally, this legislation would clarify that recipients of CHAMPVA would also be considered as meeting the requirement for minimum essential coverage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3162

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF HEALTH CARE PROVIDED BY THE SECRETARY OF VETERANS AFFAIRS THAT CONSTITUTES MINIMUM ESSENTIAL COVERAGE.

(a) IN GENERAL.—Clause (v) of section 5000A(f)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is amended to read as follows:

''(v) chapter 17 or 18 of title 38, United States Code, or otherwise under the laws administered by the Secretary of Veterans Affairs, of an individual entitled to coverage under such chapter or laws for essential health benefits (as defined by the Secretary for purposes of section 1302(b) of the Patient Protection and Affordable Care Act) insofar as such benefits are available under such chapter or laws; or''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 1501(b) of the Patient Protection and Affordable Care Act and shall be executed immediately after the amendments made by such section 1501(b).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 468—HONORING THE BLACKSTONE VALLEY TOURISM COUNCIL ON THE CELEBRATION OF ITS 25TH ANNIVERSARY

Mr. WHITEHOUSE (for himself and Mr. REED) submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 468

Whereas on April 8, 2010, the Blackstone Valley Tourism Council will celebrate the 25th anniversary of its founding;

Whereas since 1985, the Blackstone Valley Tourism Council has been at the forefront of sustainable destination development, community building, resiliency, education, and scholarly research;

Whereas the Blackstone Valley Tourism Council is a non-profit corporation registered as a 501(c)(3) educational organization and is authorized under Section 42-63.1-5 of the Rhode Island General Laws as the State-designated regional tourism development agency for the Blackstone Valley of Rhode Island;

Whereas the development region of the Blackstone Valley Tourism Council follows the length and width of the Blackstone River Watershed, from the many tributaries in southern Massachusetts, to the end of the river at the headwaters of the Narragansett Bay in Rhode Island;

Whereas the Blackstone Valley Tourism Council represents the Rhode Island cities of Pawtucket, Central Falls, and Woonsocket, and towns of Cumberland, Lincoln, North Smithfield, Smithfield, Glocester, and Burrillville;

Whereas the Blackstone Valley is the birthplace of the American Industrial Revolution that began in 1790 in Pawtucket, Rhode Island, when Samuel Slater began textile manufacturing in a wooden mill on the banks of the Blackstone River;

Whereas since its beginning, the Blackstone Valley Tourism Council has worked to develop, promote, and expand the economic and community development base for the cities and towns in the Blackstone Valley to create a viable visitor and cultural destination that preserves the historic heritage of the region;

Whereas the Blackstone Valley Tourism Council works as an interpreter and educator

of the history and ecology of the Blackstone River, initiates ongoing international relationships of major importance to the region, provides input on future riverfront and economic development, and develops various recreational activities;

Whereas the work that the Blackstone Valley Tourism Council accomplishes benefits from its partnerships with local social and community development organizations, municipalities, regional and State economic development organizations, educational institutions, and National and international entities;

Whereas the Blackstone Valley Tourism Council was the first recipient of the Ulysses Prize from the United Nations World Tourism Organization (UNWTO) that merits distinction for innovative contributions to tourism policy, sustainable tourism planning, environmental protection and new technologies, and in 2006, the Council received the UNWTO.Sbest Certification in tourism governance, the only organization in the United States to earn this certification; and

Whereas in 2008, the World Travel and Tourism Council (WTTC) recognized the Blackstone Valley Tourism Council with its Tourism for Tomorrow Destination Award, a prestigious sustainable tourism development award, in recognition of the integrated, community-centered, resilient approach of the Council to tourism development and community building: Now, therefore, be it

Resolved, That the Senate—

(1) honors the Blackstone Valley Tourism Council on the celebration of its 25th anniversary; and

(2) wishes the Council continued success.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3586. Mr. LEMIEUX submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13).

SA 3587. Mr. BROWNBACK (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3588. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra.

SA 3589. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3590. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3591. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3592. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3593. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3594. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3595. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3596. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3597. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3598. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3599. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3600. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3601. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3602. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3603. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3604. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3605. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3606. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3607. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3608. Mrs. HUTCHISON (for herself, Mr. ENZI, Mr. COBURN, Mr. BURR, Mr. BROWN of Massachusetts, and Mr. CRAPO) proposed an amendment to the bill H.R. 4872, supra.

SA 3609. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3610. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3611. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3612. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3613. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3614. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3615. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3616. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3617. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3618. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3619. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3620. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3621. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3622. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3623. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3624. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3625. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3626. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3627. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3628. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3629. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3630. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3631. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3632. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3633. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3634. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3635. Mrs. HUTCHISON proposed an amendment to the bill H.R. 4872, supra.

SA 3636. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3637. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3638. Ms. COLLINS proposed an amendment to the bill H.R. 4872, supra.

SA 3639. Mr. THUNE proposed an amendment to the bill H.R. 4872, supra.

SA 3640. Mr. THUNE (for himself, Mr. COBURN, and Mr. CRAPO) proposed an amendment to the bill H.R. 4872, supra.

SA 3641. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3642. Mr. DEMINT submitted an amendment intended to be proposed by him to the

bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3643. Ms. MURKOWSKI submitted an amendment intended to be proposed by her to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3644. Mr. HATCH (for himself, Mr. COBURN, and Mr. CRAPO) proposed an amendment to the bill H.R. 4872, supra.

SA 3645. Mr. RISCH (for himself and Mr. CRAPO) proposed an amendment to the bill H.R. 4872, supra.

SA 3646. Mr. RISCH submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3647. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3648. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3649. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3650. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3651. Mr. GREGG proposed an amendment to the bill H.R. 4872, supra.

SA 3652. Mr. BURR (for himself, Mr. GRAHAM, Mr. CRAPO, Mr. BARRASSO, Mr. MCCAIN, and Mr. BROWN of Massachusetts) proposed an amendment to the bill H.R. 4872, supra.

SA 3653. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3654. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3655. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3656. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3657. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3658. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3659. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3660. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3661. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3662. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3663. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3664. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3665. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3666. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3667. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3668. Mr. VITTER proposed an amendment to the bill H.R. 4872, supra.

SA 3669. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3670. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3671. Mr. ENZI (for himself and Mr. COBURN) submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3672. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3673. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3674. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3675. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3676. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3677. Mr. LEMIEUX submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3678. Mr. LEMIEUX submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3679. Mr. LEMIEUX submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3680. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3681. Mr. BUNNING proposed an amendment to the bill H.R. 4872, supra.

SA 3682. Mr. MCCAIN (for himself and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3683. Mr. THUNE submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3684. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3685. Mr. BROWNBACK (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3686. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3687. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3688. Ms. SNOWE (for herself, Mr. MCCAIN, Mr. VITTER, Mr. THUNE, Mr. GRASSLEY, and Ms. COLLINS) submitted an amendment intended to be proposed by her to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3689. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3690. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3691. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3692. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3693. Ms. MURKOWSKI submitted an amendment intended to be proposed by her to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3694. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3695. Mr. ALEXANDER submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3696. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3697. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3698. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 4872, supra; which was ordered to lie on the table.

SA 3699. Mr. GRASSLEY proposed an amendment to the bill H.R. 4872, supra.

TEXT OF AMENDMENTS

SA 3586. Mr. LEMIEUX submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of subtitle C of title I, add the following:

SEC. 1207. MEMBERS OF CONGRESS REQUIRED TO HAVE COVERAGE UNDER MEDICAID INSTEAD OF THROUGH FEHBP.

(a) IN GENERAL.—Notwithstanding chapter 89 of title 5, United States Code, title XIX of the Social Security Act, or any provision of this Act, effective on the date of enactment of this Act—

(1) each Member of Congress shall be eligible for medical assistance under the Medicaid plan of the State in which the Member resides; and

(2) any employer contribution under chapter 89 of title 5 of such Code on behalf of the Member may be paid only to the State agency responsible for administering the Medicaid plan in which the Member enrolls and not to the offeror of a plan offered through the Federal employees health benefit program under such chapter.

(b) PAYMENTS BY FEDERAL GOVERNMENT.—The Secretary of Health and Human Services, in consultation with the Director of the Office of Personnel Management, shall establish procedures under which the employer contributions that would otherwise be made on behalf of a Member of Congress if the

Member were enrolled in a plan offered through the Federal employees health benefit program may be made directly to the State agencies described in subsection (a).

(c) INELIGIBLE FOR FEHBP.—Effective on the date of enactment of this Act, no Member of Congress shall be eligible to obtain health insurance coverage under the program chapter 89 of title 5, United States Code.

(d) DEFINITION.—In this section, the term ''Member of Congress'' means any member of the House of Representatives or the Senate.

SA 3587. Mr. BROWNBACK (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1107.

SA 3588. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 99, between lines 9 and 10, insert the following:

(e) EXCLUSION OF MEDICAL DEVICES FOR PEDIATRIC USE AND PERSONS WITH DISABILITIES.—

(1) IN GENERAL.—For purposes of section 4191(b)(1) of the Internal Revenue Code of 1986, as added by subsection (a), the term ''taxable medical device'' shall not include any device which is primarily designed—

(A) to be used by or for pediatric patients, or

(B) to assist persons with disabilities with tasks of daily life.

(2) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

(3) APPLICATION OF PROVISION.—The amendment made by paragraph (2) shall apply as if included in the Patient Protection and Affordable Care Act.

SA 3589. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 64, between lines 4 and 5, insert the following:

SEC. 1201A. TRANSITIONAL STATE SHARE FOR COVERAGE OF PARENTS BY EXPANSION STATES.

Section 1905(z) of the Social Security Act (42 U.S.C. 1396d(z)), as amended by section 1201, is amended by adding at the end the following:

''(4) In the case of an expansion State described in paragraph (3), the State percentage with respect to amounts expended for medical assistance for individuals who are parents described in subclause (VIII) of section 1902(a)(10)(A)(i) whose income (as determined under section 1902(e)(14)) exceeds 67 percent, but does not exceed 133 percent, of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved, and who are not newly eligible (as defined in subsection (y)(2)), shall be reduced as follows:

''(A) In the case of such expenditures for 2014, by 50 percent.

''(B) In the case of such expenditures for 2015, by 60 percent.

''(C) In the case of such expenditures for 2016, by 70 percent.

''(D) In the case of such expenditures for 2017, by 80 percent.

''(E) In the case of such expenditures for 2018, by 90 percent.''.

SA 3590. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 1110. SPECIAL RULES TO ENSURE CITIZENS AND NATIONALS OF THE UNITED STATES HAVE THE SAME HEALTH CARE CHOICES AS LEGAL IMMIGRANTS.

Section 36B(c)(1) of the Internal Revenue Code of 1986, as added by section 1401 of the Patient Protection and Affordable Care Act and amended by section 10105 of such Act, is amended by adding at the end the following:

''(E) SPECIAL RULES TO ENSURE CITIZENS AND NATIONALS OF THE UNITED STATES HAVE THE SAME HEALTH CARE CHOICES AS LEGAL IMMIGRANTS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this Code, the Patient Protection and Affordable Care Act, or any amendment made by that Act, any taxpayer who—

''(I) is a citizen or national of the United States; and

''(II) has a household income which is not greater than 133 percent of an amount equal to the poverty line for a family of the size involved,

may elect to enroll in a qualified health plan through the Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act instead of enrolling in the State Medicaid plan under title XIX of the Social Security, or under a waiver of such plan.

''(ii) SPECIAL RULES.—

''(I) An individual making an election under clause (i) shall waive being provided with medical assistance under the State Medicaid plan under title XIX of the Social Security, or under a waiver of such plan while enrolled in a qualified health plan.

''(II) In the case of an individual who is a child, the child's parent or legal guardian may make such an election on behalf of the child.

''(III) Any individual making such an election, or on whose behalf such an election is made, shall—

''(aa) for purposes of the credit under this section, be treated as an applicable taxpayer and the applicable percentage with respect to such taxpayer shall be the percentage determined under subsection (b)(3)(A)(i); and

''(bb) for purposes of reduced cost-sharing under section 1402 of the Patient Protection and Affordable Care Act, be treated as an eligible individual whose household income is in the category described in subsection (c)(2)(A) of such section.''.

SA 3591. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 23___. TREATMENT OF HIGH DEDUCTIBLE HEALTH PLANS AS QUALIFIED HEALTH PLANS.

Subparagraph (B) of section 1301(a)(1) of the Patient Protection and Affordable Care Act is amended by inserting ''or meets the requirements for a high deductible health plan under section 223(c)(2) of the Internal Revenue Code of 1986'' after ''section 1302(a)''.

SA 3592. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 1___. PROTECTION OF ACCESS TO QUALITY HEALTH CARE THROUGH THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE.

(a) HEALTH CARE THROUGH DEPARTMENT OF VETERANS AFFAIRS.—Nothing in this Act or the Patient Protection and Affordable Care Act (or any amendment made by either such Act) shall be construed to prohibit, limit, or otherwise penalize veterans and dependents eligible for health care through the Department of Veterans Affairs under the laws administered by the Secretary of Veterans Affairs from receiving timely access to quality health care in any facility of the Department or from any non-Department health care provider through which the Secretary provides health care.

(b) HEALTH CARE THROUGH DEPARTMENT OF DEFENSE.—

(1) IN GENERAL.—Nothing in this Act or the Patient Protection and Affordable Care Act (or any amendment made by either such Act) shall be construed to prohibit, limit, or otherwise penalize eligible beneficiaries from receiving timely access to quality health care in any military medical treatment facility or under the TRICARE program.

(2) DEFINITIONS.—In this subsection:

(A) The term ''eligible beneficiaries'' means covered beneficiaries (as defined in section 1072(5) of title 10, United States Code) for purposes of eligibility for mental and dental care under chapter 55 of title 10, United States Code.

(B) The term ''TRICARE program'' has the meaning given that term in section 1072(7) of title 10, United States Code.

SA 3593. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, insert the following:

SEC. 2___. HEALTH CARE SAFETY NET ENHANCEMENT.

(a) LIMITATION ON LIABILITY.—Notwithstanding any other provision of law, a health care professional shall not be liable in any medical malpractice lawsuit for a cause of

action arising out of the provision of, or the failure to provide, any medical service to a medically underserved or indigent individual while engaging in the provision of pro bono medical services.

(b) REQUIREMENTS.—Subsection (a) shall not apply—

(1) to any act or omission by a health care professional that is outside the scope of the services for which such professional is deemed to be licensed or certified to provide, unless such act or omission can reasonably be determined to be necessary to prevent serious bodily harm or preserve the life of the individual being treated;

(2) if the services on which the medical malpractice claim is based did not arise out of the rendering of pro bono care for a medically underserved or indigent individual; or

(3) to an act or omission by a health care professional that constitutes willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by such professional.

(c) DEFINITION.—In this section—

(1) the term ''medically underserved individual'' means an individual who does not have health care coverage under a group health plan, health insurance coverage, or any other health care coverage program; and

(2) the term ''indigent individual'' means and individual who is unable to pay for the health care services that are provided to the individual.

SA 3594. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 15___. EQUIVALENT BANKRUPTCY PROTECTIONS FOR HEALTH SAVINGS ACCOUNTS AS RETIREMENT FUNDS.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended by adding at the end the following new subsection:

''(r) TREATMENT OF HEALTH SAVINGS ACCOUNTS.—For purposes of this section, any health savings account (as described in section 223 of the Internal Revenue Code of 1986) shall be treated in the same manner as an individual retirement account described in section 408 of such Code.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to cases commencing under title 11, United States Code, after the date of the enactment of this Act.

SA 3595. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, insert the following:

SEC. 2304. APPLICATION OF WELLNESS PROGRAMS PROVISIONS TO CARRIERS PROVIDING FEDERAL EMPLOYEE HEALTH BENEFITS PLANS.

(a) IN GENERAL.—Notwithstanding section 8906 of title 5, United States Code (including subsections (b)(1) and (b)(2) of such section), section 2705(j) of the Public Health Service Act (relating to wellness programs) shall apply to carriers entering into contracts under section 8902 of title 5, United States Code.

(b) PROPOSALS.—Carriers may submit separate proposals relating to voluntary wellness program offerings as part of the annual call for benefit and rate proposals to the Office of Personnel Management.

(c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act and shall apply to contracts entered into under section 8902 of title 5, United States Code, that take effect with respect to calendar years that begin more than 1 year after that date.

SA 3596. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle C of title I, add the following:

SEC. 1207. STATE OPTION TO OPT-OUT OF MEDICAID COVERAGE EXPANSION TO AVOID ASSUMING UNFUNDED FEDERAL MANDATE.

Notwithstanding any provision of the Patient Protection and Affordable Care Act (or any amendment made by such Act), the Governor of a State shall have the authority to opt out of any provision under such Act or any amendment made by such Act that requires the State to expand coverage under the Medicaid program if the State agency responsible for administering the State plan under title XIX certifies that such expansion would result in an increase of at least 1 percent in the total amount of expenditures by the State for providing medical assistance to all individuals enrolled under the State plan, when compared to the total amount of such expenditures for the most recently ended State fiscal year.

SA 3597. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 23___. SOCIAL SECURITY NUMBER REQUIREMENT FOR PARTICIPATION IN EXCHANGES.

Section 1411(b)(2) of the Patient Protection and Affordable Care Act is amended by adding at the end the following new flush sentence:

''For purposes of this section, the term 'social security number' means a social security number issued to an individual by the Social Security Administration. Such term shall not include a taxpayer identification number or TIN issued by the Internal Revenue Service.''.

SA 3598. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, add the following:

SEC. ___. ENSURING MEDICARE SAVINGS ARE KEPT IN THE MEDICARE PROGRAM.

No reduction in outlays under the Medicare program under title XVIII of the Social Security Act under the provisions of, and amendments made by, this Act or the Patient Protection and Affordable Care Act may be utilized to offset any outlays under any other program or activity of the Federal government.

SA 3599. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PROHIBITION ON USING MEDICARE SAVINGS TO OFFSET PROGRAMS UNRELATED TO MEDICARE.

Title III of the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding at the end the following:

''SEC. 316. PROHIBITION ON USING MEDICARE SAVINGS TO OFFSET PROGRAMS UNRELATED TO MEDICARE.

''For purposes of this title and title IV, a reduction in outlays under title XVIII of the Social Security Act may not be counted as an offset to any outlays under any other program or activity of the Federal Government.''.

SA 3600. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PROHIBITION ON USING MEDICARE SAVINGS TO OFFSET PROGRAMS UNRELATED TO MEDICARE.

Title III of the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding at the end the following:

''SEC. 316. PROHIBITION ON USING MEDICARE SAVINGS TO OFFSET PROGRAMS UNRELATED TO MEDICARE.

''(a) IN GENERAL.—For purposes of this title and title IV, a reduction in outlays under title XVIII of the Social Security Act or an increase in revenues resulting from an increase in taxes assessed for purposes of such title may not be counted as an offset to any outlays under any other program or activity of the Federal Government.

''(b) POINT OF ORDER.—

''(1) IN GENERAL.—It shall not be in order to consider any bill, resolution, amendment, conference report, or motion that violates subsection (a).

''(2) WAIVER AND APPEAL.—

''(A) WAIVER.—This subsection may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

''(B) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this subsection shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this subsection.''.

SA 3601. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for

reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of section 1002, add the following:

(c) LIMITATION ON LIENS AND LEVIES.—Section 5000A(g)(2) of the Internal Revenue Code of 1986, as added by the Patient Protection and Affordable Care Act, is amended by striking subparagraphs (A) and (B) and inserting the following:

''(A) WAIVER OF CRIMINAL AND CIVIL PENALTIES AND INTEREST.—In the case of any failure by a taxpayer to timely pay any penalty imposed by this section—

''(i) such taxpayer shall not be subject to any criminal prosecution or penalty with respect to such failure, and

''(ii) no penalty, addition to tax, or interest shall be imposed with respect to such failure or such penalty.

''(B) LIMITED COLLECTION ACTIONS PERMITTED.—In the case of the assessment of any penalty imposed by this section, the Secretary shall not take any action with respect to the collection of such penalty other than—

''(i) giving notice and demand for such penalty under section 6303,

''(ii) crediting under section 6402(a) the amount of any overpayment of the taxpayer against such penalty, and

''(iii) offsetting any payment owed by any Federal agency to the taxpayer against such penalty under the Treasury offset program.''.

SA 3602. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, add the following:

SEC. 14___. REPEAL OF ADDITIONAL TAX FROM DISTRIBUTIONS FROM HSAS AND MSAS.

(a) HSAs.—Section 223(f)(4)(A) of the Internal Revenue Code of 1986, as amended by section 9004 of the Patient Protection and Affordable Care Act, is amended by striking ''20 percent'' and inserting ''10 percent''.

(b) ARCHER MSAs.—Section 220(f)(4)(A) of the Internal Revenue Code of 1986, as amended by section 9004 of the Patient Protection and Affordable Care Act, is amended by striking ''20 percent'' and inserting ''15 percent''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2010.

SA 3603. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1403 and insert the following:

SEC. 1403. ELIMINATION OF LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986, as amended by sections 9005 and 10902 of the Patient Protection and Affordable Care Act, is amended by striking subsection (i).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2010.

SA 3604. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, add the following:

SEC. 1412. SUNSET FOR EXPANSIONS OF ENTITLEMENT SPENDING.

(a) IN GENERAL.—Notwithstanding any other provision of this Act or the Patient Protection and Affordable Care Act (or any amendments made by such Acts), any establishment or expansion of entitlement authority (as defined in subsection (b)) that is provided for under this Act or the Patient Protection and Affordable Care Act (or any amendments made by such Acts) that would draw from the general funds of the Treasury, the Federal Hospital Insurance Trust Fund (as established under section 1817 of the Social Security Act (42 U.S.C. 1395i)), the Federal Supplementary Medical Insurance Trust Fund (as established under section 1841 of such Act (42 U.S.C. 1395t)), or any other such trust fund, shall terminate at the end of fiscal year 2020.

(b) ENTITLEMENT AUTHORITY.—In this section, the term ''entitlement authority'' means the authority to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing that authority, the United States is obligated to make such payments to persons or government who meet the requirements established by that law.

SA 3605. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle C of title I, add the following:

SEC. 1207. STATE EXEMPTION FROM MEDICAID EXPANSION TO PREVENT REDUCTION IN MEDICAL SERVICES.

Notwithstanding any other provision of law, no State shall be required to expand coverage under the Medicaid program on or after the date of enactment of the Patient Protection and Affordable Care Act if the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act certifies that such expansion would require the State to reduce or eliminate care or services provided to individuals who are eligible for medical assistance under such State plan on the date of enactment of the Patient Protection and Affordable Care Act.

SA 3606. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 61, between lines 3 and 4, insert the following:

SEC. 1110. APPLICATION OF UNUSED STIMULUS FUNDS FOR UPDATING OF THE MEDICARE PHYSICIAN FEE SCHEDULE.

(a) RESCISSION IN ARRA.—Effective as the date of enactment of this Act, any unobligated balances available on such date of funds made available by division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) are rescinded.

(b) UPDATE OF MEDICARE PHYSICIAN FEE SCHEDULE.—The Secretary of Health and Human Services shall increase the update to the conversion factor under section 1848 of the Social Security Act (42 U.S.C. 1395w-4) for physicians' services so that the estimated total amount of payments for such services furnished during fiscal years 2010 through 2019 is equal to the estimated total amount of payments for such services that would have been made in such fiscal years if this section did not apply plus an amount equal to the total funds rescinded under subsection (a).

SA 3607. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 113, after line 21, insert the following:

SEC. 1502. STATE OPTION TO OPT-OUT OF NEW FEDERAL PROGRAM AND REQUIREMENTS.

(a) IN GENERAL.—In accordance with this section, a State may elect for the provisions of the Patient Protection and Affordable Care Act to not apply within such State to the extent that such provisions violate the protections described in subsection (b).

(b) EFFECT OF OPT-OUT.—In the case of a State that makes an election under subsection (a)—

(1) the residents of such State shall not be subject to any requirement under such Act, including tax provisions or penalties, that would otherwise require such residents to purchase health insurance;

(2) the employers located in such State shall not be subject to any requirement under such Act, including tax provisions or penalties, that would otherwise require such employers to provide health insurance to their employees or make contributions relating to health insurance;

(3) the residents of such State shall not be prohibited under such Act from receiving health care services from any provider of health care services under terms and conditions subject to the laws of such State and mutually acceptable to the patient and the provider;

(4) the residents of such State shall not be prohibited under such Act from entering into a contract subject to the laws of such State with any group health plan, health insurance issuer, or other business, for the provision of, or payment to other parties for, health care services;

(5) the eligibility of residents of such State for any program operated by or funded wholly or partly by the Federal Government shall not be adversely affected as a result of having received services in a manner consistent with paragraphs (3) and (4);

(6) the health care providers within such State shall not be denied participation in or payment from a Federal program for which they would otherwise be eligible as a result of having provided services in a manner consistent with paragraphs (3) and (4); and

(7) such State shall not be subject to the taxes and fees enumerated in the amendments made by title IX of such Act.

(c) PROCESS.—A State shall be treated as making an election under subsection (a) if—

(1) the Governor of such State provides timely and appropriate notice, at least 180 days before the election is to become effective, to the Secretary of Health and Human Services notifying the Secretary that the State is making such election; or

(2) the legislature of such State enacts a law to provide for such election.

SA 3608. Mrs. HUTCHISON (for herself, Mr. ENZI, Mr. COBURN, Mr. BURR, Mr. BROWN of Massachusetts, and Mr. CRAPO) proposed an amendment to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of section 1002, insert the following:

(c) RIGHT OF STATES TO OPT OUT OF FEDERAL HEALTH CARE TAKEOVER.—Section 1321(d) of the Patient Protection and Affordable Care Act is amended—

(1) by striking ''Nothing'' and inserting:

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing''; and

(2) by adding at the end the following:

''(2) EXCEPTION FOR OPT OUT OF HEALTH CARE REFORM.—The provisions of, and the amendments made by, this Act shall not preempt any State law enacted after the date of enactment of this Act that exempts the State from such provisions or amendments, including, but not limited to, provisions and amendments relating to the individual mandate, the employer mandate, taxes on prescription drugs, taxes on medical devices, taxes on high value health plans, Medicare cuts, and the unfunded expansion of Medicaid.''.

SA 3609. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, insert the following:

SEC. _____. DISCLOSURE OF AGREEMENTS WITH COMPANIES, UNIONS, AND ASSOCIATIONS.

Not later than 30 days after the date of enactment of this Act, the President shall disclose any agreement made between the White House or any of its designees and a company, union, or association on the Patient Protection and Affordable Care Act or this Act.

SA 3610. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 144, between lines 2 and 3, insert the following:

SEC. 2214. ONGOING RECORD OF JOBS LOST.

The Secretary of Labor shall keep an ongoing record of jobs lost due to the termination of the Robert T. Stafford Federal Student Loan Program.

SA 3611. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, add the following:

SEC. ____. DELAYED IMPLEMENTATION.

Notwithstanding any other provision of this Act or the Patient Protection and Affordable Care Act, or the amendments made by this Act or the Patient Protection and Affordable Care Act, such provisions and amendments shall not take effect before the date that the Board of Trustees of the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) submits an annual report to Congress under subsection (b)(2) of such section that includes a statement that such Trust Fund is projected to be solvent through 2037.

SA 3612. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, insert the following:

SEC. _____. STATE OPT OUT.

A State may opt out of the application of the Patient Protection and Affordable Care Act and this Act effective upon notice by the Governor of that State to the President.

SA 3613. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, insert the following:

SEC. _____. PROHIBITING IRS HIRING.

The Internal Revenue Service shall not hire any additional staff for the purpose of enforcing, implementing, or administering the Patient Protection and Affordable Care Act and this Act.

SA 3614. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, insert the following:

SEC. _____. JOB LOSS RECORDS DUE TO HEALTH CARE BILL.

The Director of the Office of Management and Budget, in coordination with the Secretary of Labor, shall submit a semiannual public report to Congress detailing the record of jobs lost due to additional taxes, fees, and mandates contained in the Patient Protection and Affordable Care Act and this Act.

SA 3615. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle C of title I, add the following:

SEC. 1207. NONAPPLICATION OF ANY MEDICAID ELIGIBILITY EXPANSION UNTIL REDUCTION IN MEDICAID FRAUD RATE.

Notwithstanding any other provision of law, with respect to a State, any provision of law that imposes on or after the date of enactment of this Act a federally-mandated expansion of eligibility for Medicaid shall not apply to the State before the date on which the State Medicaid Director certifies to the Secretary of Health and Human Services that the Medicaid payment error rate measurement (commonly referred to as ''PERM'') for the State does not exceed 5 percent.

SA 3616. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, add the following:

SEC. ____. EXEMPTING CRITICAL ACCESS HOSPITALS FROM RECOMMENDATIONS OF THE INDEPENDENT PAYMENT ADVISORY BOARD.

Section 1899A(c)(2)(A) of the Social Security Act, as added by section 3403 of the Patient Protection and Affordable Care Act and amended by section 10320 of such Act, is amended by adding at the end the following new clause:

''(vii) The proposal shall not include any recommendation that would reduce payment rates for items and services furnished by a critical access hospital (as defined in section 1861(mm)(1)).''.

SA 3617. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 144, between lines 2 and 3, insert the following:

SEC. 2214. PROHIBITION REGARDING SPENDING FOR ADDITIONAL EDUCATION EMPLOYEES AND FOR IMPLEMENTING THE GOVERNMENT TAKEOVER OF THE STUDENT LOAN INDUSTRY.

Notwithstanding any other provision of this subtitle, none of the funds made available under this subtitle or the amendments made by this subtitle shall be available to hire additional employees at the Department of Education who are responsible for implementing, or to implement, the provisions of this subtitle or the amendments made by this subtitle related to the termination of the Robert T. Stafford Federal Student Loan Program.

SA 3618. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1403 and insert the following:

SECTION 1403. REPEAL OF LIMITATION ON FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.

Sections 9005 and 10902 of the Patient Protection and Affordable Care Act are hereby repealed effective as of the date of the enactment of such Act and any provisions of law amended by such sections are amended to read as such provisions would read if such sections had never been enacted.

SA 3619. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1105 and insert the following:

SEC. 1105. REPEAL OF THE PRODUCTIVITY AND OTHER MARKET BASKET ADJUSTMENTS.

Effective as if included in the enactment of the Patient Protection and Affordable Care Act, sections 3401 and 10319 of such Act (and the amendments made by such sections) are repealed.

SA 3620. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of section 1003, add the following:

(e) INCREASE IN SIZE OF APPLICABLE LARGE EMPLOYER.—Section 4980H(d)(2) of the Internal Revenue Code of 1986, as added by the Patient Protection and Affordable Care Act, is amended by striking ''50'' each place it appears and inserting ''499''.

SA 3621. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, add the following:

SECTION 14___. REPEAL OF LIMITATION ON DEDUCTIONS FOR OVER-THE-COUNTER MEDICINE.

Section 9003 of the Patient Protection and Affordable Care Act is hereby repealed effective as of the date of the enactment of such Act and any provisions of law amended by such section is amended to read as such provision would read if such section had never been enacted.

SA 3622. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, add the following:

SEC. 14___. REPEAL OF ADDITIONAL TAX FROM DISTRIBUTIONS FROM HSAS AND MSAS.

(a) HSAs.—Section 223(f)(4)(A) of the Internal Revenue Code of 1986, as amended by section 9004 of the Patient Protection and Affordable Care Act, is amended by striking ''20 percent'' and inserting ''10 percent''.

(b) ARCHER MSAs.—Section 220(f)(4)(A) of the Internal Revenue Code of 1986, as amended by section 9004 of the Patient Protection and Affordable Care Act, is amended by striking ''20 percent'' and inserting ''15 percent''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2010.

SA 3623. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1402 and insert the following:

SECTION 1402. REPEAL OF ADDITIONAL HOSPITAL INSURANCE TAX AND UNEARNED INCOME MEDICARE CONTRIBUTION.

Sections 9015 and 10906 of the Patient Protection and Affordable Care Act are hereby repealed effective as of the date of the enactment of such Act and any provisions of law amended by such sections are amended to read as such provisions would read if such sections had never been enacted.

SA 3624. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, add the following:

SECTION 14___. REPEAL OF MODIFICATION OF ITEMIZED DEDUCTION FOR MEDICAL EXPENSES.

Section 9013 of the Patient Protection and Affordable Care Act is hereby repealed effective as of the date of the enactment of such Act and any provisions of law amended by such section is amended to read as such provision would read if such section had never been enacted.

SA 3625. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1401 and insert the following:

SECTION 1401. REPEAL OF EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE.

Sections 9001 and 10901 of the Patient Protection and Affordable Care Act are hereby repealed effective as of the date of the enactment of such Act and any provisions of law amended by such sections are amended to read as such provisions would read if such sections had never been enacted.

SA 3626. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following::

SEC. 15___. NON-APPLICATION OF PROVISIONS TO CERTAIN INDIVIDUALS.

(a) IN GENERAL.—Notwithstanding any provision of, or amendment made by, this Act or the Patient Protection and Affordable Care Act, no such provision or amendment which, directly or indirectly, results in an increase in Federal tax liability with respect to any taxpayer for any taxable year described in subsection (b) shall be administered in such a manner as to impose such an increase on such taxpayer.

(b) FEDERAL TAX INCREASE.—An increase in Federal tax liability with respect to any taxpayer for any taxable year is described in this subsection if the amount of Federal taxes owed for such taxable year is in excess of the amount of Federal taxes which would be owed by such taxpayer for such taxable year under the Internal Revenue Code of 1986 as in effect for taxable years beginning in 1999.

SA 3627. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, add the following:

SEC. 14___. NO FEDERAL TAX INCREASE IMPOSED ON MIDDLE INCOME INDIVIDUALS AND FAMILIES.

(a) IN GENERAL.—Notwithstanding any provision of, or amendment made by, this Act or the Patient Protection and Affordable Care Act, no such provision or amendment which, directly or indirectly, results in a Federal tax increase shall be administered in such manner as to impose such an increase on any middle income taxpayer.

(b) MIDDLE INCOME TAXPAYER.—For purposes of this section, the term ''middle income taxpayer'' means, for any taxable year, any taxpayer with adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) of less than $200,000 ($250,000 in the case of a joint return of tax).

SA 3628. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, add the following:

SEC. ___. REPEAL OF THE CENTER FOR MEDICARE AND MEDICAID INNOVATION.

(a) IN GENERAL.—Effective as if included in the enactment of the Patient Protection and Affordable Care Act, sections 3021 and 10306 of such Act (and the amendments made by such sections) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 2705 of the Patient Protection and Affordable Care Act is amended—

(A) in subsection (a), by striking ''shall, in coordination'' and that follows through ''establish'' and inserting ''shall establish''; and

(B) in subsection (d)(2), by striking ''section 1115A(b)(3) of the Social Security Act (as so added)'' and inserting ''the Social Security Act''.

(2) Section 1899(b)(4) of the Social Security Act, as added by section 3022 of the Patient Protection and Affordable Care Act, is amended by striking ''any of the following''

and all that follows through the period at the end of subparagraph (B) and inserting ''the independence at home medical practice pilot program under section 1866E.''.

(3) Section 933 of the Public Health Service Act, as added by section 3501 of the Patient Protection and Affordable Care Act, is amended by striking subsection (f).

(4) Section 10328(b) of the Patient Protection and Affordable Care Act is amended by striking ''or to study'' and all that follows through ''3021''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the enactment of the Patient Protection and Affordable Care Act.

SA 3629. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, add the following:

SEC. ___. REPEAL OF THE INDEPENDENT PAYMENT ADVISORY BOARD.

Effective as if included in the enactment of the Patient Protection and Affordable Care Act, sections 3403 and 10320 of such Act (and the amendments made by such sections) are repealed.

SA 3630. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Beginning on page 30, strike line 17 and all that follows through page 50, line 11.

SA 3631. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, insert the following:

SEC. ___. REPEALING PAYMENT ADJUSTMENTS FOR HOME HEALTH CARE.

Effective as if included in the enactment of the Patient Protection and Affordable Care Act, sections 3131 and 3401(e) of such Act (and the amendments made by such sections) are repealed.

SA 3632. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, insert the following:

SEC. ___. REPEALING PAYMENT ADJUSTMENTS FOR HOSPICE CARE.

Effective as if included in the enactment of the Patient Protection and Affordable Care Act, sections 3004(c), 3132, and 3401(g) of such Act (and the amendments made by such sections) are repealed.

SA 3633. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1104 and insert the following:

SEC. 1104. REPEALING CUTS TO MEDICARE DISPROPORTIONATE SHARE HOSPITAL PAYMENTS.

Effective as if included in the enactment of the Patient Protection and Affordable Care Act, sections 3133 and 10316 of such Act (and the amendments made by such sections) are repealed.

SA 3634. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 1006. REPEAL OF TAXABLE YEAR LIMITATION ON SMALL BUSINESS TAX CREDIT.

(a) IN GENERAL.—Section 45R of the Internal Revenue Code of 1986, as added by section 1421 of the Patient Protection and Affordable Care Act and amended by section 10105(e) of such Act, is amended—

(1) by striking ''in the credit period'' in subsection (a),

(2) in subsection (e), by striking paragraph (2) and redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively,

(3) in subsection (g), by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively, and

(4) by striking ''to prevent the avoidance of the 2-year limit on the credit period through the use of successor entities and'' in subsection (i).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Patient Protection and Affordable Care Act to which the amendments relate.

SA 3635. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 15___. PERMANENT TAX RELIEF PROVISIONS.

(a) REPEAL OF SUNSET ON MARRIAGE PENALTY RELIEF.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to sections 301, 302, and 303(a) of such Act (relating to marriage penalty relief).

(b) PERMANENT EXTENSION OF ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES.—Subparagraph (I) of section 164(b)(5) of the Internal Revenue Code of 1986 is amended by striking '', and before January 1, 2010''.

(c) RESCISSION OF STIMULUS FUNDS.—Any amounts appropriated or made available and remaining unobligated under division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 115) (other than under title X of such division A), are hereby rescinded.

SA 3636. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 113, after line 21, add the following:

SEC. 1502. CIVIL ACTIONS.

For purposes of any civil action in which a State challenges any provision of this Act, or an amendment made by this Act, the State shall be—

(1) deemed to be a party for purposes of section 2412(d) of title 28, United States Code; and

(2) entitled to an award of attorney's fees under section 2412(d)(1)(A) of title 28, United States Code, if the State is a prevailing party, without regard to whether the position of the United States was substantially justified or whether there are special circumstances.

SA 3637. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 113, after line 21, add the following:

SEC. 1502. OPEN FUEL STANDARD.

(a) SHORT TITLE.—This section may be cited as the ''Open Fuel Standard Act of 2009'' or the ''OFS Act''.

(b) FINDINGS.—Congress makes the following findings:

(1) The status of oil as a strategic commodity, which derives from its domination of the transportation sector, presents a clear and present danger to the United States;

(2) in a prior era, when salt was a strategic commodity, salt mines conferred national power and wars were fought over the control of such mines;

(3) technology, in the form of electricity and refrigeration, decisively ended salt's monopoly of meat preservation and greatly reduced its strategic importance;

(4) fuel competition and consumer choice would similarly serve to end oil's monopoly in the transportation sector and strip oil of its strategic status;

(5) the current closed fuel market has allowed a cartel of petroleum exporting countries to inflate fuel prices, effectively imposing a harmful tax on the economy of the United States;

(6) much of the inflated petroleum revenues the oil cartel earns at the expense of the people of the United States are used for purposes antithetical to the interests of the United States and its allies;

(7) alcohol fuels, including ethanol and methanol, could potentially provide significant supplies of additional fuels that could be produced in the United States and in many other countries in the Western Hemisphere that are friendly to the United States;

(8) alcohol fuels can only play a major role in securing the energy independence of the United States if a substantial portion of vehicles in the United States are capable of operating on such fuels;

(9) it is not in the best interest of United States consumers or the United States Government to be constrained to depend solely upon petroleum resources for vehicle fuels if alcohol fuels are potentially available;

(10) existing technology, in the form of flexible fuel vehicles, allows internal combustion engine cars and trucks to be produced at little or no additional cost, which are capable of operating on conventional gasoline, alcohol fuels, or any combination of such fuels, as availability or cost advantage dictates, providing a platform on which fuels can compete;

(11) the necessary distribution system for such alcohol fuels will not be developed in the United States until a substantial fraction of the vehicles in the United States are capable of operating on such fuels;

(12) the establishment of such a vehicle fleet and distribution system would provide a large market that would mobilize private resources to substantially advance the technology and expand the production of alcohol fuels in the United States and abroad;

(13) the United States has an urgent national security interest to develop alcohol fuels technology, production, and distribution systems as rapidly as possible;

(14) new cars sold in the United States that are equipped with an internal combustion engine should allow for fuel competition by being flexible fuel vehicles, and new diesel cars should be capable of operating on biodiesel; and

(15) such an open fuel standard would help to protect the United States economy from high and volatile oil prices and from the threats caused by global instability, terrorism, and natural disaster.

(c) OPEN FUEL STANDARD FOR TRANSPORTATION.—

(1) IN GENERAL.—Chapter 329 of title 49, United States Code, is amended by adding at the end the following:

''§ 32920. Open fuel standard for transportation

''(a) DEFINITIONS.—In this section:

''(1) E85.—The term 'E85' means a fuel mixture containing 85 percent ethanol and 15 percent gasoline by volume.

''(2) FLEXIBLE FUEL AUTOMOBILE.—The term 'flexible fuel automobile' means an automobile that has been warranted by its manufacturer to operate on gasoline, E85, and M85.

''(3) FUEL CHOICE-ENABLING AUTOMOBILE.—The term 'fuel choice-enabling automobile' means—

''(A) a flexible fuel automobile; or

''(B) an automobile that has been warranted by its manufacturer to operate on biodiesel.

''(4) LIGHT-DUTY AUTOMOBILE.—The term 'light-duty automobile' means—

''(A) a passenger automobile; or

''(B) a non-passenger automobile.

''(5) LIGHT-DUTY AUTOMOBILE MANUFACTURER'S ANNUAL COVERED INVENTORY.—The term 'light-duty automobile manufacturer's annual covered inventory' means the number of light-duty automobiles powered by an internal combustion engine that a manufacturer, during a given calendar year, manufactures in the United States or imports from outside of the United States for sale in the United States.

''(6) M85.—The term 'M85' means a fuel mixture containing 85 percent methanol and 15 percent gasoline by volume.

''(b) OPEN FUEL STANDARD FOR TRANSPORTATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), each light-duty automobile manufacturer's annual covered inventory shall be comprised of—

''(A) not less than 50 percent fuel choice-enabling automobiles in 2012, 2013, and 2014; and

''(B) not less than 80 percent fuel choice-enabling automobiles in 2015, and in each subsequent year.

''(2) TEMPORARY EXEMPTION FROM REQUIREMENTS.—

''(A) APPLICATION.—A manufacturer may request an exemption from the requirement described in paragraph (1) by submitting an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require by regulation. Each such application shall specify the models, lines, and types of automobiles affected.

''(B) EVALUATION.—After evaluating an application received from a manufacturer, the Secretary may at any time, under such terms and conditions, and to such extent as the Secretary considers appropriate, temporarily exempt, or renew the exemption of, a light-duty automobile from the requirement described in paragraph (1) if the Secretary determines that unavoidable events that are not under the control of the manufacturer prevent the manufacturer of such automobile from meeting its required production volume of fuel choice-enabling automobiles, including—

''(i) a disruption in the supply of any component required for compliance with the regulations;

''(ii) a disruption in the use and installation by the manufacturer of such component; or

''(iii) the failure for plug-in hybrid electric automobiles to meet State air quality requirements as a result of the requirement described in paragraph (1).

''(C) CONSOLIDATION.—The Secretary may consolidate applications received from multiple manufactures under subparagraph (A) if they are of a similar nature.

''(D) CONDITIONS.—Any exemption granted under subparagraph (B) shall be conditioned upon the manufacturer's commitment to recall the exempted automobiles for installation of the omitted components within a reasonable time proposed by the manufacturer and approved by the Secretary after such components become available in sufficient quantities to satisfy both anticipated production and recall volume requirements.

''(E) NOTICE.—The Secretary shall publish in the Federal Register—

''(i) notice of each application received from a manufacturer;

''(ii) notice of each decision to grant or deny a temporary exemption; and

''(iii) the reasons for granting or denying such exemptions.

''(c) LIMITED LIABILITY PROTECTION FOR RENEWABLE FUEL AND ETHANOL MANUFACTURE, USE, OR DISTRIBUTION.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, any fuel containing ethanol or a renewable fuel (as defined in section 211(o)(1) of the Clean Air Act) that is used or intended to be used to operate an internal combustion engine shall not be deemed to be a defective product or subject to a failure to warn due to such ethanol or renewable fuel content unless such fuel violates a control or prohibition imposed by the Administrator under section 211 of the Clean Air Act (42 U.S.C. 7545).

''(2) SAVINGS PROVISION.—Nothing in this subsection may be construed to affect the liability of any person other than liability based upon a claim of defective product and failure to warn described in paragraph (1).

''(d) RULEMAKING.—Not later than 1 year after the date of the enactment of this section, the Secretary of Transportation shall promulgate regulations to carry out this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 329 of title 49, United States Code, is amended by adding at the end the following:

''32920. Open fuel standard for transportation.''.

SA 3638. Ms. COLLINS proposed an amendment to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of section 1003, add the following:

(e) UNEMPLOYED INDIVIDUAL NOT TAKEN INTO ACCOUNT.—Paragraph (5) of section 4980H(d) of the Internal Revenue Code of 1986, as added by the Patient Protection and Affordable Care Act, is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FOR PREVIOUSLY UNEMPLOYED INDIVIDUALS.—

''(i) IN GENERAL.—The term 'full-time employee' shall not include any individual who certifies by signed affidavit, under penalties of perjury, that such individual has not been employed from more than 40 hours during the 60-day period ending on the date such individual begins such employment.

''(ii) EXCEPTION FOR REPLACEMENT WORKERS.—Clause (i) shall not apply to an individual who is employed by the employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause.''.

SA 3639. Mr. THUNE proposed an amendment to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

Beginning on page 123, strike line 10 and all that follows through page 124, line 10, and insert the following:

SEC. 2201. TERMINATION OF FEDERAL FAMILY EDUCATION LOAN APPROPRIATIONS.

Section 421 (20 U.S.C. 1071) is amended—

(1) in subsection (b), in the first sentence of the matter following paragraph (6), by inserting '', except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement is after such date if the Secretary certifies that no State will experience a net job loss as a result of the enactment of the SAFRA Act'' after ''expended''; and

(2) by adding at the end the following new subsection:

''(d) TERMINATION OF AUTHORITY TO MAKE OR INSURE NEW LOANS.—Notwithstanding paragraphs (1) through (6) of subsection (b) or any other provision of law—

''(1) no new loans (including consolidation loans) may be made or insured under this part after June 30, 2010 if the Secretary certifies that no State will experience a net job loss as a result of the enactment of the SAFRA Act; and

''(2) no funds are authorized to be appropriated, or may be expended, under this Act or any other Act to make or insure loans under this part (including consolidation loans) for which the first disbursement is after June 30, 2010 if the Secretary certifies that no State will experience a net job loss as a result of the enactment of the SAFRA Act,

except as expressly authorized by an Act of Congress enacted after the date of enactment of the SAFRA Act.''.

SA 3640. Mr. THUNE (for himself, Mr. COBURN, and Mr. CRAPO) proposed an amendment to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of subtitle B of title II, add the following:

SEC. 2304. REPEAL OF THE CLASS ACT.

Title VIII of the Patient Protection and Affordable Care Act and the amendments made by that title are repealed.

SA 3641. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. SECRET BALLOT PROTECTION.

(a) SHORT TITLE.—This section may be cited as the ''Secret Ballot Protection Act of 2010''.

(b) FINDINGS.—Congress makes the following findings:

(1) The right of employees under the National Labor Relations Act (29 U.S.C. 151 et seq.) to choose whether to be represented by a labor organization by way of secret ballot election conducted by the National Labor Relations Board is among the most important protections afforded under Federal labor law.

(2) The right of employees to choose by secret ballot is the only method that ensures a choice free of coercion, intimidation, irregularity, or illegality.

(3) The recognition of a labor organization by using a private agreement, rather than a secret ballot election overseen by the National Labor Relations Board, threatens the freedom of employees to choose whether to be represented by a labor organization, and severely limits the ability of the National Labor Relations Board to ensure the protection of workers.

(c) NATIONAL LABOR RELATIONS ACT.—

(1) RECOGNITION OF REPRESENTATIVE.—

(A) IN GENERAL.—Section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) is amended by inserting before the colon the following: ''or to recognize or bargain collectively with a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the Board in accordance with section 9''.

(B) APPLICATION.—The amendment made by subparagraph (A) shall not apply to collective bargaining relationships in which a labor organization with majority support was lawfully recognized prior to the date of enactment of this Act.

(2) ELECTION REQUIRED.—

(A) IN GENERAL.—Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)) is amended—

(i) in paragraph (6), by striking ''and'' at the end;

(ii) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(8) to cause or attempt to cause an employer to recognize or bargain collectively with a representative of a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the Board in accordance with section 9.''.

(B) APPLICATION.—The amendment made by subparagraph (A) shall not apply to collective bargaining relationships that were recognized prior to the date of enactment of this Act.

(3) SECRET BALLOT ELECTION.—Section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)) is amended—

(A) by striking ''Representatives'' and inserting ''(1) Representatives'';

(B) by inserting after ''designated or selected'' the following: ''by a secret ballot election conducted by the Board in accordance with this section''; and

(C) by adding at the end the following:

''(2) The secret ballot election requirement under paragraph (1) shall not apply to collective bargaining relationships that were recognized before the date of the enactment of the Health Care and Education Reconciliation Act of 2010.''.

(d) REGULATIONS AND AUTHORITY.—

(1) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the National Labor Relations Board shall review and revise all regulations promulgated prior to such date of enactment to implement the amendments made by this section.

(2) AUTHORITY.—Nothing in this section (or the amendments made by this section) shall be construed to limit or otherwise diminish the remedial authority of the National Labor Relations Board.

SA 3642. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, add the following:

SEC. ___. ALLOWING INDIVIDUALS TO CHOOSE TO OPT OUT OF THE MEDICARE PART A BENEFIT.

Notwithstanding any other provision of law, in the case of an individual who elects to opt-out of benefits under part A of title XVIII of the Social Security Act, such individual shall not be required to—

(1) opt-out of benefits under title II of such Act as a condition for making such election; and

(2) repay any amount paid under such part A for items and services furnished prior to making such election.

SA 3643. Ms. MURKOWSKI submitted an amendment intended to be proposed by her to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, insert the following:

SEC. ___. ALLOWING INDIVIDUALS TO CHOOSE TO OPT OUT OF THE MEDICARE PART A BENEFIT.

Notwithstanding any other provision of law, in the case of an individual who elects to opt-out of benefits under part A of title XVIII of the Social Security Act, such individual shall not be required to—

(1) opt-out of benefits under title II of such Act as a condition for making such election; and

(2) repay any amount paid under such part A for items and services furnished prior to making such election.

SA 3644. Mr. HATCH (for himself, Mr. COBURN, and Mr. CRAPO) proposed an amendment to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

On page 99, between lines 9 and 10, insert the following:

(e) EXCLUSION OF MEDICAL DEVICES SOLD UNDER THE TRICARE FOR LIFE PROGRAM OR VETERAN'S HEALTH CARE PROGRAMS.—

(1) IN GENERAL.—For purposes of section 4191(b)(1) of the Internal Revenue Code of 1986, as added by subsection (a), the term ''taxable medical device'' shall not include any device which is sold to individuals covered under the TRICARE for Life program or the veteran's health care program under chapter 17 of title 38, United States Code, any portion of the cost of which is paid or reimbursed under either such program.

(2) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

(3) APPLICATION OF PROVISION.—The amendment made by paragraph (2) shall apply as if included in the Patient Protection and Affordable Care Act.

SA 3645. Mr. RISCH (for himself and Mr. CRAPO) submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of subtitle E of title I, insert the following:

SECTION—.REPEAL OF LIMITATION ON ITEMIZED DEDUCTIONS FOR MEDICAL EXPENSES.

(a) IN GENERAL.—Section 9013 of the Patient Protection and Affordable Care Act is hereby repealed effective as of the date of the enactment of such Act and any provisions of law amended by such section are amended to read as such provisions would read if such section had never been enacted.

(b) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act and amended by section 10106 of such Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

(c) APPLICATION OF PROVISION.—The amendment made by subsection (b) shall apply as if included in the Patient Protection and Affordable Care Act.

SA 3646. Mr. RISCH submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of subtitle C of title I, add the following:

SEC. 1207. REQUIREMENT FOR ALL MEDICAID AND CHIP APPLICANTS TO PRESENT AN IDENTIFICATION DOCUMENT.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 211(a)(1)(A)(i) of Public Law 111–3, section 2303(a)(2) of the Patient Protection and Affordable Care Act, and section 1202 of this Act, is amended—

(1) in subsection (a)(46), —

(A) in subparagraph (A), by striking ''and'' after the semicolon;

(B) in subparagraph (B), by adding ''and'' after the semicolon; and

(C) by adding at the end the following:

''(C) provide that each applicant for medical assistance (or the parent or guardian of an applicant who has not attained age 18), regardless of whether the applicant is described in paragraph (2) of section 1903(x), shall present an identification document described in subsection (kk) when applying for

medical assistance (and shall be provided with at least the reasonable opportunity to present such identification as is provided under clauses (i) and (ii) of section 1137(d)(4)(A) to an individual for the submittal to the State of evidence indicating a satisfactory immigration status;''; and

(2) by adding at the end the following:

''(kk) For purposes of subsection (a)(46)(C), a document described in this subsection is—

''(1) in the case of an individual who is a national of the United States—

''(A) a United States passport, or passport card issued pursuant to the Secretary of State's authority under the first section of the Act of July 3, 1926 (44 Stat. 887, Chapter 772; 22 U.S.C. 211a); or

''(B) a driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States that—

''(i) contains a photograph of the individual and other identifying information, including the individual's name, date of birth, gender, and address; and

''(ii) contains security features to make the license or card resistant to tampering, counterfeiting, and fraudulent use;

''(2) in the case of an alien lawfully admitted for permanent residence in the United States, a permanent resident card, as specified by the Secretary of Homeland Security that meets the requirements of clauses (i) and (ii) of paragraph (1)(B);

''(3) in the case of an alien who is authorized to be employed in the United States, an employment authorization card, as specified by the Secretary of Homeland Security that meets the requirements of clauses (i) and (ii) of paragraph (1)(B); or

''(4) in the case of an individual who is unable to obtain a document described in paragraph (1), (2), or (3), a document designated by the Secretary of Homeland Security that meets the requirements of clauses (i) and (ii) of paragraph (1)(B).''.

(b) APPLICATION TO CHIP.—Section 2105(c)(9)(A) (42 U.S.C. 1397ee(c)(9)(A)) is amended by striking ''section 1902(a)(46)(B)'' and inserting ''subparagraphs (B) and (C) of subsection (a)(46) and subsection (kk) of section 1902''.

SA 3647. Mr. COLLINS submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of section 1001, insert the following:

(c) BEREAVEMENT EXCEPTION IN DETERMINING FAMILY SIZE.—

(1) IN GENERAL.—Section 36B(d)(1) of the Internal Revenue Code of 1986, as added by section 1401 of the Patient Protection and Affordable Care Act and amended by section 10105 of such Act is amended by adding at the end the following new sentence: ''If an individual taken into account under the preceding sentence for any taxable year dies during such taxable year, such individual shall be taken into account in determining family size for the following taxable year unless the family size for the taxable year of death was only one.''

(2) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provision of the Patient Protection and Affordable Care Act to which the amendment relates.

SA 3648. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

On page 144, between lines 2 and 3, insert the following:

SEC. 2214. DIRECT LOAN ORIGINATION FEE REDETERMINATION.

Notwithstanding section 455(c) of the Higher Education Act of 1965 (20 U.S.C. 1087e(c)), the Secretary of Education shall determine under such section an increase to the origination fee charged to a borrower of a loan made under part D of title IV of such Act (20 U.S.C. 1087a et seq.) for the subsequent award year to take into account any increase in actual program costs for the Federal Direct Loan Program under such part D, as determined by the Office of Management and Budget in the program re-estimate contained in the President's current fiscal year budget.

SA 3649. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

On page 144, between lines 2 and 3, insert the following:

SEC. 2214. QUALIFICATION REQUIREMENT FOR DEPARTMENT OF EDUCATION STAFF.

Not later than 6 years after the date of enactment of this Act, each employee of the Department of Education Office of Federal Student Aid shall become highly qualified in fiscal management by earning a bachelor's degree in finance or business management/administration.

SA 3650. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

On page 144, between lines 2 and 3, insert the following:

SEC. 2214. REDUCTION OF FEDERAL PELL GRANT ADD ON.

Notwithstanding any other provision of law, the additional funds amount provided under section 401(b)(8) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(8)) for Federal Pell Grants for a fiscal year shall be reduced for such fiscal year by the amount that reflects any increase in actual program costs for the Federal Direct Loan Program under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.), as determined by the Office of Management and Budget in the program re-estimate contained in the President's current fiscal year budget.

SA 3651. Mr. GREGG proposed an amendment to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

On page 61, between lines 3 and 4, insert the following:

SEC. ___. INCREASE IN THE MEDICARE PHYSICIAN PAYMENT UPDATE FOR THE LAST 9 MONTHS OF 2010 AND ALL OF 2011 THROUGH 2013.

Paragraph (1) of section 1848(d) of the Social Security Act, as added by section 1011(a) of the Department of Defense Appropriations Act, 2010 (Public Law 111–118) and as amended by section 5 of the Temporary Extension Act of 2010 (Public Law 111–144), is amended to read as follows:

''(10) UPDATE FOR 2010 THROUGH 2013.—

''(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), and (9)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for each of 2010, 2011, 2012, and 2013, the update to the single conversion factor shall be 0 percent for such years.

''(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2014 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2014 and subsequent years as if subparagraph (A) had never applied.''.

SA 3652. Mr. BURR (for himself, Mr. GRAHAM, Mr. CRAPO, Mr. BARRASSO, Mr. MCCAIN and Mr. BROWN of Massachusetts) proposed an amendment to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of subtitle F of title I, insert the following:

SEC. 1___. TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE HEALTH PROGRAMS.

Subtitle G of title I of the Patient Protection and Affordable Care Act is amended by adding at the end the following new section:

''SEC. 1564. DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE HEALTH PROGRAMS.

''(a) CLARIFICATIONS WITH RESPECT TO CERTAIN PROGRAMS AND AUTHORITIES.—Nothing in this Act or in the amendments made by this Act shall be construed as affecting any of the following:

''(1) Any authority under title 38, United States Code.

''(2) Any authority under chapter 55 of title 10, United States Code.

''(3) Any health care or health care benefit provided under the TRICARE program under chapter 55 of title 10, United States Code, or by the Secretary of Veterans Affairs under the laws administered by such Secretary.

''(b) CLARIFICATION WITH RESPECT TO MINIMUM ESSENTIAL COVERAGE.—For purposes of this Act and the amendments made by this Act, the term 'minimum essential coverage' includes the following:

''(1) Coverage provided under chapter 55 of title 10, United States Code.

''(2) Eligibility for health care provided by the Secretary of Veterans Affairs under title 38, United States Code.''.

SA 3653. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of subtitle F of title I, add the following:

SEC. 15___. RENEWABLE FUEL.

(a) DEFINITION OF RENEWABLE FUEL.—Section 211(o)(1)(J) of the Clean Air Act (42 U.S.C. 7545(o)(1)(J)) is amended by striking ''fuel that is produced'' and inserting ''a blend of fuel at least 85 percent of the content of which is derived''.

(b) LIABILITY PROTECTION FOR RENEWABLE FUEL OR ETHANOL MANUFACTURE, USE, OR DISTRIBUTION.—

(1) IN GENERAL.—Section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)) is amended by adding at the end the following:

''(13) LIABILITY PROTECTION FOR RENEWABLE FUEL OR ETHANOL MANUFACTURE, USE, OR DISTRIBUTION.—

''(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, no renewable fuel or ethanol used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing renewable fuel or ethanol, shall be considered a defective product or subject to a failure to warn by virtue of the fact that the renewable fuel or ethanol is, or contains, the renewable fuel or ethanol, if the renewable fuel or ethanol does not violate a control or prohibition imposed by the Administrator under this section.

''(B) EFFECT ON LIABILITY.—Nothing in this paragraph affects the liability of any person other than liability based on a claim of a defective product and failure to warn of the defect.''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall—

(A) be effective on the earlier of—

(i) the date of enactment of this Act; or

(ii) the date on which the Administrator of the Environmental Protection Agency approves for use fuel blends with greater than 10 percent ethanol by volume; and

(B) apply with respect to all claims filed on or after the earlier date described in subparagraph (A).

SA 3654. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of subtitle A of title I, add the following:

SEC. 1006. SUNSET IF PREMIUMS INCREASE TOO RAPIDLY.

(a) IN GENERAL.—The following requirements of the Patient Protection and Affordable Care Act shall not apply to health insurance coverage and group health plans offered in the individual or group market within a State during plan years beginning after the sunset date with respect to that market:

(1) Any requirement under section 1301 of such Act, section 2707 of the Public Health Service Act, or any other provision of, or amendment made by, such Act that a health plan provide an essential health benefits package described in section 1302(a) of such Act, including any requirement that the plan provide—

(A) for essential health benefits described in section 1302(b) of such Act;

(B) in the case of a plan offered in the group market, an annual limitation on the plan's deductible described in section 1302(c)(2) of such Act; and

(C) a level of coverage described in section 1302(d) of such Act.

(2) The requirements of section 2701 of the Public Health Service Act (relating to limits on premiums).

(b) COORDINATION WITH QUALIFIED HEALTH PLANS AND PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS.—In the case of a State to which subsection (a) applies, the Secretary of health and Human Services shall establish procedures for establishing which health plans shall be treated as qualified health plans for purposes of the Exchanges established within such State. Such procedures shall ensure that the aggregate amount of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402 of the Patient Protection and Affordable Care Act with respect to qualified health plans in the individual market within such State does not exceed the aggregate amount of such credits and reductions that would have been allowed if subsection (a) did not apply to such State.

(c) SUNSET DATE.—For purposes of this section—

(1) IN GENERAL.—The term ''sunset date'' means, with respect to the individual or group market within a State, the first date on which the applicable State authority determines under paragraph (2) that the percentage increase in average annual premiums within such market for a calendar year over the preceding calendar year exceeds the percentage increase for such period in the Consumer Price Index for all urban consumers published by the Department of Labor.

(2) DETERMINATION.—The applicable State authority shall for each calendar year after 2013 make the determination described in paragraph (1).

(3) APPLICABLE STATE AUTHORITY.—The term ''applicable State authority'' has the meaning given such term by section 2791(d)(1) of the Public Health Service Act.

SA 3655. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

In subtitle A of title I, add at the end the following:

SEC. 1___. EXEMPTION FROM MANDATE.

Section 5000A of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f), the following:

''(g) LIMITATION.—This section shall not apply to an individual for a taxable year if such individual—

''(1) in under 30 years of age when such year begins; or

''(2) has a modified gross income that does not exceed $30,000 for such year.''.

SA 3656. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of section 1002, insert the following:

(c) HIGH DEDUCTIBLE HEALTH PLANS TREATED AS MINIMUM ESSENTIAL COVERAGE.—Section 5000A(f) of the Internal Revenue Code of 1986, as so added and amended, is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following:

''(5) HIGH DEDUCTIBLE HEALTH PLAN.—

''(A) IN GENERAL.—If an applicable individual—

''(i) is an employee of an employer who ceases to offer the employee the opportunity to enroll in an eligible employer-sponsored plan, or

''(ii) ceases employment with an employer and is not otherwise eligible to enroll in an eligible employer-sponsored plan,

the applicable individual may enroll in a high deductible health plan described in subparagraph (C) and such plan shall be treated as minimum essential coverage.

''(B) CONTINUED ENROLLMENT.—If an individual described in subparagraph (A) enrolls in a high deductible health plan described in subparagraph (C), such plan shall continue to be treated as minimum essential coverage with respect to that individual during any continuous period of enrollment even if the individual is otherwise eligible to enroll in an eligible employer-sponsored plan.

''(C) PLAN DESCRIBED.—A health plan is described in this subparagraph if it is a high deductible health plan (as defined in section 223(c)(2)) that meets all requirements under such section to be offered in connection with a health savings account. No requirement imposed by any provision of, or any amendment made by, the Patient Protection and Affordable Care Act shall apply with respect to the plan or issuer thereof.''.

SA 3657. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of section 1002, insert the following:

(c) INDIVIDUAL MANDATE PENALTIES CREDITED TO INDIVIDUAL ACCOUNTS AND USED FOR PREMIUMS.—Section 5000A of the Internal Revenue Code of 1986, as so added and amended, is amended by adding at the end the following:

''(h) PENALTIES CREDITED TO INDIVIDUAL ACCOUNTS AND USED FOR PREMIUMS.—

''(1) IN GENERAL.—The Secretary shall not later than January 1, 2014, establish and implement a program under which—

''(A) if a penalty has been imposed under this section with respect to an applicable individual for months during any calendar year, the Secretary—

''(i) establishes an account on behalf of the applicable individual, and

''(ii) credits such account with an amount equal to the amount of the penalty, and

''(B) if the applicable individual subsequently becomes covered under minimum essential coverage for 1 or more months, the Secretary pays to or on behalf of the applicable individual an amount equal to the premiums paid by the individual for such coverage (or, if lesser, the balance in the account established under subparagraph (A)).

''(2) AMOUNTS AVAILABLE ONLY FOR 3 YEARS.—

''(A) IN GENERAL.—If an account is credited under paragraph (1)(A) with an amount for any calendar year, such amount shall be available for payment under paragraph (1)(B) only for premiums for minimum essential coverage for months occurring during the 3 calendar years immediately following such calendar year.

''(B) SPECIAL RULES.—For purposes of this subsection—

''(i) the Secretary need only establish 1 account for an individual, and

''(ii) amounts shall be treated as paid out of an account on a first-in, first-out basis.''.

SA 3658. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 61, between lines 3 and 4, insert the following:

SEC. ___. USE OF PRIVATE CONTRACTS BY MEDICARE BENEFICIARIES FOR PROFESSIONAL SERVICES.

(a) IN GENERAL.—Section 1802(b) of the Social Security Act (42 U.S.C. 1395a) is amended to read as follows:

''(b) CLARIFICATION OF USE OF PRIVATE CONTRACTS BY MEDICARE BENEFICIARIES FOR PROFESSIONAL SERVICES.—

''(1) IN GENERAL.—Nothing in this title shall prohibit a medicare beneficiary from

entering into a private contract with a physician or health care practitioner for the provision of medicare covered professional services (as defined in paragraph (5)(C)) if—

''(A) the services are covered under a private contract that is between the beneficiary and the physician or practitioner and meets the requirements of paragraph (2);

''(B) under the private contract no claim for payment for services covered under the contract is to be submitted (and no payment made) under part A or B, under a contract under section 1876, or under an MA plan (other than an MSA plan); and

''(C)(i) the Secretary has been provided with the minimum information necessary to avoid any payment under part A or B for services covered under the contract, or

''(ii) in the case of an individual enrolled under a contract under section 1876 or an MA plan (other than an MSA plan) under part C, the eligible organization under the contract or the MA organization offering the plan has been provided the minimum information necessary to avoid any payment under such contract or plan for services covered under the contract.

''(2) REQUIREMENTS FOR PRIVATE CONTRACTS.—The requirements in this paragraph for a private contract between a medicare beneficiary and a physician or health care practitioner are as follows:

''(A) GENERAL FORM OF CONTRACT.—The contract is in writing and is signed by the medicare beneficiary.

''(B) NO CLAIMS TO BE SUBMITTED FOR COVERED SERVICES.—The contract provides that no party to the contract (and no entity on behalf of any party to the contract) shall submit any claim for (or request) payment for services covered under the contract under part A or B, under a contract under section 1876, or under an MA plan (other than an MSA plan).

''(C) SCOPE OF SERVICES.—The contract identifies the medicare covered professional services and the period (if any) to be covered under the contract, but does not cover any services furnished—

''(i) before the contract is entered into; or

''(ii) for the treatment of an emergency medical condition (as defined in section 1867(e)(1)(A)), unless the contract was entered into before the onset of the emergency medical condition.

''(D) CLEAR DISCLOSURE OF TERMS.—The contract clearly indicates that by signing the contract the medicare beneficiary—

''(i) agrees not to submit a claim (or to request that anyone submit a claim) under part A or B (or under section 1876 or under an MA plan, other than an MSA plan) for services covered under the contract;

''(ii) agrees to be responsible, whether through insurance or otherwise, for payment for such services and understands that no reimbursement will be provided under such part, contract, or plan for such services;

''(iii) acknowledges that no limits under this title (including limits under paragraphs (1) and (3) of section 1848(g)) will apply to amounts that may be charged for such services;

''(iv) acknowledges that medicare supplemental policies under section 1882 do not, and other supplemental health plans and policies may elect not to, make payments for such services because payment is not made under this title; and

''(v) acknowledges that the beneficiary has the right to have such services provided by (or under the supervision of) other physicians or health care practitioners for whom payment would be made under such part, contract, or plan.

Such contract shall also clearly indicate whether the physician or practitioner involved is excluded from participation under this title.

''(3) MODIFICATIONS.—The parties to a private contract may mutually agree at any time to modify or terminate the contract on a prospective basis, consistent with the provisions of paragraphs (1) and (2).

''(4) NO REQUIREMENTS FOR SERVICES FURNISHED TO MSA PLAN ENROLLEES.—The requirements of paragraphs (1) and (2) do not apply to any contract or arrangement for the provision of services to a medicare beneficiary enrolled in an MSA plan under part C.

''(5) DEFINITIONS.—In this subsection:

''(A) HEALTH CARE PRACTITIONER.—The term 'health care practitioner' means a practitioner described in section 1842(b)(18)(C).

''(B) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means an individual who is enrolled under part B.

''(C) MEDICARE COVERED PROFESSIONAL SERVICES.—The term 'medicare covered professional services' means—

''(i) physicians' services (as defined in section 1861(q), and including services described in section 1861(s)(2)(A)), and

''(ii) professional services of health care practitioners, including services described in section 1842(b)(18)(D),

for which payment may be made under part A or B, under a contract under section 1876, or under a Medicare Advantage plan but for the provisions of a private contract that meets the requirements of paragraph (2).

''(D) MA PLAN; MSA PLAN.—The terms 'MA plan' and 'MSA plan' have the meanings given such terms in section 1859.

''(E) PHYSICIAN.—The term 'physician' has the meaning given such term in section 1861(r).''.

(b) CONFORMING AMENDMENTS CLARIFYING EXEMPTION FROM LIMITING CHARGE AND FROM REQUIREMENT FOR SUBMISSION OF CLAIMS.—Section 1848(g) of the Social Security Act (42 U.S.C. 1395w–4(g)) is amended—

(1) in paragraph (1)(A), by striking ''In'' and inserting ''Subject to paragraph (8), in'';

(2) in paragraph (3)(A), by striking ''Payment'' and inserting ''Subject to paragraph (8), payment'';

(3) in paragraph (4)(A), by striking ''For'' and inserting ''Subject to paragraph (8), for''; and

(4) by adding at the end the following new paragraph:

''(8) EXEMPTION FROM REQUIREMENTS FOR SERVICES FURNISHED UNDER PRIVATE CONTRACTS.—

''(A) IN GENERAL.—Pursuant to section 1802(b)(1), paragraphs (1), (3), and (4) do not apply with respect to physicians' services (and services described in section 1861(s)(2)(A)) furnished to an individual by (or under the supervision of) a physician if the conditions described in section 1802(b)(1) are met with respect to the services.

''(B) NO RESTRICTIONS FOR ENROLLEES IN MSA PLANS.—Such paragraphs do not apply with respect to services furnished to individuals enrolled with MSA plans under part C, without regard to whether the conditions described in subparagraphs (A) through (C) of section 1802(b)(1) are met.

''(C) APPLICATION TO ENROLLEES IN OTHER PLANS.—Subject to subparagraph (B) and section 1852(k)(2), the provisions of subparagraph (A) shall apply in the case of an individual enrolled under a contract under section 1876 or under an MA plan (other than an MSA plan) under part C, in the same manner as they apply to individuals not enrolled under such a contract or plan.''.

(c) CONFORMING AMENDMENTS.—(1) Section 1842(b)(18) of the Social Security Act (42 U.S.C. 1395u(b)(18)) is amended by adding at the end the following:

''(E) The provisions of section 1848(g)(8) shall apply with respect to exemption from limitations on charges and from billing requirements for services of health care practitioners described in this paragraph in the same manner as such provisions apply to exemption from the requirements referred to in section 1848(g)(8)(A) for physicians' services.''.

(2) Section 1866(a)(1)(O) of such Act (42 U.S.C. 1395cc(a)(1)(O)) is amended by striking ''enrolled with a Medicare Advantage organization under part C'' and inserting ''enrolled with an MA organization under part C (other than under an MSA plan)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 6 months after the date of the enactment of this Act and apply to contracts entered into on or after that date.

SA 3659. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, insert the following:

SEC. 1____. CONTINUED ABILITY TO PAY FOR HEALTH CARE.

Title I of the Patient Protection and Affordable Care Act is amended by adding at the end the following:

''SEC. 1564. CONTINUED ABILITY TO PAY FOR HEALTH CARE.

''Nothing in this title (or an amendment made by this title) shall be construed to prohibit an individual from purchasing or otherwise paying for health care items or services on an out-of-pocket basis.''.

SA 3660. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, insert the following:

SEC. 1____. PROTECTING THE TAXPAYERS.

Title I of the Patient Protection and Affordable Care Act is amended by adding at the end the following:

''SEC. 1564. PROTECTING THE TAXPAYERS.

''The provisions of this title (and the amendments made by this title) shall not apply with respect to a fiscal year if the Director of the Office of Management and Budget fails to certify to Congress that the application of such provisions (and amendments) in such fiscal year will not increase the Federal budget deficit.''.

SA 3661. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

In subtitle A of title I, add at the end the following:

SEC. 1____. EXEMPTION FROM MANDATE.

Section 5000A of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f), the following:

''(g) LIMITATION.—This section shall not apply to an individual for a taxable year if such individual—

''(1) in under 30 years of age when such year begins; or

''(2) has a modified gross income that does not exceed $30,000 for such year.''.

SA 3662. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, add the following:

SEC. 14___. REPEAL OF ADDITIONAL TAX FROM DISTRIBUTIONS FROM HSAS AND MSAS.

(a) HSAS.—Section 223(f)(4)(A) of the Internal Revenue Code of 1986, as amended by section 9004 of the Patient Protection and Affordable Care Act, is amended by striking ''20 percent'' and inserting ''10 percent''.

(b) ARCHER MSAS.—Section 220(f)(4)(A) of the Internal Revenue Code of 1986, as amended by section 9004 of the Patient Protection and Affordable Care Act, is amended by striking ''20 percent'' and inserting ''15 percent''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2010.

SA 3663. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 56, between lines 20 and 21, insert the following:

(f) BUDGET-NEUTRAL EXEMPTION OF CERTAIN PROVIDERS.—Notwithstanding the provisions of, and amendments made by, the preceding subsections of this section and sections 3401 and 10319 of the Patient Protection and Affordable Care Act—

(1) such provisions and amendments shall not apply to a health care provider that—

(A) is described in section 340B(a)(4) of the Public Health Service Act or 1927(c)(1)(D)(i)(IV) of the Social Security Act (42 U.S.C. 1396r–8(c)(1)(D)(i)(IV)); and

(B) is located in an area that is not a metropolitan statistical area (as determined by the Bureau of the Census); and

(2) the Secretary of Health and Human Services shall make appropriate adjustments in the application of such provisions and amendments to ensure that the amount of expenditures under title XVIII of the Social Security Act is equal to the amount of expenditures that would have been made under such title if this subsection had not been enacted, as estimated by the Secretary.

SA 3664. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 1502. VERIFICATION OF IDENTITY.

No individual may receive assistance of any kind provided by the Federal Government to obtain health insurance coverage unless the individual provides to the appropriate agency or department of the Federal Government an appropriate identification that was issued by a governmental entity and that includes a photograph and the name, date of birth, and social security number of the individual.

SA 3665. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, insert the following:

SEC. _____. SUSPENSION OF THE ACT.

If at the beginning of any fiscal year OMB determines that the deficit targets set forth in the CBO report of March 20, 2010 will not be met, the provisions of this Act and the Patient Protection and Affordable Care Act shall be suspended for that year.

SA 3666. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 1502. ELIMINATION OF AUTOMATIC PAY ADJUSTMENTS FOR MEMBERS OF CONGRESS.

(a) IN GENERAL.—Paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 601(a)(1) of such Act is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)'';

(2) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(3) by striking ''as adjusted by paragraph (2) of this subsection'' and inserting ''adjusted as provided by law''.

(c) EFFECTIVE DATE.—This section shall take effect on December 31, 2011.

SA 3667. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 1502. ELIMINATION OF SPECIAL HEALTH CARE PRIVILEGES FOR MEMBERS OF CONGRESS.

Section 1312(d)(3) of the Patient Protection and Affordable Care Act is amended by striking subparagraph (D) and inserting the following:

''(D) REQUIREMENT OF MEMBERS OF CONGRESS TO ENROLL IN AN EXCHANGE.—

''(i) REQUIREMENT.—Notwithstanding any other provision of law, all Members of Congress shall be enrolled in an Exchange when established under section 1321.

''(ii) INELIGIBLE FOR FEHBP.—Effective on the date on which an Exchange is established under section 1321, no Member of Congress shall be eligible to participate in a health benefits plan under chapter 89 of title 5, United States Code.

''(iii) EMPLOYER CONTRIBUTION.—

''(I) IN GENERAL.—The Secretary of the Senate or the Chief Administrative Officer of the House of Representatives shall pay the amount determined under subclause (II) to the appropriate Exchange.

''(II) AMOUNT OF EMPLOYER CONTRIBUTION.—The Director of the Office Of Personnel Management shall determine the amount of the employer contribution for each Member of Congress enrolled in an Exchange. The amount shall be equal to the employer contribution for the health benefits plan under chapter 89 of title 5, United States Code, with the greatest number of enrollees, except that the contribution shall be actuarially adjusted for age.

''(iv) MILITARY MEDICAL TREATMENT FACILITIES AND THE OFFICE OF THE ATTENDING PHYSICIAN.—

''(I) IN GENERAL.—Notwithstanding any other provision of law, a Member of Congress may not receive health care or medical treatment at any military medical treatment facility or at the Office of the Attending Physician.

''(II) EXCEPTION.—Subclause (I) shall not apply to any case of a medical emergency in which the life of a Member of Congress is in immediate danger.

''(v) DEFINITIONS.—In this subparagraph:

''(I) EXCHANGE.—The term 'Exchange' means an Exchange established under section 1321.

''(II) MEMBER OF CONGRESS.—The term 'Member of Congress' means any member of the House of Representatives or the Senate.''.

SA 3668. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 15___. REFUNDS OF FEDERAL MOTOR FUEL EXCISE TAXES FOR FUEL USED IN MOBILE MAMMOGRAPHY VEHICLES.

(a) REFUNDS.—Section 6427 of the Internal Revenue Code of 1986 (relating to fuels not used for taxable purposes) is amended by inserting after subsection (f) the following new subsection:

''(g) FUELS USED IN MOBILE MAMMOGRAPHY VEHICLES.—Except as provided in subsection (k), if any fuel on which tax was imposed by section 4041 or 4081 is used in any highway vehicle designed exclusively to provide mobile mammography services to patients within such vehicle, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of the tax imposed on such fuel.''.

(b) EXEMPTION FROM RETAIL TAX.—Section 4041 of such Code is amended by adding at the end the following new subsection:

''(n) FUELS USED IN MOBILE MAMMOGRAPHY VEHICLES.—No tax shall be imposed under this section on any liquid sold for use in, or used in, any highway vehicle designed exclusively to provide mobile mammography services to patients within such vehicle.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SA 3669. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13);

which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE III—IMPORTATION OF PRESCRIPTION DRUGS

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Pharmaceutical Market Access Act of 2010''.

SEC. 3002. FINDINGS.

Congress finds as follows:

(1) Americans unjustly pay up to 1,000 percent more to fill their prescriptions than consumers in other countries.

(2) The United States is the world's largest market for pharmaceuticals yet consumers still pay the world's highest prices.

(3) An unaffordable drug is neither safe nor effective. Allowing and structuring the importation of prescription drugs ensures access to affordable drugs, thus providing a level of safety to American consumers they do not currently enjoy.

(4) Prescription drugs are a leading cost of the growth in health care spending in the United States, which is projected to reach $2,600,000,000,000 in 2009, according to the Congressional Budget Office.

(5) According to the Congressional Budget Office, American seniors alone will spend $1,800,000,000,000 on pharmaceuticals over the next 10 years.

(6) Allowing open pharmaceutical markets could save American consumers at least $635,000,000,000 of their own money.

SEC. 3003. PURPOSES.

The purposes of this title are to—

(1) give all Americans immediate relief from the outrageously high cost of pharmaceuticals;

(2) reverse the perverse economics of the American pharmaceutical market;

(3) allow the importation of prescription drugs only if the drugs and facilities where such drugs are manufactured are approved by the Food and Drug Administration, and to exclude pharmaceutical narcotics; and

(4) ensure continued integrity to the prescription drug supply of the United States by—

(A) requiring that imported prescription drugs be packaged and shipped using counterfeit-resistant technologies;

(B) requiring Internet pharmacies to register with the United States Government for Americans to verify authenticity before purchases over the Internet;

(C) requiring all foreign sellers to register with United States Government and submit to facility inspections by the Government without prior notice; and

(D) limiting the eligible countries from which prescription drugs may be imported to Canada, member countries of the European Union, and other highly industrialized nations with safe pharmaceutical infrastructures.

SEC. 3004. AMENDMENTS TO SECTION 804 OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITIONS.—Section 804(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(a)) is amended to read as follows:

''(a) DEFINITIONS.—In this section:

''(1) IMPORTER.—The term 'importer' means a pharmacy, group of pharmacies, pharmacist, or wholesaler.

''(2) PERMITTED COUNTRY.—The term 'permitted country' means Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Netherlands, Portugal, Spain, Sweden, the United Kingdom, Iceland, Liechtenstein, and Norway, except that the Secretary—

''(A) may add a country, union, or economic area as a permitted country for purposes of this section if the Secretary determines that the country, union, or economic area has a pharmaceutical infrastructure that is substantially equivalent or superior to the pharmaceutical infrastructure of the United States, taking into consideration pharmacist qualifications, pharmacy storage procedures, the drug distribution system, the drug dispensing system, and market regulation; and

''(B) may remove a country, union, or economic area as a permitted country for purposes of this section if the Secretary determines that the country, union, or economic area does not have such a pharmaceutical infrastructure.

''(3) PHARMACIST.—The term 'pharmacist' means a person licensed by the relevant governmental authority to practice pharmacy, including the dispensing and selling of prescription drugs.

''(4) PHARMACY.—The term 'pharmacy' means a person that is licensed by the relevant governmental authority to engage in the business of selling prescription drugs that employs 1 or more pharmacists.

''(5) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug subject to section 503(b), other than—

''(A) a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(B) a biological product (as defined in section 351 of the Public Health Service Act (42 U.S.C. 262));

''(C) an infused drug (including a peritoneal dialysis solution);

''(D) an intravenously injected drug;

''(E) a drug that is inhaled during surgery; or

''(F) a drug which is a parenteral drug, the importation of which pursuant to subsection (b) is determined by the Secretary to pose a threat to the public health, in which case section 801(d)(1) shall continue to apply.

''(6) QUALIFYING DRUG.—The term 'qualifying drug' means a prescription drug that—

''(A) is approved pursuant to an application submitted under section 505(b)(1); and

''(B) is not—

''(i) a drug manufactured through 1 or more biotechnology processes;

''(ii) a drug that is required to be refrigerated; or

''(iii) a photoreactive drug.

''(7) QUALIFYING INTERNET PHARMACY.—The term 'qualifying Internet pharmacy' means a registered exporter that dispenses qualifying drugs to individuals over an Internet Web site.

''(8) QUALIFYING LABORATORY.—The term 'qualifying laboratory' means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

''(9) REGISTERED EXPORTER.—The term 'registered exporter' means a person that is in the business of exporting a drug to persons in the United States (or that seeks to be in such business), for which a registration under this section has been approved and is in effect.

''(10) WHOLESALER.—

''(A) IN GENERAL.—The term 'wholesaler' means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A).

''(B) EXCLUSION.—The term 'wholesaler' does not include a person authorized to import drugs under section 801(d)(1).''.

(b) REGULATIONS.—Section 804(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(b)) is amended to read as follows:

''(b) REGULATIONS.—Not later than 180 days after the date of enactment of the Pharmaceutical Market Access Act of 2010, the Secretary, after consultation with the United States Trade Representative and the Commissioner of the U.S. Customs and Border Protection, shall promulgate regulations permitting pharmacists, pharmacies, and wholesalers to import qualifying drugs from permitted countries into the United States.''.

(c) LIMITATION.—Section 804(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(c)) is amended by striking ''prescription drug'' each place it appears and inserting ''qualifying drug''.

(d) INFORMATION AND RECORDS.—Section 804(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(d)(1)) is amended—

(1) by striking subparagraph (G) and redesignating subparagraphs (H) through (N) as subparagraphs (G) through (M), respectively;

(2) in subparagraph (H) (as so redesignated), by striking ''telephone number, and professional license number (if any)'' and inserting ''and telephone number''; and

(3) in subparagraph (L) (as so redesignated), by striking ''(J) and (L)'' and inserting ''(I) and (K)''.

(e) TESTING.—Section 804(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(e)) is amended to read as follows:

''(e) TESTING.—The regulations under subsection (b) shall require that the testing described under subparagraphs (I) and (K) of subsection (d)(1) be conducted by the importer of the qualifying drug, unless the qualifying drug is subject to the requirements under section 505E for counterfeit-resistant technologies.''.

(f) REGISTRATION OF EXPORTERS; INSPECTIONS.—Section 804(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(f)) is amended to read as follows:

''(f) REGISTRATION OF EXPORTERS; INSPECTIONS.—

''(1) IN GENERAL.—Any person that seeks to be a registered exporter (referred to in this subsection as the 'registrant') shall submit to the Secretary a registration that includes the following:

''(A) The name of the registrant and identification of all places of business of the registrant that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the registrant.

''(B) An agreement by the registrant to—

''(i) make its places of business that relate to qualifying drugs (including warehouses and other facilities owned or controlled by, or operated for, the exporter) and records available to the Secretary for on-site inspections, without prior notice, for the purpose of determining whether the registrant is in compliance with this Act's requirements;

''(ii) export only qualifying drugs;

''(iii) export only to persons authorized to import the drugs;

''(iv) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country to or from which the registrant has exported or imported, or intends to export or import, to the United States;

''(v) monitor compliance with registration conditions and report any noncompliance promptly;

''(vi) submit a compliance plan showing how the registrant will correct violations, if any; and

''(vii) promptly notify the Secretary of changes in the registration information of the registrant.

''(2) NOTICE OF APPROVAL OR DISAPPROVAL.—

''(A) IN GENERAL.—Not later than 90 days after receiving a completed registration from a registrant, the Secretary shall—

''(i) notify such registrant of receipt of the registration;

''(ii) assign such registrant a registration number; and

''(iii) approve or disapprove the application.

''(B) DISAPPROVAL OF APPLICATION.—

''(i) IN GENERAL.—The Secretary shall disapprove a registration, and notify the registrant of such disapproval, if the Secretary has reason to believe that such registrant is not in compliance with a registration condition.

''(ii) SUBSEQUENT APPROVAL.—The Secretary may subsequently approve a registration that was denied under clause (i) if the Secretary finds that the registrant is in compliance with all registration conditions.

''(3) LIST.—The Secretary shall—

''(A) maintain an up-to-date list of registered exporters (including qualifying Internet pharmacies that sell qualifying drugs to individuals);

''(B) make such list available to the public on the Internet Web site of the Food and Drug Administration and via a toll-free telephone number; and

''(C) update such list promptly after the approval of a registration under this subsection.

''(4) EDUCATION OF CONSUMERS.—The Secretary shall carry out activities, by use of the Internet Web site and toll-free telephone number under paragraph (3), that educate consumers with regard to the availability of qualifying drugs for import for personal use under this section, including information on how to verify whether an exporter is registered.

''(5) INSPECTION OF IMPORTERS AND REGISTERED EXPORTERS.—The Secretary shall inspect the warehouses, other facilities, and records of importers and registered exporters as often as the Secretary determines necessary to ensure that such importers and registered exporters are in compliance with this section.''.

(g) SUSPENSION OF IMPORTATION.—Section 804(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(g)) is amended by—

(1) striking ''and the Secretary determines that the public is adequately protected from counterfeit and violative prescription drugs being imported under subsection (b)''; and

(2) by adding after the period at the end the following: ''The Secretary shall reinstate the importation by a specific importer upon a determination by the Secretary that the violation has been corrected and that the importer has demonstrated that further violations will not occur. This subsection shall not apply to a prescription drug imported by an individual, or to a prescription drug shipped to an individual by a qualifying Internet pharmacy.''.

(h) WAIVER AUTHORITY FOR INDIVIDUALS.—Section 804(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(j)) is amended to read as follows:

''(j) IMPORTATION BY INDIVIDUALS.—

''(1) IN GENERAL.—Not later than 180 days after the enactment of the Pharmaceutical Market Access Act of 2010, the Secretary shall by regulation permit an individual to import a drug from a permitted country to the United States if the drug is—

''(A) a qualifying drug;

''(B) imported from a licensed pharmacy or qualifying Internet pharmacy;

''(C) for personal use by an individual, or family member of the individual, not for resale;

''(D) in a quantity that does not exceed a 90-day supply during any 90-day period; and

''(E) accompanied by a copy of a prescription for the drug, which—

''(i) is valid under applicable Federal and State laws; and

''(ii) was issued by a practitioner who is authorized to administer prescription drugs.

''(2) DRUGS DISPENSED OUTSIDE THE UNITED STATES.—An individual may import a drug from a country that is not a permitted country if—

''(A) the drug was dispensed to the individual while the individual was in such country, and the drug was dispensed in accordance with the laws and regulations of such country;

''(B) the individual is entering the United States and the drug accompanies the individual at the time of entry;

''(C) the drug is approved for commercial distribution in the country in which the drug was obtained;

''(D) the drug does not appear to be adulterated; and

''(E) the quantity of the drug does not exceed a 14-day supply.''.

(i) REPEAL OF CERTAIN PROVISIONS.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) is amended by striking subsections (l) and (m).

SEC. 3005. REGISTRATION FEES.

Subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379f et seq.) is amended by adding at the end the following:

''PART 6—FEES RELATING TO PRESCRIPTION DRUG IMPORTATION

''SEC. 743. FEES RELATING TO PRESCRIPTION DRUG IMPORTATION.

''(a) REGISTRATION FEE.—The Secretary shall establish a registration fee program under which a registered exporter under section 804 shall be required to pay an annual fee to the Secretary in accordance with this subsection.

''(b) COLLECTION.—

''(1) COLLECTION ON INITIAL REGISTRATION.—A fee under this section shall be payable for the fiscal year in which the registered exporter first submits a registration under section 804 (or reregisters under that section if that person has withdrawn its registration and subsequently reregisters) in a amount of $10,000, due on the date the exporter first submits a registration to the Secretary under section 804.

''(2) COLLECTION IN SUBSEQUENT YEARS.—After the fee is paid for the first fiscal year, the fee described under this subsection shall be payable on or before October 1 of each year.

''(3) ONE FEE PER FACILITY.—The fee shall be paid only once for each registered exporter for a fiscal year in which the fee is payable.

''(c) FEE AMOUNT.—

''(1) IN GENERAL.—Subject to subsection (b)(1), the amount of the fee shall be determined each year by the Secretary and shall be based on the anticipated costs to the Secretary of enforcing the amendments made by the Pharmaceutical Market Access Act of 2010 in the subsequent fiscal year.

''(2) LIMITATION.—

''(A) IN GENERAL.—The aggregate total of fees collected under this section shall not exceed 1 percent of the total price of drugs exported annually to the United States by registered exporters under this section.

''(B) REASONABLE ESTIMATE.—Subject to the limitation described in subparagraph (A), a fee under this subsection for an exporter shall be an amount that is a reasonable estimate by the Secretary of the annual share of the exporter of the volume of drugs exported by exporters under this section.

''(d) USE OF FEES.—The fees collected under this section shall be used for the sole purpose of administering this section with respect to registered exporters, including the costs associated with—

''(1) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug;

''(2) developing, implementing, and maintaining a system to determine registered exporters' compliance with the registration conditions under the Pharmaceutical Market Access Act of 2010, including when shipments of qualifying drugs are offered for import into the United States; and

''(3) inspecting such shipments, as necessary, when offered for import into the United States to determine if any such shipment should be refused admission.

''(e) ANNUAL FEE SETTING.—The Secretary shall establish, 60 days before the beginning of each fiscal year beginning after September 30, 2009, for that fiscal year, registration fees.

''(f) EFFECT OF FAILURE TO PAY FEES.—

''(1) DUE DATE.—A fee payable under this section shall be paid by the date that is 30 days after the date on which the fee is due.

''(2) FAILURE TO PAY.—If a registered exporter subject to a fee under this section fails to pay the fee, the Secretary shall not permit the registered exporter to engage in exportation to the United States or offering for exportation prescription drugs under this Act until all such fees owed by that person are paid.

''(g) REPORTS.—

''(1) FEE ESTABLISHMENT.—Not later than 60 days before the beginning of each fiscal year, the Secretary shall—

''(A) publish registration fees under this section for that fiscal year;

''(B) hold a meeting at which the public may comment on the recommendations; and

''(C) provide for a period of 30 days for the public to provide written comments on the recommendations.

''(2) PERFORMANCE AND FISCAL REPORT.—Beginning with fiscal year 2009, not later than 60 days after the end of each fiscal year during which fees are collected under this section, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes—

''(A) implementation of the registration fee authority during the fiscal year; and

''(B) the use by the Secretary of the fees collected during the fiscal year for which the report is made.''.

SEC. 3006. COUNTERFEIT-RESISTANT TECHNOLOGY.

(a) MISBRANDING.—Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352; deeming drugs and devices to be misbranded) is amended by adding at the end the following:

''(aa) If it is a drug subject to section 503(b), unless the packaging of such drug complies with the requirements of section 505E for counterfeit-resistant technologies.''.

(b) REQUIREMENTS.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 505D the following:

''SEC. 505E. COUNTERFEIT-RESISTANT TECHNOLOGIES.

''(a) INCORPORATION OF COUNTERFEIT-RESISTANT TECHNOLOGIES INTO PRESCRIPTION DRUG PACKAGING.—The Secretary shall require that the packaging of any drug subject to section 503(b) incorporate—

''(1) overt optically variable counterfeit-resistant technologies that are described in subsection (b) and comply with the standards of subsection (c); or

''(2) technologies that have an equivalent function of security, as determined by the Secretary.

''(b) ELIGIBLE TECHNOLOGIES.—Technologies described in this subsection—

''(1) shall be visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

''(2) shall be similar to that used by the Bureau of Engraving and Printing to secure United States currency;

''(3) shall be manufactured and distributed in a highly secure, tightly controlled environment; and

''(4) should incorporate additional layers of non-visible covert security features up to and including forensic capability.

''(c) STANDARDS FOR PACKAGING.—

''(1) MULTIPLE ELEMENTS.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to section 503(b), manufacturers of the drugs shall incorporate the technologies described in subsection (b) into multiple elements of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

''(2) LABELING OF SHIPPING CONTAINER.—Shipments of drugs described in subsection (a) shall include a label on the shipping container that incorporates the technologies described in subsection (b), so that officials inspecting the packages will be able to determine the authenticity of the shipment. Chain of custody procedures shall apply to such labels and shall include procedures applicable to contractual agreements for the use and distribution of the labels, methods to audit the use of the labels, and database access for the relevant governmental agencies for audit or verification of the use and distribution of the labels.

''(d) EFFECTIVE DATE.—This section shall take effect 180 days after the date of enactment of the Pharmaceutical Market Access Act of 2010.''.

SEC. 3007. PROHIBITED ACTS.

Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after subsection (k) the following:

''(l) The failure to register in accordance with section 804(f) or to import or offer to import a prescription drug in violation of a suspension order under section 804(g).''.

SEC. 3008. PATENTS.

Section 271 of title 35, United States Code, is amended—

(1) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(2) by inserting after subsection (g) the following:

''(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) that was first sold abroad by or under authority of the owner or licensee of such patent.''.

SEC. 3009. OTHER ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Section 804 of the Federal Food, Drug, and Cosmetic Act, as amended by section 3004, is amended by adding at the end the following:

''(l) UNFAIR OR DISCRIMINATORY ACTS AND PRACTICES.—

''(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing or other agreement) to—

''(A) discriminate by charging a higher price for a prescription drug sold to a person in a permitted country that exports a prescription drug to the United States under this section than the price that is charged to another person that is in the same country and that does not export a prescription drug into the United States under this section;

''(B) discriminate by charging a higher price for a prescription drug sold to a person that distributes, sells, or uses a prescription drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a prescription drug under this section, or that does not distribute, sell, or use such a drug;

''(C) discriminate by denying supplies of a prescription drug to a person in a permitted country that exports a prescription drug to the United States under this section or distributes, sells, or uses a prescription drug imported into the United States under this section;

''(D) discriminate by publicly, privately, or otherwise refusing to do business with a person in a permitted country that exports a prescription drug to the United States under this section or distributes, sells, or uses a prescription drug imported into the United States under this section;

''(E) discriminate by specifically restricting or delaying the supply of a prescription drug to a person in a permitted country that exports a prescription drug to the United States under this section or distributes, sells, or uses a prescription drug imported into the United States under this section;

''(F) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and the drug for distribution in a permitted country for the purpose of restricting importation of the drug into the United States under this section;

''(G) refuse to allow an inspection authorized under this section of an establishment that manufactures a prescription drug that may be imported or offered for import under this section;

''(H) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a prescription drug that may be imported or offered for import under this section to good manufacturing practice under this Act;

''(I) become a party to a licensing or other agreement related to a prescription drug that fails to provide for compliance with all requirements of this section with respect to such prescription drug or that has the effect of prohibiting importation of the drug under this section; or

''(J) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages in, or to impede, delay, or block the process for, the importation of a prescription drug under this section.

''(2) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge that a person has discriminated under subparagraph (A), (B), (C), (D), or (E) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial of supplies of a prescription drug to a person, the refusal to do business with a person, or the specific restriction or delay of supplies to a person is not based, in whole or in part, on—

''(A) the person exporting or importing a prescription drug into the United States under this section; or

''(B) the person distributing, selling, or using a prescription drug imported into the United States under this section.

''(3) PRESUMPTION AND AFFIRMATIVE DEFENSE.—

''(A) PRESUMPTION.—A difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) created after January 1, 2009, between a prescription drug for distribution in the United States and the drug for distribution in a permitted country shall be presumed under paragraph (1)(F) to be for the purpose of restricting importation of the drug into the United States under this section.

''(B) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to the presumption under subparagraph (A) that—

''(i) the difference was required by the country in which the drug is distributed; or

''(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug.

''(4) EFFECT OF SUBSECTION.—

''(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

''(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

''(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B of the Public Health Service Act (42 U.S.C. 256b) in return for inclusion of the drug on a formulary;

''(ii) require that such discounts be made available to other purchasers of the prescription drug; or

''(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

''(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

''(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

''(ii) apply to such donations or supplying of a prescription drug.

''(5) ENFORCEMENT.—

''(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act.

''(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

''(i) shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this section; and

''(ii) may seek monetary relief threefold the damages sustained.

''(6) ACTIONS BY STATES.—

''(A) IN GENERAL.—

''(i) CIVIL ACTIONS.—The attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction for a violation of paragraph (1) to—

''(I) enjoin that practice;

''(II) enforce compliance with this subsection;

''(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

''(IV) obtain such other relief as the court may consider to be appropriate.

''(ii) NOTICE.—

''(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

''(aa) written notice of that action; and

''(bb) a copy of the complaint for that action.

''(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

''(B) INTERVENTION.—

''(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Commission shall have the right to intervene in the action that is the subject of the notice.

''(ii) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subparagraph (A), it shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

''(i) conduct investigations;

''(ii) administer oaths or affirmations; or

''(iii) compel the attendance of witnesses or the production of documentary and other evidence.

''(D) ACTIONS BY THE COMMISSION.—

''(i) IN GENERAL.—In any case in which an action is instituted by or on behalf of the Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

''(ii) INTERVENTION.—An attorney general of a State may intervene, on behalf of the residents of that State, in an action instituted by the Commission.

''(iii) EFFECT OF INTERVENTION.—If an attorney general of a State intervenes in an action instituted by the Commission, such attorney general shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(G) LIMITATION OF ACTIONS.—Any action under this paragraph to enforce a cause of action under this subsection by the Federal Trade Commission or the attorney general of a State shall be forever barred unless commenced within 5 years after the Federal Trade Commission, or the attorney general, as the case may be, knew or should have known that the cause of action accrued. No cause of action barred under existing law on the effective date of the Pharmaceutical Market Access Act of 2010 shall be revived by such Act.

''(H) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

''(I) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the attorney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

''(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term 'antitrust laws' has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

''(8) MANUFACTURER.—In this subsection, the term 'manufacturer' means any entity, including any affiliate or licensee of that entity, that is engaged in—

''(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

''(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.''.

(b) REGULATIONS.—The Federal Trade Commission shall promulgate regulations to carry out the enforcement program under section 804(l) of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(c) SUSPENSION AND TERMINATION OF EXPORTERS.—Section 804(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(g)), as amended by section 3004(g), is amended by—

(1) striking ''SUSPENSION OF IMPORTATION.—The Secretary'' and inserting ''SUSPENSION OF IMPORTATION.—

''(1) IN GENERAL.—The Secretary''; and

(2) adding at the end the following:

''(2) SUSPENSION AND TERMINATION OF EXPORTERS.—

''(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under subsection (f) by a registered exporter:

''(i) Subject to clause (ii), if the Secretary determines, after notice and opportunity for a hearing, that the registered exporter has failed to maintain substantial compliance with all registration conditions, the Secretary may suspend the registration.

''(ii) If the Secretary determines that, under color of the registration, the registered exporter has exported a drug that is not a qualifying drug, or a drug that does not meet the criteria under this section, or has exported a qualifying drug to an individual in violation of this section, the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registered exporter involved an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

''(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registered exporter has demonstrated that further violations of registration conditions will not occur.

''(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under subsection (f) of a registered exporter if the Secretary determines that the registered exporter has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registered exporter. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration of a registered exporter is terminated, any registration submitted under subsection (f) by such exporter or a person who is a partner in the export enterprise or a principal officer in such enterprise, and any registration prepared with the assistance of such exporter or such a person, has no legal effect under this section.''.

SEC. 3010. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title (and the amendments made by this title).

SA 3670. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 143, between lines 17 and 18, insert the following:

SEC. 2213. DIRECT LENDING ADMINISTRATIVE EXPENSES.

Section 458(a) (20 U.S.C. 1087h(a)) (as amended by section 2212(b)(1)) is amended—

(1) by striking paragraph (3) and inserting the following:

''(2) MANDATORY FUNDS FOR ADMINISTRATIVE COSTS IN FISCAL YEARS 2010 THROUGH 2019.—For each of the fiscal years 2010 through 2019, there shall be available to the Secretary, from funds not otherwise appropriated, such sums as may be necessary for the administrative costs under this part and part B, including the costs of the direct student loan programs under this part, in each such fiscal year.'';

(2) in paragraph (4), by striking ''through 2014'' and inserting ''through 2019''.

SA 3671. Mr. ENZI (for himself and Mr. COBURN) submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 114, between lines 12 and 13, insert the following:

SEC. 2002. ELIMINATION OF SPENDING IN ORDER TO REDUCE THE PUBLIC DEBT.

Notwithstanding any other provision of this title, sections 2101, 2102, 2103, and 2213, and the amendments made by such sections, shall have no force and effect, and the resulting savings shall be used to reduce the public debt.

SA 3672. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Beginning on page 114, strike line 13 and all that follows through line 8 on page 123 and insert the following:

PART I—EXTENSION OF ECASLA

SEC. 2101. EXTENSION OF STUDENT LOAN PURCHASE AUTHORITY.

Section 459A (20 U.S.C. 1087i–1) is amended—

(1) in subsections (a)(1), (a)(3)(A), and (f), by striking ''July 1, 2010'' and inserting ''July 1, 2011''; and

(2) in subsection (e)—

(A) in the matter preceding clause (i) of paragraph (1)(A) and the matter preceding subparagraph (A) of paragraph (2), by striking ''September 30, 2010'' and inserting ''September 30, 2011'';

(B) in paragraph (2), by striking ''February 15, 2011'' and inserting ''February 15, 2012''; and

(C) in paragraph (3), by striking ''2010, and 2011'' and inserting ''2010, 2011, and 2012''.

SEC. 2102. EXTENSION OF AUTHORITY TO DESIGNATE LENDERS FOR LENDER-OF-LAST-RESORT PROGRAM.

Section 428(j) (20 U.S.C. 1078(j)) is amended—

(1) in paragraph (6), by striking ''June 30, 2010'' and inserting ''June 30, 2011'';

(2) in paragraph (7), by striking ''June 30, 2010'' and inserting ''June 30, 2011''; and

(3) in paragraph (9)(A)—

(A) in the matter preceding subclause (I) of clause (ii), by striking ''June 30, 2011'' and inserting ''June 30, 2012'';

(B) in subclause (III) of clause (ii), by striking ''June 30, 2010'' and inserting ''June 30, 2011''; and

(C) in the matter preceding subclause (I) of clause (iii), by striking ''July 1, 2011'' and inserting ''July 1, 2012''.

SEC. 2103. ONE-YEAR DELAY OF FFEL TERMINATION.

(a) ONE-YEAR DELAY.—Title IV (as amended by part II) (20 U.S.C. 1070 et seq.) is further amended—

(1) in section 427A(l)(4), by inserting the following:

''(D) For a loan for which the first disbursement is made on or after July 1, 2010, and before July 1, 2011, 4.5 percent on the unpaid principal balance of the loan.'';

(2) in section 438(c)(2)(B)—

(A) in clause (iii), by striking ''; and'' and inserting a semicolon;

(B) in clause (iv), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(v) by substituting '0.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010 and before July 1, 2011.'';

(3) in section 456(a)(4)(A)(iii), by striking ''2014'' and inserting ''2015''; and

(4) in section 458(a)(2), by striking ''2010 through 2019'' and inserting ''2011 through 2019'';

(5) in sections 458(a)(7)(B) and 459B(a)(3), by striking ''2011'' and inserting ''2012'';

(6) in the headings of sections 427A(l), 438(b)(2)(I), and 438(b)(2)(I)(vi), by striking ''2010'' and inserting ''2011'';

(7) in sections 421(b), 428B(a)(1), 458(a)(6)(B), and 459B(a)(3), subsections (f) and (j)(1) of section 428, subsections (c)(2)(B)(6) and (d)(2)(B) of section 438, and subsections (a)(1) and (g) of section 455, by striking ''2010'' and inserting ''2011'';

(8) in sections 421(d), 424(a), 427A(l), 428B(a)(1), 428C, 428H, 438(b)(2)(I), and 458(a)(7), and subsections (a) and (b)(1) of section 428, by striking ''2010'' each place the term appears and inserting ''2011''; and

(9) in sections 424(a) and 456(c)(1)(B), by striking ''2009'' each place the term appears and inserting ''2010''.

(b) DELAYED IMPLEMENTATION.—Notwithstanding section 2209(b)(2), 2210(b), or 2211(b) or any other provision of this title—

(1) subsection (a) and part II, and the amendments made by such subsection and part, shall not be effective until the day that is one year after the date of enactment of this Act; and

(2) sections 2210(b) and 2211(b) shall be applied, beginning on the date described in paragraph (1), by striking ''July 1, 2010'' and inserting ''July 1, 2011''.

SEC. 2104. ELIMINATION OF INCOME-BASED REPAYMENT CHANGES.

Notwithstanding any other provision of this title, section 2213 and the amendments made by such section shall have no force and effect.

SA 3673. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of part II of subtitle A of title II, add the following:

SEC. 2214. GRANT PROHIBITION.

For fiscal year 2012 and succeeding fiscal years, and notwithstanding any other provision of law, the Secretary of Education, the Secretary of Health and Human Services, and the Secretary of Labor shall not award a grant to an institution of higher education that increases the tuition and fees charged for attendance at the institution at a rate that is greater than the annual increase in the Consumer Price Index prepared by the Department of Labor.

SA 3674. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, insert the following:

SEC. 2___. EXEMPTION RELATING TO EXCHANGE REQUIREMENTS.

Section 1311 of the Patient Protection and Affordable Care Act is amended by adding at the end the following:

''(l) EXEMPTION.—The provisions of this section shall not apply to any State that has a State exchange in operation on the date of enactment of this Act. Such exchange shall be deemed to meet all requirements applicable to Exchanges under this section.''.

SA 3675. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 1___. REPEAL OF INDIVIDUAL MANDATE.

Section 5000A of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is repealed.

SA 3676. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, insert the following:

SECTION ___. HEALTH CARE COST INCREASE TAX CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 25D the following new section:

''SEC. 25E. HEALTH CARE COST INCREASE TAX CREDIT.

''(a) IN GENERAL.—In the case of an eligible taxpayer, there shall be allowed a credit against the tax imposed by this chapter for the taxable year in an amount equal to the lesser of—

''(1) the health care cost increase amount for such taxable year, or

''(2) the eligible taxpayer's premium increase amount for such taxable year.

''(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means an individual who purchases self-only or family health insurance coverage which is a qualified health plan within the meaning of section 36B(c)(3)(A) for all months in the taxable year.

''(c) HEALTH CARE COST INCREASE AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, with respect to taxable years beginning in any calendar year after 2009, the health care cost increase amount is the amount, as determined by the Secretary of Health and Human Services, by which the average national premium cost for a plan in the silver level of coverage (within the meaning of section 1302(d)(1)(B) of the Patient Protection and Affordable Care Act) for such calendar year exceeds the average national premium cost for such a plan as of March 23, 2010.

''(2) PUBLICATION OF DETERMINATION.—The Secretary of Health and Human Services shall publish the health care cost increase amount determined under paragraph (1) for each calendar year not later than December 31 of such calendar year.

''(d) PREMIUM INCREASE AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, with respect to an eligible taxpayer, the premium increase amount is the amount by which the total premiums paid by such taxpayer for months during the taxable year for coverage described in subsection (b) exceed the total premiums paid by such taxpayer for such coverage for the last plan year ending before March 23, 2010, except that such amount—

''(A) shall be adjusted to reflect any changes in coverage under the taxpayer's plan or in the family size of the taxpayer, and

''(B) shall be reduced by the amount of any credit under section 36B and any Federal cost sharing subsidy with respect to such coverage.

''(2) REGULATORY AUTHORITY.—The Secretary of Health and Human Services shall prescribe regulations for determining the adjustments required under paragraph (1)(A).

''(e) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(2) the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 30D) and section 27 for the taxable year.''.

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25D the following new item:

''Sec. 25E. Health care cost increase credit.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) of the Internal Revenue Code of 1986 is amended by inserting ''25E,'' after ''25D,''.

(2) Section 25(e)(1)(C)(ii) of such Code is amended by inserting ''25E,'' after ''25D,''.

(3) Section 26(a)(1) of such Code is amended by inserting ''25E,'' after ''25D,''.

(4) Section 25B(g)(2) of such Code is amended by inserting ''25E,'' after ''25D,''.

(5) Section 904(i) of such Code is amended by inserting ''25E,'' after ''25B,''.

(6) Section 1400C(d)(2) of such Code is amended by inserting ''25E,'' after ''25D,''.

(d) APPLICATION OF EGGTRA SUNSET.—The amendment made by subsection (c)(1) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply to taxable years ending after March 23, 2010.

SA 3677. Mr. LEMIEUX submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle D of title I, add the following:

SEC. 1305. HEALTH CARE FRAUD PREVENTION SYSTEM.

(a) HEALTH CARE FRAUD PREVENTION SYSTEM.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall establish a fraud prevention system which shall be designed as follows:

(A) IN GENERAL.—The fraud prevention system shall—

(i) be holistic;

(ii) be able to view all provider and patient activities across all Federal health program payers;

(iii) be able to integrate into the existing health care claims flow with minimal effort, time, and cost;

(iv) be modeled after systems used in the Financial Services industry; and

(v) utilize integrated real-time transaction risk scoring and referral strategy capabilities to identify claims that are statistically unusual.

(B) MODULARIZED ARCHITECTURE.—The fraud prevention system shall be designed from an end-to-end modularized perspective to allow for ease of integration into multiple points along a health care claim flow (pre- or post-adjudication), which shall—

(i) utilize a single entity to host, support, manage, and maintain software-based services, predictive models, and solutions from a central location for the customers who access the fraud prevention system;

(ii) allow access through a secure private data connection rather than the installation of software in multiple information technology infrastructures (and data facilities);

(iii) provide access to the best and latest software without the need for upgrades, data security, and costly installations;

(iv) permit modifications to the software and system edits in a rapid and timely manner;

(v) ensure that all technology and decision components reside within the module; and

(vi) ensure that the third party host of the modular solution is not a party, payer, or stakeholder that reports claims data, accesses the results of the fraud prevention systems analysis, or is otherwise required under this section to verify, research, or investigate the risk of claims.

(C) PROCESSING, SCORING, AND STORAGE.—The platform of the fraud prevention system shall be a high volume, rapid, real-time information technology solution, which includes data pooling, data storage, and scoring capabilities to quickly and accurately capture and evaluate data from millions of claims per day. Such platform shall be secure and have (at a minimum) data centers that comply with Federal and State privacy laws.

(D) DATA CONSORTIUM.—The fraud prevention system shall provide for the establishment of a centralized data file (referred to as a ''consortium'') that accumulates data from all government health insurance claims data sources. Notwithstanding any other provision of law, Federal health care payers shall provide to the consortium existing claims data, such as Medicare's ''Common Working File'' and Medicaid claims data, for the purpose of fraud and abuse prevention. Such accumulated data shall be transmitted and stored in an industry standard secure data environment that complies with applicable Federal privacy laws for use in building medical waste, fraud, and abuse prevention predictive models that have a comprehensive view of provider activity across all payers (and markets).

(E) MARKET VIEW.—The fraud prevention system shall ensure that claims data from Federal health programs and all markets flows through a central source so the waste, fraud, and abuse system can look across all markets and geographies in health care to identify fraud and abuse in Medicare, Medicaid, the State Children's Health Program, TRICARE, and the Department of Veterans Affairs, holistically. Such cross-market visibility shall identify unusual provider and patient behavior patterns and fraud and abuse schemes that may not be identified by looking independently at one Federal payer's transactions.

(F) BEHAVIOR ENGINE.—The fraud prevention system shall ensure that the technology used provides real-time ability to identify high-risk behavior patterns across markets, geographies, and specialty group providers to detect waste, fraud, and abuse, and to identify providers that exhibit unusual behavior patterns. Behavior pattern technology that provides the capability to compare a provider's current behavior to their own past behavior and to compare a provider's current behavior to that of other providers in the same specialty group and geographic location shall be used in order to provide a comprehensive waste, fraud, and abuse prevention solution.

(G) PREDICTIVE MODEL.—The fraud prevention system shall involve the implementation of a statistically sound, empirically derived predictive modeling technology that is designed to prevent (versus post-payment detect) waste, fraud, and abuse. Such prevention system shall utilize historical transaction data, from across all Federal health programs and markets, to build and re-develop scoring models, have the capability to incorporate external data and external models from other sources into the health care predictive waste, fraud, and abuse model, and provide for a feedback loop to provide outcome information on verified claims so future system enhancements can be developed based on previous claims experience.

(H) CHANGE CONTROL.—The fraud prevention system platform shall have the infrastructure to implement new models and attributes in a test environment prior to moving into a production environment. Capabilities shall be developed to quickly make changes to models, attributes, or strategies to react to changing patterns in waste, fraud, and abuse.

(I) SCORING ENGINE.—The fraud prevention system shall identify high-risk claims by scoring all such claims on a real-time capacity prior to payment. Such scores shall then be communicated to the fraud management system provided for under subparagraph (J).

(J) FRAUD MANAGEMENT SYSTEM.—The fraud prevention system shall utilize a fraud management system, that contains workflow management and workstation tools to provide the ability to systematically present scores, reason codes, and treatment actions for high-risk scored transactions. The fraud prevention system shall ensure that analysts who review claims have the capability to access, review, and research claims efficiently, as well as decline or approve claims (payments) in an automated manner. Workflow management under this subparagraph shall be combined with the ability to utilize principles of experimental design to compare and measure prevention and detection rates between test and control strategies. Such strategy testing shall allow for continuous improvement and maximum effectiveness in keeping up with ever changing fraud and abuse patterns. Such system shall provide the capability to test different treatments or actions randomly (typically through use of random digit assignments).

(K) DECISION TECHNOLOGY.—The fraud prevention system shall have the capability to monitor consumer transactions in real-time and monitor provider behavior at different stages within the transaction flow based upon provider, transaction and consumer trends. The fraud prevention system shall provide for the identification of provider and claims excessive usage patterns and trends that differ from similar peer groups, have the capability to trigger on multiple criteria, such as predictive model scores or custom attributes, and be able to segment transaction waste, fraud, and abuse into multiple types for health care categories and business types.

(L) FEEDBACK LOOP.—The fraud prevention system shall have a feedback loop where all Federal health payers provide pre-payment and post-payment information about the eventual status of a claim designated as ''Normal'', ''Waste'', ''Fraud'', ''Abuse'', or ''Education Required''. Such feedback loop shall enable Federal health agencies to measure the actual amount of waste, fraud, and abuse as well as the savings in the system and provide the ability to retrain future, enhanced models. Such feedback loop shall be an industry file that contains information on previous fraud and abuse claims as well as abuse perpetrated by consumers, providers, and fraud rings, to be used to alert other payers, as well as for subsequent fraud and abuse solution development.

(M) TRACKING AND REPORTING.—The fraud prevention system shall ensure that the infrastructure exists to ascertain system, strategy, and predictive model return on investment. Dynamic model validation and strategy validation analysis and reporting shall be made available to ensure a strategy or predictive model has not degraded over time or is no longer effective. Queue reporting shall be established and made available for population estimates of what claims were flagged, what claims received treatment, and ultimately what results occurred. The capability shall exist to complete tracking and reporting for prevention strategies and actions residing farther upstream in the health care payment flow. The fraud prevention system shall establish a reliable metric to measure the dollars that are never paid due to identification of fraud and abuse, as well

as a capability to effectively test and estimate the impact from different actions and treatments utilized to detect and prevent fraud and abuse for legitimate claims. Measuring results shall include waste and abuse.

(N) OPERATING TENET.—The fraud prevention system shall not be designed to deny health care services or to negatively impact prompt-pay laws because assessments are late. The database shall be designed to speed up the payment process. The fraud prevention system shall require the implementation of constant and consistent test and control strategies by stakeholders, with results shared with Federal health program leadership on a quarterly basis to validate improving progress in identifying and preventing waste, fraud, and abuse. Under such implementation, Federal health care payers shall use standard industry waste, fraud, and abuse measures of success.

(2) COORDINATION.—The Secretary shall coordinate the operation of the fraud prevention system with the Department of Justice and other related Federal fraud prevention systems.

(3) OPERATION.—The Secretary shall phase-in the implementation of the system under this subsection beginning not later than 18 months after the date of enactment of this Act, through the analysis of a limited number of Federal health program claims. Not later than 5 years after such date of enactment, the Secretary shall ensure that such system is fully phased-in and applicable to all Federal health program claims.

(4) NON-PAYMENT OF CLAIMS.—The Secretary shall promulgate regulations to prohibit the payment of any health care claim that has been identified as potentially ''fraudulent'', ''wasteful'', or ''abusive'' until such time as the claim has been verified as valid.

(5) APPLICATION.—The system under this section shall only apply to Federal health programs (all such programs), including programs established after the date of enactment of this Act.

(6) REGULATIONS.—The Secretary shall promulgate regulations providing the maximum appropriate protection of personal privacy.

(b) PROTECTING PARTICIPATION IN HEALTH CARE ANTIFRAUD PROGRAMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, no person providing information to the Secretary under this section shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew, or had reason to believe, that such information was false.

(2) CONFIDENTIALITY.—The Secretary shall, through the promulgation of regulations, establish standards for—

(A) the protection of confidential information submitted or obtained with regard to suspected or actual health care fraud;

(B) the protection of the ability of representatives the Department of Health and Human Services to testify in private civil actions concerning any such information; and

(C) the sharing by the Department of Health and Human Services of any such information related to the medical antifraud programs established under this section.

(c) USE OF SAVINGS.—Notwithstanding any other provision of law, amounts remaining at the end of a fiscal year in the account for any Federal health program to which this section applies that the Secretary of Health and Human Services determines are remaining as a result of the fraud prevention activities applied under this section shall remain in such account and be used for such program for the next fiscal year.

(d) DEFINITION.—In this section, the term ''Federal health program'' means any program that provides Federal payments or reimbursements to providers of health-related items or services, or suppliers of such items, for the provision of such items or services to an individual patient.

(e) RECISSION OF CERTAIN STIMULUS FUNDS.—Notwithstanding section 5 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 116), from the amounts appropriated or made available under division A of such Act (other than under title X of such division A), there is rescinded, of the remaining unobligated amounts as of the date of the enactment of this Act, funds in the amount as may be necessary to carry out this section. The Director of the Office of Management and Budget shall report to each congressional committee the amounts so rescinded within the jurisdiction of such committee.

SA 3678. Mr. LEMIEUX submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 1___. PRODUCTIVITY AWARD PROGRAM.

Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall establish a Productivity Award Program to recognize employees, work units, and contractors of the Centers for Medicare & Medicaid whose work significantly and measurably increases productivity and promotes innovation to improve the delivery of services and achieving savings for taxpayers. The amount of any such award shall be equal to 10 percent of the amount of the estimated saving to the Federal Government as a result of the action resulting in the award (as determined by the Secretary), but not to exceed $50,000.

SA 3679. Mr. LEMIEUX submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 1___. CONSUMER RIGHT-TO-KNOW.

(a) DEVELOPMENT OF INFORMATION SYSTEM.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall develop a system for the collection of quality and pricing information related to the provision of health care services. Through the use of such information, the Secretary shall, to the extent practicable—

(1) determine the lowest, median, average, and highest charged amount and reimbursed amount for each outpatient and inpatient health care procedure conducted at each facility in the United States;

(2) provide comparisons of such prices with respect to procedures in similar facilities in the same county, city, State and on a national basis; and

(3) develop quality of care data, including data on consumer satisfaction, coordination and continuity of care, infrastructure, the results of accreditation, Medicare-related information, and other survey information, and combine such data with price information to enable consumers to make informed choices.

(b) USE OF EXISTING SOURCES.—To the extent that the information required under subsection (a) is being collected by the Centers for Medicare & Medicaid Services, States, State medical societies, or private sector entities, the Secretary, to the extent practicable, utilize such information to carry out such subsection.

(c) AVAILABILITY OF INFORMATION.—The Secretary, either directly or through contract, shall make the information and data collected and developed under this section available on an Internet website. Such information and data shall be displayed by payer (such as Medicare, Medicaid, health insurance plans, employer-based health plans, and other types of health care coverage).

SA 3680. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE __MEDICAL CARE ACCESS PROTECTION

SEC. __1. SHORT TITLE.

This title may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

SEC. __2. DEFINITIONS.

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment

opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this title, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. _3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this title applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. _4. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the

entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. __5. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. __6. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. __7. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. __8. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

SEC. __9. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. __10. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this title shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this title) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section ___4(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. __11. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3681. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle B of title I, add the following:

SEC. ___. ALLOWING INDIVIDUALS TO ELECT TO OPT OUT OF THE MEDICARE PART A BENEFIT.

Notwithstanding any other provision of law, in the case of an individual who elects to opt out of benefits under part A of title XVIII of the Social Security Act, such individual shall not be required to—

(1) opt out of benefits under title II of such Act as a condition for making such election; and

(2) repay any amount paid under such part A for items and services furnished prior to making such election.

SA 3682. Mr. MCCAIN (for himself and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 113, after line 21, insert the following:

SEC. 1502. COMPENSATION TO STATES FOR APPLYING DAVIS-BACON WAGE REQUIREMENTS TO CERTAIN WATER TREATMENT PROJECTS.

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency shall compensate States for any increased administrative and project labor costs incurred by the States as the result of the provisions of title II of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Public Law 111–88), that apply the provisions of subchapter IV of chapter 31 of part A of subtitle II of title 40, United States Code (commonly referred to as the ''Davis-Bacon Act''), to any projects carried out, in whole or in part, with assistance made available from the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) or State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.).

(b) OFFSET.—Any amounts otherwise made available to pay the salaries and expenses of the Office of the Administrator of the Environmental Protection Agency shall be reduced by the amount necessary to carry out subsection (a).

SA 3683. Mr. THUNE submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 113, after line 21, insert the following:

SEC. ___. FAIL-SAFE MECHANISM TO PREVENT INCREASE IN FEDERAL BUDGET DEFICIT.

(a) ESTIMATE AND CERTIFICATION OF EFFECT OF PATIENT PROTECTION AND AFFORDABLE CARE ACT AND THIS ACT ON BUDGET DEFICIT.—

(1) IN GENERAL.—The President shall include in the submission under section 1105 of title 31, United States Code, of the budget of the United States Government for fiscal year 2013 and each fiscal year thereafter an estimate of the budgetary effects for the fiscal year of the provisions of (and the amendments made by) the Patient Protection and Affordable Care Act and this Act, based on the information available as of the date of such submission.

(2) CERTIFICATION.—The President shall include with the estimate under paragraph (1) for any fiscal year a certification as to whether the sum of the decreases in revenues and increases in outlays for the fiscal year by reason of the provisions of (and the amendments made by) the Patient Protection and Affordable Care Act and this Act exceed (or do not exceed) the sum of the increases in revenues and decreases in outlays for the fiscal year by reason of the provisions and amendments.

(b) EFFECT OF DEFICIT.—If the President certifies an excess under subsection (a)(2) for any fiscal year—

(1) the President shall include with the certification the percentage by which the credits allowable under section 36B of the Internal Revenue Code of 1986 and the cost-sharing subsidies under section 1402 of the Patient Protection and Affordable Care Act must be reduced for plan years beginning during such fiscal year such that there is an aggregate decrease in the amount of such credits and subsidies equal to the amount of such excess; and

(2) the President shall instruct the Secretary of Health and Human Services and the Secretary of the Treasury to reduce such credits and subsidies for such plan years by such percentage.

(c) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

SA 3684. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1202 and insert the following:

SEC. 1202. PAYMENTS TO PRIMARY CARE PROVIDERS.

(a) GRANTS TO STATES TO INCREASE PAYMENTS.—From the amounts appropriated under subsection (b), the Secretary of Health and Human Services shall award grants to States with an approved State plan amendment under the Medicaid program under title XIX of the Social Security Act to permanently increase payment rates to primary

care providers under the State Medicaid program above the rates applicable under the State Medicaid program on the date of enactment of this Act. Funds paid to a State from such a grant shall only be used for expenditures attributable to the additional amounts paid to such providers as a result of the increase in such rates.

(b) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, $8,000,000,000, to remain available until expended.

(c) EFFECTIVE DATE.—This section shall take effect on January 1, 2013.

SA 3685. Mr. BROWNBACK (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 61, after line 3, insert the following:

SEC. _____. RESTORING STATE AUTHORITY TO WAIVE THE 35-MILE RULE FOR MEDICARE CRITICAL ACCESS HOSPITAL DESIGNATIONS.

(a) IN GENERAL.—Section 1820(c)(2)(B)(i)(II) of the Social Security Act (42 U.S.C. 1395i–4(c)(2)(B)(i)(II)) is amended by inserting ''or on or after the date of enactment of the Health Care and Education Reconciliation Act of 2010'' after ''January 1, 2006,''.

(b) EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act, is amended by striking ''8 percent'' and inserting ''5 percent''.

SA 3686. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle C of title I, add the following:

SEC. 1207. INCREASING THE TRANSPARENCY OF INFORMATION ON HOSPITAL CHARGES AND MAKING AVAILABLE INFORMATION ON ESTIMATED OUT-OF-POCKET COSTS FOR HEALTH CARE SERVICES.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 3021(b) of the Patient Protection and Affordable Care Act, is amended—

(1) by striking ''and'' at the end of paragraph (82);

(2) by striking the period at the end of paragraph (83) and inserting ''; and'';

(3) by inserting after paragraph (83) the following new paragraph:

''(84) provide that the State will establish and maintain laws, in accordance with the requirements of section 1921A, to require disclosure of information on hospital charges, to make such information available to the public, and to provide individuals with information about estimated out-of-pocket costs for health care services.''; and

(4) by inserting after section 1921 the following new section:

''INCREASING THE TRANSPARENCY OF INFORMATION ON HOSPITAL CHARGES AND PROVIDING CONSUMERS WITH ESTIMATES OF OUT-OF-POCKET COSTS FOR HEALTH CARE SERVICES

''SEC. 1921A. (a) IN GENERAL.—The requirements referred to in section 1902(a)(84) are that the laws of a State must—

''(1) in accordance with subsection (b)—

''(A) require the disclosure of information on hospital charges; and

''(B) provide for access to such information; and

''(2) in accordance with subsection (c), require the provision of a statement of the estimated out-of-pocket costs of an individual for anticipated future health care services.

''(b) INFORMATION ON HOSPITAL CHARGES.—The laws of a State must—

''(1) require disclosure, by each hospital located in the State, of information on the charges for certain inpatient and outpatient hospital services (as determined by the State) provided at the hospital; and

''(2) provide for timely access to such information by individuals seeking or requiring such services.

''(c) ESTIMATED OUT-OF-POCKET COSTS.—The laws of a State must require that, upon the request of any individual with health insurance coverage sponsored by a health insurance issuer, the issuer must provide a statement of the estimated out-of-pocket costs that are likely to be incurred by the individual if the individual receives particular health care items and services within a specified period of time.

''(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as—

''(1) authorizing or requiring the Secretary to establish uniform standards for the State laws required by subsections (b) and (c);

''(2) requiring any State with a law enacted on or before the date of the enactment of this section that—

''(A) meets the requirements of subsection (b) or subsection (c) to modify or amend such law; or

''(B) meets some but not all of the requirements of subsection (b) or subsection (c) to modify or amend such law except to the extent necessary to address the unmet requirements;

''(3) precluding any State in which a program of voluntary disclosure of information on hospital charges is in effect from adopting a law codifying such program (other than its voluntary nature) to satisfy the requirement of subsection (b)(1); or

''(4) guaranteeing that the out-of-pocket costs of an individual will not exceed the estimate of such costs provided pursuant to subsection (c).

''(e) DEFINITIONS.—For purposes of this section:

''(1) The term 'health insurance coverage' has the meaning given such term in section 2791(b)(1) of the Public Health Service Act.

''(2) The term 'health insurance issuer' has the meaning given such term in section 2791(b)(2) of the Public Health Service Act, except that such term also includes—

''(A) a Medicaid managed care organization (as defined in section 1903(m)); and

''(B) a Medicare Advantage organization (as defined in 1859(a)(1), taking into account the operation of section 201(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003).

Section 1856(b)(3) shall not preclude the application to a Medicare Advantage organization or a Medicare Advantage plan offered by such an organization of any State law adopted to carry out the requirements of subsection (b) or (c).

''(3) The term 'hospital' means an institution that meets the requirements of paragraphs (1) and (7) of section 1861(e) and includes those to which section 1820(c) applies.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect on October 1, 2010.

(2) EXCEPTION.—In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SA 3687. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. CONDITIONS FOR TREATMENT OF CERTAIN PERSONS AS ADJUDICATED MENTALLY INCOMPETENT FOR CERTAIN PURPOSES.

(a) IN GENERAL.—Chapter 55 of title 38, United States Code, is amended by adding at the end the following new section:

''§ 5511. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes

''In any case arising out of the administration by the Secretary of laws and benefits under this title, a person who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness shall not be considered adjudicated as a mental defective under subsection (d)(4) or (g)(4) of section 922 of title 18 without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of such title is amended by adding at the end the following new item:

''5511. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes.''.

SA 3688. Ms. SNOWE (for herself, Mr. MCCAIN, Mr. VITTER, Mr. THUNE, Mr. GRASSLEY, and Ms. COLLINS) submitted an amendment intended to be proposed by her to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE III—IMPORTATION OF PRESCRIPTION DRUGS

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Pharmaceutical Market Access and Drug Safety Act of 2010''.

SEC. 3002. FINDINGS.

Congress finds that—

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries;

(2) the United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world;

(3) a prescription drug is neither safe nor effective to an individual who cannot afford it;

(4) allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy;

(5) American spend more than $200,000,000,000 on prescription drugs every year;

(6) the Congressional Budget Office has found that the cost of prescription drugs are between 35 to 55 percent less in other highly-developed countries than in the United States; and

(7) promoting competitive market pricing would both contribute to health care savings and allow greater access to therapy, improving health and saving lives.

SEC. 3003. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.

Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804.

SEC. 3004. IMPORTATION OF PRESCRIPTION DRUGS; WAIVER OF CERTAIN IMPORT RESTRICTIONS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 3003, is further amended by inserting after section 803 the following:

''SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.

''(a) IMPORTATION OF PRESCRIPTION DRUGS.—

''(1) IN GENERAL.—In the case of qualifying drugs imported or offered for import into the United States from registered exporters or by registered importers—

''(A) the limitation on importation that is established in section 801(d)(1) is waived; and

''(B) the standards referred to in section 801(a) regarding admission of the drugs are subject to subsection (g) of this section (including with respect to qualifying drugs to which section 801(d)(1) does not apply).

''(2) IMPORTERS.—A qualifying drug may not be imported under paragraph (1) unless—

''(A) the drug is imported by a pharmacy, group of pharmacies, or a wholesaler that is a registered importer; or

''(B) the drug is imported by an individual for personal use or for the use of a family member of the individual (not for resale) from a registered exporter.

''(3) RULE OF CONSTRUCTION.—This section shall apply only with respect to a drug that is imported or offered for import into the United States—

''(A) by a registered importer; or

''(B) from a registered exporter to an individual.

''(4) DEFINITIONS.—

''(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—For purposes of this section:

''(i) The term 'registered exporter' means an exporter for which a registration under subsection (b) has been approved and is in effect.

''(ii) The term 'registered importer' means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

''(iii) The term 'registration condition' means a condition that must exist for a registration under subsection (b) to be approved.

''(B) QUALIFYING DRUG.—For purposes of this section, the term 'qualifying drug' means a drug for which there is a corresponding U.S. label drug.

''(C) U.S. LABEL DRUG.—For purposes of this section, the term 'U.S. label drug' means a prescription drug that—

''(i) with respect to a qualifying drug, has the same active ingredient or ingredients, route of administration, dosage form, and strength as the qualifying drug;

''(ii) with respect to the qualifying drug, is manufactured by or for the person that manufactures the qualifying drug;

''(iii) is approved under section 505(c); and

''(iv) is not—

''(I) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

''(II) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262), including—

''(aa) a therapeutic DNA plasmid product;

''(bb) a therapeutic synthetic peptide product;

''(cc) a monoclonal antibody product for in vivo use; and

''(dd) a therapeutic recombinant DNA-derived product;

''(III) an infused drug, including a peritoneal dialysis solution;

''(IV) an injected drug;

''(V) a drug that is inhaled during surgery;

''(VI) a drug that is the listed drug referred to in 2 or more abbreviated new drug applications under which the drug is commercially marketed; or

''(VII) a sterile opthlamic drug intended for topical use on or in the eye.

''(D) OTHER DEFINITIONS.—For purposes of this section:

''(i)(I) The term 'exporter' means a person that is in the business of exporting a drug to individuals in the United States from Canada or from a permitted country designated by the Secretary under subclause (II), or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(II) The Secretary shall designate a permitted country under subparagraph (E) (other than Canada) as a country from which an exporter may export a drug to individuals in the United States if the Secretary determines that—

''(aa) the country has statutory or regulatory standards that are equivalent to the standards in the United States and Canada with respect to—

''(AA) the training of pharmacists;

''(BB) the practice of pharmacy; and

''(CC) the protection of the privacy of personal medical information; and

''(bb) the importation of drugs to individuals in the United States from the country will not adversely affect public health.

''(ii) The term 'importer' means a pharmacy, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(iii) The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(iv) The term 'pharmacy' means a person that—

''(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

''(II) employs 1 or more pharmacists.

''(v) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(vi) The term 'wholesaler'—

''(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A); and

''(II) does not include a person authorized to import drugs under section 801(d)(1).

''(E) PERMITTED COUNTRY.—The term 'permitted country' means—

''(i) Australia;

''(ii) Canada;

''(iii) a member country of the European Union, but does not include a member country with respect to which—

''(I) the country's Annex to the Treaty of Accession to the European Union 2003 includes a transitional measure for the regulation of human pharmaceutical products that has not expired; or

''(II) the Secretary determines that the requirements described in subclauses (I) and (II) of clause (vii) will not be met by the date on which such transitional measure for the regulation of human pharmaceutical products expires;

''(iv) Japan;

''(v) New Zealand;

''(vi) Switzerland; and

''(vii) a country in which the Secretary determines the following requirements are met:

''(I) The country has statutory or regulatory requirements—

''(aa) that require the review of drugs for safety and effectiveness by an entity of the government of the country;

''(bb) that authorize the approval of only those drugs that have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs;

''(cc) that require the methods used in, and the facilities and controls used for the manufacture, processing, and packing of drugs in the country to be adequate to preserve their identity, quality, purity, and strength;

''(dd) for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective; and

''(ee) that require the labeling and promotion of drugs to be in accordance with the approval of the drug.

''(II) The valid marketing authorization system in the country is equivalent to the systems in the countries described in clauses (i) through (vi).

''(III) The importation of drugs to the United States from the country will not adversely affect public health.

''(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

''(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred to in this subsection as a 'registrant') submits to the Secretary a registration containing the following:

''(A)(i) In the case of an exporter, the name of the exporter and an identification of all places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter.

''(ii) In the case of an importer, the name of the importer and an identification of the places of business of the importer at which the importer initially receives a qualifying drug after importation (which shall not exceed 3 places of business except by permission of the Secretary).

''(B) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under—

''(i) in the case of an importer, subsections (c), (d), (e), (g), and (j) (relating to the sources of imported qualifying drugs; the inspection of facilities of the importer; the payment of fees; compliance with the standards referred to in section 801(a); and maintenance of records and samples); or

''(ii) in the case of an exporter, subsections (c), (d), (f), (g), (h), (i), and (j) (relating to the sources of exported qualifying drugs; the inspection of facilities of the exporter and the marking of compliant shipments; the payment of fees; and compliance with the standards referred to in section 801(a); being licensed as a pharmacist; conditions for individual importation; and maintenance of records and samples).

''(C) An agreement by the registrant that the registrant will not under subsection (a) import or export any drug that is not a qualifying drug.

''(D) An agreement by the registrant to—

''(i) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country that the registrant has exported or imported, or intends to export or import, to the United States under subsection (a);

''(ii) provide for the return to the registrant of such drug; and

''(iii) cease, or not begin, the exportation or importation of such drug unless the Secretary has notified the registrant that exportation or importation of such drug may proceed.

''(E) An agreement by the registrant to ensure and monitor compliance with each registration condition, to promptly correct any noncompliance with such a condition, and to promptly report to the Secretary any such noncompliance.

''(F) A plan describing the manner in which the registrant will comply with the agreement under subparagraph (E).

''(G) An agreement by the registrant to enforce a contract under subsection (c)(3)(B) against a party in the chain of custody of a qualifying drug with respect to the authority of the Secretary under clauses (ii) and (iii) of that subsection.

''(H) An agreement by the registrant to notify the Secretary not more than 30 days before the registrant intends to make the change, of—

''(i) any change that the registrant intends to make regarding information provided under subparagraph (A) or (B); and

''(ii) any change that the registrant intends to make in the compliance plan under subparagraph (F).

''(I) In the case of an exporter:

''(i) An agreement by the exporter that a qualifying drug will not under subsection (a) be exported to any individual not authorized pursuant to subsection (a)(2)(B) to be an importer of such drug.

''(ii) An agreement to post a bond, payable to the Treasury of the United States that is equal in value to the lesser of—

''(I) the value of drugs exported by the exporter to the United States in a typical 4-week period over the course of a year under this section; or

''(II) $1,000,000.

''(iii) An agreement by the exporter to comply with applicable provisions of Canadian law, or the law of the permitted country designated under subsection (a)(4)(D)(i)(II) in which the exporter is located, that protect the privacy of personal information with respect to each individual importing a prescription drug from the exporter under subsection (a)(2)(B).

''(iv) An agreement by the exporter to report to the Secretary—

''(I) not later than August 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the 6-month period from January 1 through June 30 of that year; and

''(II) not later than January 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the previous fiscal year.

''(J) In the case of an importer, an agreement by the importer to report to the Secretary—

''(i) not later than August 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the 6-month period from January 1 through June 30 of that fiscal year; and

''(ii) not later than January 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the previous fiscal year.

''(K) Such other provisions as the Secretary may require by regulation to protect the public health while permitting—

''(i) the importation by pharmacies, groups of pharmacies, and wholesalers as registered importers of qualifying drugs under subsection (a); and

''(ii) importation by individuals of qualifying drugs under subsection (a).

''(2) APPROVAL OR DISAPPROVAL OF REGISTRATION.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the registrant is not in compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

''(B) CHANGES IN REGISTRATION INFORMATION.—Not later than 30 days after receiving a notice under paragraph (1)(H) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant of the determination.

''(3) PUBLICATION OF CONTACT INFORMATION FOR REGISTERED EXPORTERS.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website and the information provided through the toll-free telephone number accordingly.

''(4) SUSPENSION AND TERMINATION.—

''(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under paragraph (1):

''(i) Subject to clause (ii), the Secretary may suspend the registration if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with a registration condition.

''(ii) If the Secretary determines that, under color of the registration, the exporter has exported a drug or the importer has imported a drug that is not a qualifying drug, or a drug that does not comply with subsection (g)(2)(A) or (g)(4), or has exported a qualifying drug to an individual in violation of subsection (i), the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

''(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registrant has demonstrated that further violations of registration conditions will not occur.

''(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is terminated, any registration submitted under paragraph (1) by the registrant, or a person that is a partner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

''(5) DEFAULT OF BOND.—A bond required to be posted by an exporter under paragraph (1)(I)(ii) shall be defaulted and paid to the Treasury of the United States if, after opportunity for an informal hearing, the Secretary determines that the exporter has—

''(A) exported a drug to the United States that is not a qualifying drug or that is not in compliance with subsection (g)(2)(A), (g)(4), or (i); or

''(B) failed to permit the Secretary to conduct an inspection described under subsection (d).

''(c) SOURCES OF QUALIFYING DRUGS.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported into the United States only if there is compliance with the following:

''(1) The drug was manufactured in an establishment—

''(A) required to register under subsection (h) or (i) of section 510; and

''(B)(i) inspected by the Secretary; or

''(ii) for which the Secretary has elected to rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided for under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(2) The establishment is located in any country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug is manufactured for distribution in a foreign country that is not a permitted country).

''(3) The exporter or importer obtained the drug—

''(A) directly from the establishment; or

''(B) directly from an entity that, by contract with the exporter or importer—

''(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that, for the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties to the transaction);

''(ii) agrees to permit the Secretary to inspect such statements and related records to determine their accuracy;

''(iii) agrees, with respect to the qualifying drugs involved, to permit the Secretary to inspect warehouses and other facilities, including records, of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

''(iv) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority regarding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

''(4)(A) The foreign country from which the importer will import the drug is a permitted country; or

''(B) The foreign country from which the exporter will export the drug is the permitted country in which the exporter is located.

''(5) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

''(6) The exporter or importer retains a sample of each lot of the drug for testing by the Secretary.

''(d) INSPECTION OF FACILITIES; MARKING OF SHIPMENTS.—

''(1) INSPECTION OF FACILITIES.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions—

''(A) the exporter agrees to permit the Secretary—

''(i) to conduct onsite inspections, including monitoring on a day-to-day basis, of places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter;

''(ii) to have access, including on a day-to-day basis, to—

''(I) records of the exporter that relate to the export of such drugs, including financial records; and

''(II) samples of such drugs;

''(iii) to carry out the duties described in paragraph (3); and

''(iv) to carry out any other functions determined by the Secretary to be necessary regarding the compliance of the exporter; and

''(B) the Secretary has assigned 1 or more employees of the Secretary to carry out the functions described in this subsection for the Secretary randomly, but not less than 12 times annually, on the premises of places of businesses referred to in subparagraph (A)(i), and such an assignment remains in effect on a continuous basis.

''(2) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the exporter involved agrees to affix to each shipping container of qualifying drugs exported under subsection (a) such markings as the Secretary determines to be necessary to identify the shipment as being in compliance with all registration conditions. Markings under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings to any shipping container that is not authorized to bear the markings; and

''(B) include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies.

''(3) CERTAIN DUTIES RELATING TO EXPORTERS.—Duties of the Secretary with respect to an exporter include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the exporter at which qualifying drugs are stored and from which qualifying drugs are shipped.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the exporter, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an exporter.

''(C) Randomly reviewing records of exports to individuals for the purpose of determining whether the drugs are being imported by the individuals in accordance with the conditions under subsection (i). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

''(D) Monitoring the affixing of markings under paragraph (2).

''(E) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records, of other parties in the chain of custody of qualifying drugs.

''(F) Determining whether the exporter is in compliance with all other registration conditions.

''(4) PRIOR NOTICE OF SHIPMENTS.—A registration condition is that, not less than 8 hours and not more than 5 days in advance of the time of the importation of a shipment of qualifying drugs, the importer involved agrees to submit to the Secretary a notice with respect to the shipment of drugs to be imported or offered for import into the United States under subsection (a). A notice under the preceding sentence shall include—

''(A) the name and complete contact information of the person submitting the notice;

''(B) the name and complete contact information of the importer involved;

''(C) the identity of the drug, including the established name of the drug, the quantity of the drug, and the lot number assigned by the manufacturer;

''(D) the identity of the manufacturer of the drug, including the identity of the establishment at which the drug was manufactured;

''(E) the country from which the drug is shipped;

''(F) the name and complete contact information for the shipper of the drug;

''(G) anticipated arrival information, including the port of arrival and crossing location within that port, and the date and time;

''(H) a summary of the chain of custody of the drug from the establishment in which the drug was manufactured to the importer;

''(I) a declaration as to whether the Secretary has ordered that importation of the drug from the permitted country cease under subsection (g)(2)(C) or (D); and

''(J) such other information as the Secretary may require by regulation.

''(5) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the importer involved agrees, before wholesale distribution (as defined in section 503(e)) of a qualifying drug that has been imported under subsection (a), to affix to each container of such drug such markings or other technology as the Secretary determines necessary to identify the shipment as being in compliance with all registration conditions, except that the markings or other technology shall not be required on a drug that bears comparable, compatible markings or technology from the manufacturer of the drug. Markings or other technology under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings or other technology to any container that is not authorized to bear the markings; and

''(B) shall include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of such technologies.

''(6) CERTAIN DUTIES RELATING TO IMPORTERS.—Duties of the Secretary with respect to an importer include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the importer at which a qualifying drug is initially received after importation.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the importer, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an importer.

''(C) Reviewing notices under paragraph (4).

''(D) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records of other parties in the chain of custody of qualifying drugs.

''(E) Determining whether the importer is in compliance with all other registration conditions.

''(e) IMPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the importer involved pays to the Secretary a fee of $10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the importer involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for importers for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered importers, including the costs associated with—

''(i) inspecting the facilities of registered importers, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(6);

''(ii) developing, implementing, and operating under such subsection an electronic system for submission and review of the notices required under subsection (d)(4) with respect to shipments of qualifying drugs under subsection (a) to assess compliance with all registration conditions when such shipments are offered for import into the United States; and

''(iii) inspecting such shipments as necessary, when offered for import into the

United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered importers under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during that fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered importers during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered importer on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL IMPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an importer shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the importer of the volume of qualifying drugs imported by importers under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(f) EXPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the exporter involved pays to the Secretary a fee of $10,000 due on the date on which the exporter first submits that registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the exporter involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for exporters for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered exporters, including the costs associated with—

''(i) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(3);

''(ii) developing, implementing, and operating under such subsection a system to screen marks on shipments of qualifying drugs under subsection (a) that indicate compliance with all registration conditions, when such shipments are offered for import into the United States; and

''(iii) screening such markings, and inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered exporters under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during that fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered exporters during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered exporter on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL EXPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an exporter shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the exporter of the volume of qualifying drugs exported by exporters under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(g) COMPLIANCE WITH SECTION 801(a).—

''(1) IN GENERAL.—A registration condition is that each qualifying drug exported under subsection (a) by the registered exporter involved or imported under subsection (a) by the registered importer involved is in compliance with the standards referred to in section 801(a) regarding admission of the drug into the United States, subject to paragraphs (2), (3), and (4).

''(2) SECTION 505; APPROVAL STATUS.—

''(A) IN GENERAL.—A qualifying drug that is imported or offered for import under subsection (a) shall comply with the conditions established in the approved application under section 505(b) for the U.S. label drug as described under this subsection.

''(B) NOTICE BY MANUFACTURER; GENERAL PROVISIONS.—

''(i) IN GENERAL.—The person that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country shall in accordance with this paragraph submit to the Secretary a notice that—

''(I) includes each difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling); or

''(II) states that there is no difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling).

''(ii) INFORMATION IN NOTICE.—A notice under clause (i)(I) shall include the information that the Secretary may require under section 506A, any additional information the Secretary may require (which may include data on bioequivalence if such data are not

required under section 506A), and, with respect to the permitted country that approved the qualifying drug for commercial distribution, or with respect to which such approval is sought, include the following:

''(I) The date on which the qualifying drug with such difference was, or will be, introduced for commercial distribution in the permitted country.

''(II) Information demonstrating that the person submitting the notice has also notified the government of the permitted country in writing that the person is submitting to the Secretary a notice under clause (i)(I), which notice describes the difference in the qualifying drug from a condition established in the approved application for the U.S. label drug.

''(III) The information that the person submitted or will submit to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in the country which, if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation.

''(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

''(I) the information provided in the notice is complete and true; and

''(II) a copy of the notice has been provided to the Federal Trade Commission and to the State attorneys general.

''(iv) FEE.—

''(I) IN GENERAL.—If a notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to section 736(a)(1)(A)(ii). Fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

''(II) FEE AMOUNT FOR CERTAIN YEARS.—If no fee amount is in effect under section 736(a)(1)(A)(ii) for a fiscal year, then the amount paid by a person under subclause (I) shall—

''(aa) for the first fiscal year in which no fee amount under such section in effect, be equal to the fee amount under section 736(a)(1)(A)(ii) for the most recent fiscal year for which such section was in effect, adjusted in accordance with section 736(c); and

''(bb) for each subsequent fiscal year in which no fee amount under such section is effect, be equal to the applicable fee amount for the previous fiscal year, adjusted in accordance with section 736(c).

''(v) TIMING OF SUBMISSION OF NOTICES.—

''(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (C) applies shall be submitted to the Secretary not later than 120 days before the qualifying drug with the difference is introduced for commercial distribution in a permitted country, unless the country requires that distribution of the qualifying drug with the difference begin less than 120 days after the country requires the difference.

''(II) OTHER APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than the day on which the qualifying drug with the difference is introduced for commercial distribution in a permitted country.

''(III) OTHER NOTICES.—A notice under clause (i) to which subparagraph (E) applies shall be submitted to the Secretary on the date that the qualifying drug is first introduced for commercial distribution in a permitted country and annually thereafter.

''(vi) REVIEW BY SECRETARY.—

''(I) IN GENERAL.—In this paragraph, the difference in a qualifying drug that is submitted in a notice under clause (i) from the U.S. label drug shall be treated by the Secretary as if it were a manufacturing change to the U.S. label drug under section 506A.

''(II) STANDARD OF REVIEW.—Except as provided in subclause (III), the Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, using the safe and effective standard for approving or disapproving a manufacturing change under section 506A.

''(III) BIOEQUIVALENCE.—If the Secretary would approve the difference in a notice submitted under clause (i) using the safe and effective standard under section 506A and if the Secretary determines that the qualifying drug is not bioequivalent to the U.S. label drug, the Secretary shall—

''(aa) include in the labeling provided under paragraph (3) a prominent advisory that the qualifying drug is safe and effective but is not bioequivalent to the U.S. label drug if the Secretary determines that such an advisory is necessary for health care practitioners and patients to use the qualifying drug safely and effectively; or

''(bb) decline to approve the difference if the Secretary determines that the availability of both the qualifying drug and the U.S. label drug would pose a threat to the public health.

''(IV) REVIEW BY THE SECRETARY.—The Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, not later than 120 days after the date on which the notice is submitted.

''(V) ESTABLISHMENT INSPECTION.—If review of such difference would require an inspection of the establishment in which the qualifying drug is manufactured—

''(aa) such inspection by the Secretary shall be authorized; and

''(bb) the Secretary may rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(vii) PUBLICATION OF INFORMATION ON NOTICES.—

''(I) IN GENERAL.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall readily make available to the public a list of notices submitted under clause (i).

''(II) CONTENTS.—The list under subclause (I) shall include the date on which a notice is submitted and whether—

''(aa) a notice is under review;

''(bb) the Secretary has ordered that importation of the qualifying drug from a permitted country cease; or

''(cc) the importation of the drug is permitted under subsection (a).

''(III) UPDATE.—The Secretary shall promptly update the Internet website with any changes to the list.

''(C) NOTICE; DRUG DIFFERENCE REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under subsection (c) or (d)(3)(B)(i) of section 506A, require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) Promptly after the notice is submitted, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general that the notice has been submitted with respect to the qualifying drug involved.

''(ii) If the Secretary has not made a determination whether such a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the qualifying drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country not begin until the Secretary completes review of the notice; and

''(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the order.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease, or provide that an order under clause (ii), if any, remains in effect;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iv) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the Secretary shall—

''(I) vacate the order under clause (ii), if any;

''(II) consider the difference to be a variation provided for in the approved application for the U.S. label drug;

''(III) permit importation of the qualifying drug under subsection (a); and

''(IV) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(D) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under section 506A(d)(3)(B)(ii), not require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) During the period in which the notice is being reviewed by the Secretary, the authority under this subsection to import the qualifying drug involved continues in effect.

''(ii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the difference shall be considered to be a variation provided for in the approved application for the U.S. label drug.

''(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING APPROVAL; NO DIFFERENCE.—In the case of

a notice under subparagraph (B)(i) that includes a difference for which, under section 506A(d)(1)(A), a supplemental application would not be required for the difference to be made to the U.S. label drug, or that states that there is no difference, the Secretary—

''(i) shall consider such difference to be a variation provided for in the approved application for the U.S. label drug;

''(ii) may not order that the importation of the qualifying drug involved cease; and

''(iii) shall promptly notify registered exporters and registered importers.

''(F) DIFFERENCES IN ACTIVE INGREDIENT, ROUTE OF ADMINISTRATION, DOSAGE FORM, OR STRENGTH.—

''(i) IN GENERAL.—A person who manufactures a drug approved under section 505(b) shall submit an application under section 505(b) for approval of another drug that is manufactured for distribution in a permitted country by or for the person that manufactures the drug approved under section 505(b) if—

''(I) there is no qualifying drug in commercial distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries with the same active ingredient or ingredients, route of administration, dosage form, and strength as the drug approved under section 505(b); and

''(II) each active ingredient of the other drug is related to an active ingredient of the drug approved under section 505(b), as defined in clause (v).

''(ii) APPLICATION UNDER SECTION 505(b).—The application under section 505(b) required under clause (i) shall—

''(I) request approval of the other drug for the indication or indications for which the drug approved under section 505(b) is labeled;

''(II) include the information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the other drug in that country, which if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation;

''(III) include a right of reference to the application for the drug approved under section 505(b); and

''(IV) include such additional information as the Secretary may require.

''(iii) TIMING OF SUBMISSION OF APPLICATION.—An application under section 505(b) required under clause (i) shall be submitted to the Secretary not later than the day on which the information referred to in clause (ii)(II) is submitted to the government of the permitted country.

''(iv) NOTICE OF DECISION ON APPLICATION.—The Secretary shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of a determination to approve or to disapprove an application under section 505(b) required under clause (i).

''(v) RELATED ACTIVE INGREDIENTS.—For purposes of clause (i)(II), 2 active ingredients are related if they are—

''(I) the same; or

''(II) different salts, esters, or complexes of the same moiety.

''(3) SECTION 502; LABELING.—

''(A) IMPORTATION BY REGISTERED IMPORTER.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered importer, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the qualifying drug bears—

''(I) a copy of the labeling approved for the U.S. label drug under section 505, without regard to whether the copy bears any trademark involved;

''(II) the name of the manufacturer and location of the manufacturer;

''(III) the lot number assigned by the manufacturer;

''(IV) the name, location, and registration number of the importer; and

''(V) the National Drug Code number assigned to the qualifying drug by the Secretary.

''(ii) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer involved, upon request of the importer.

''(iii) REQUESTED LABELING.—The labeling provided by the Secretary under clause (ii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the qualifying drug;

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof;

''(III) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the qualifying drug is safe and effective but not bioequivalent to the U.S. label drug; and

''(IV) if the inactive ingredients of the qualifying drug are different from the inactive ingredients for the U.S. label drug, include—

''(aa) a prominent notice that the ingredients of the qualifying drug differ from the ingredients of the U.S. label drug and that the qualifying drug must be dispensed with an advisory to people with allergies about this difference and a list of ingredients; and

''(bb) a list of the ingredients of the qualifying drug as would be required under section 502(e).

''(B) IMPORTATION BY INDIVIDUAL.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the packaging and labeling of the qualifying drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and the labeling of the qualifying drug includes—

''(I) directions for use by the consumer;

''(II) the lot number assigned by the manufacturer;

''(III) the name and registration number of the exporter;

''(IV) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug;

''(V) if the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(aa) a prominent advisory that persons with an allergy should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(bb) a list of the ingredients of the drug as would be required under section 502(e); and

''(VI) a copy of any special labeling that would be required by the Secretary had the U.S. label drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears any trademark involved.

''(ii) PACKAGING.—A qualifying drug offered for import to an individual by an exporter under this section that is packaged in a unit-of-use container (as those items are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(I) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(II) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the exporter will provide the drug in packaging that is compliant at no additional cost.

''(iii) REQUEST FOR COPY OF SPECIAL LABELING AND INGREDIENT LIST.—The Secretary shall provide to the registered exporter involved a copy of the special labeling, the advisory, and the ingredient list described under clause (i), upon request of the exporter.

''(iv) REQUESTED LABELING AND INGREDIENT LIST.—The labeling and ingredient list provided by the Secretary under clause (iii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the drug; and

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof.

''(4) SECTION 501; ADULTERATION.—A qualifying drug that is imported or offered for import under subsection (a) shall be considered to be in compliance with section 501 if the drug is in compliance with subsection (c).

''(5) STANDARDS FOR REFUSING ADMISSION.—A drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission into the United States if 1 or more of the following applies:

''(A) The drug is not a qualifying drug.

''(B) A notice for the drug required under paragraph (2)(B) has not been submitted to the Secretary.

''(C) The Secretary has ordered that importation of the drug from the permitted country cease under subparagraph (C) or (D) of paragraph (2).

''(D) The drug does not comply with paragraph (3) or (4).

''(E) The shipping container appears damaged in a way that may affect the strength, quality, or purity of the drug.

''(F) The Secretary becomes aware that—

''(i) the drug may be counterfeit;

''(ii) the drug may have been prepared, packed, or held under insanitary conditions; or

''(iii) the methods used in, or the facilities or controls used for, the manufacturing, processing, packing, or holding of the drug do not conform to good manufacturing practice.

''(G) The Secretary has obtained an injunction under section 302 that prohibits the distribution of the drug in interstate commerce.

''(H) The Secretary has under section 505(e) withdrawn approval of the drug.

''(I) The manufacturer of the drug has instituted a recall of the drug.

''(J) If the drug is imported or offered for import by a registered importer without submission of a notice in accordance with subsection (d)(4).

''(K) If the drug is imported or offered for import from a registered exporter to an individual and 1 or more of the following applies:

''(i) The shipping container for such drug does not bear the markings required under subsection (d)(2).

''(ii) The markings on the shipping container appear to be counterfeit.

''(iii) The shipping container or markings appear to have been tampered with.

''(h) EXPORTER LICENSURE IN PERMITTED COUNTRY.—A registration condition is that

the exporter involved agrees that a qualifying drug will be exported to an individual only if the Secretary has verified that—

''(1) the exporter is authorized under the law of the permitted country in which the exporter is located to dispense prescription drugs; and

''(2) the exporter employs persons that are licensed under the law of the permitted country in which the exporter is located to dispense prescription drugs in sufficient number to dispense safely the drugs exported by the exporter to individuals, and the exporter assigns to those persons responsibility for dispensing such drugs to individuals.

''(i) INDIVIDUALS; CONDITIONS FOR IMPORTATION.—

''(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

''(A) The drug is accompanied by a copy of a prescription for the drug, which prescription—

''(i) is valid under applicable Federal and State laws; and

''(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

''(B) The drug is accompanied by a copy of the documentation that was required under the law or regulations of the permitted country in which the exporter is located, as a condition of dispensing the drug to the individual.

''(C) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

''(i) to indicate that the prescription, and the equivalent document in the permitted country in which the exporter is located, have been filled; and

''(ii) to prevent a duplicative filling by another pharmacist.

''(D) The individual has provided to the registered exporter a complete list of all drugs used by the individual for review by the individuals who dispense the drug.

''(E) The quantity of the drug does not exceed a 90-day supply.

''(F) The drug is not an ineligible subpart H drug. For purposes of this section, a prescription drug is an 'ineligible subpart H drug' if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval), with restrictions under section 520 of such part to assure safe use, and the Secretary has published in the Federal Register a notice that the Secretary has determined that good cause exists to prohibit the drug from being imported pursuant to this subsection.

''(2) NOTICE REGARDING DRUG REFUSED ADMISSION.—If a registered exporter ships a drug to an individual pursuant to subsection (a)(2)(B) and the drug is refused admission to the United States, a written notice shall be sent to the individual and to the exporter that informs the individual and the exporter of such refusal and the reason for the refusal.

''(j) MAINTENANCE OF RECORDS AND SAMPLES.—

''(1) IN GENERAL.—A registration condition is that the importer or exporter involved shall—

''(A) maintain records required under this section for not less than 2 years; and

''(B) maintain samples of each lot of a qualifying drug required under this section for not more than 2 years.

''(2) PLACE OF RECORD MAINTENANCE.—The records described under paragraph (1) shall be maintained—

''(A) in the case of an importer, at the place of business of the importer at which the importer initially receives the qualifying drug after importation; or

''(B) in the case of an exporter, at the facility from which the exporter ships the qualifying drug to the United States.

''(k) DRUG RECALLS.—

''(1) MANUFACTURERS.—A person that manufactures a qualifying drug imported from a permitted country under this section shall promptly inform the Secretary—

''(A) if the drug is recalled or withdrawn from the market in a permitted country;

''(B) how the drug may be identified, including lot number; and

''(C) the reason for the recall or withdrawal.

''(2) SECRETARY.—With respect to each permitted country, the Secretary shall—

''(A) enter into an agreement with the government of the country to receive information about recalls and withdrawals of qualifying drugs in the country; or

''(B) monitor recalls and withdrawals of qualifying drugs in the country using any information that is available to the public in any media.

''(3) NOTICE.—The Secretary may notify, as appropriate, registered exporters, registered importers, wholesalers, pharmacies, or the public of a recall or withdrawal of a qualifying drug in a permitted country.

''(l) DRUG LABELING AND PACKAGING.—

''(1) IN GENERAL.—When a qualifying drug that is imported into the United States by an importer under subsection (a) is dispensed by a pharmacist to an individual, the pharmacist shall provide that the packaging and labeling of the drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and shall include with any other labeling provided to the individual the following:

''(A) The lot number assigned by the manufacturer.

''(B) The name and registration number of the importer.

''(C) If required under paragraph (2)(B)(vi)(III) of subsection (g), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug.

''(D) If the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(i) a prominent advisory that persons with allergies should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(ii) a list of the ingredients of the drug as would be required under section 502(e).

''(2) PACKAGING.—A qualifying drug that is packaged in a unit-of-use container (as those terms are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(A) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(B) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the pharmacist will provide the drug in packaging that is compliant at no additional cost.

''(m) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, this section does not authorize the importation into the United States of a qualifying drug donated or otherwise supplied for free or at nominal cost by the manufacturer of the drug to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country.

''(n) UNFAIR AND DISCRIMINATORY ACTS AND PRACTICES.—

''(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing agreement or other agreement), to—

''(A) discriminate by charging a higher price for a prescription drug sold to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section than the price that is charged, inclusive of rebates or other incentives to the permitted country or other person, to another person that is in the same country and that does not export a qualifying drug into the United States under this section;

''(B) discriminate by charging a higher price for a prescription drug sold to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a qualifying drug under this section, or that does not distribute, sell, or use such a drug;

''(C) discriminate by denying, restricting, or delaying supplies of a prescription drug to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(D) discriminate by publicly, privately, or otherwise refusing to do business with a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or with a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(E) knowingly fail to submit a notice under subsection (g)(2)(B)(i), knowingly fail to submit such a notice on or before the date specified in subsection (g)(2)(B)(v) or as otherwise required under paragraphs (3), (4), and (5) of section 3004(e) of the Pharmaceutical Market Access and Drug Safety Act of 2010, knowingly submit such a notice that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such a notice;

''(F) knowingly fail to submit an application required under subsection (g)(2)(F), knowingly fail to submit such an application on or before the date specified in subsection (g)(2)(F)(iii), knowingly submit such an application that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such an application;

''(G) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and the drug for distribution in a permitted country;

''(H) refuse to allow an inspection authorized under this section of an establishment that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country;

''(I) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country to good manufacturing practice under this Act;

''(J) become a party to a licensing agreement or other agreement related to a qualifying drug that fails to provide for compliance with all requirements of this section with respect to such drug;

''(K) enter into a contract that restricts, prohibits, or delays the importation of a qualifying drug under this section;

''(L) engage in any other action to restrict, prohibit, or delay the importation of a qualifying drug under this section; or

''(M) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages or attempts to engage in the importation of a qualifying drug under this section.

''(2) REFERRAL OF POTENTIAL VIOLATIONS.—The Secretary shall promptly refer to the Federal Trade Commission each potential violation of subparagraph (E), (F), (G), (H), or (I) of paragraph (1) that becomes known to the Secretary.

''(3) AFFIRMATIVE DEFENSE.—

''(A) DISCRIMINATION.—It shall be an affirmative defense to a charge that a manufacturer has discriminated under subparagraph (A), (B), (C), (D), or (M) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial, restriction, or delay of supplies of a prescription drug to a person, the refusal to do business with a person, or other discriminatory activity against a person, is not based, in whole or in part, on—

''(i) the person exporting or importing a qualifying drug into the United States under this section; or

''(ii) the person distributing, selling, or using a qualifying drug imported into the United States under this section.

''(B) DRUG DIFFERENCES.—It shall be an affirmative defense to a charge that a manufacturer has caused there to be a difference described in subparagraph (G) of paragraph (1) that—

''(i) the difference was required by the country in which the drug is distributed;

''(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug;

''(iii) the person manufacturing the drug for distribution in the United States has given notice to the Secretary under subsection (g)(2)(B)(i) that the drug for distribution in the United States is not different from a drug for distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries; or

''(iv) the difference was not caused, in whole or in part, for the purpose of restricting importation of the drug into the United States under this section.

''(4) EFFECT OF SUBSECTION.—

''(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

''(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

''(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B of the Public Health Service Act (42 U.S.C. 256b) in return for inclusion of the drug on a formulary;

''(ii) require that such discounts be made available to other purchasers of the prescription drug; or

''(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

''(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

''(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

''(ii) apply to such donations or supplying of a prescription drug.

''(5) ENFORCEMENT.—

''(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

''(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

''(i) shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section; and

''(ii) may seek monetary relief threefold the damages sustained, in addition to any other remedy available to the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

''(6) ACTIONS BY STATES.—

''(A) IN GENERAL.—

''(i) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State have been adversely affected by any manufacturer that violates paragraph (1), the attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction to—

''(I) enjoin that practice;

''(II) enforce compliance with this subsection;

''(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

''(IV) obtain such other relief as the court may consider to be appropriate.

''(ii) NOTICE.—

''(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

''(aa) written notice of that action; and

''(bb) a copy of the complaint for that action.

''(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

''(B) INTERVENTION.—

''(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Federal Trade Commission shall have the right to intervene in the action that is the subject of the notice.

''(ii) EFFECT OF INTERVENTION.—If the Federal Trade Commission intervenes in an action under subparagraph (A), it shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

''(i) conduct investigations;

''(ii) administer oaths or affirmations; or

''(iii) compel the attendance of witnesses or the production of documentary and other evidence.

''(D) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Federal Trade Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

''(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(G) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

''(H) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the attorney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

''(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term 'antitrust laws' has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

''(8) MANUFACTURER.—In this subsection, the term 'manufacturer' means any entity, including any affiliate or licensee of that entity, that is engaged in—

''(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

''(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.''.

(b) PROHIBITED ACTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301 (21 U.S.C. 331), by striking paragraph (aa) and inserting the following:

''(aa)(1) The sale or trade by a pharmacist, or by a business organization of which the pharmacist is a part, of a qualifying drug that under section 804(a)(2)(A) was imported by the pharmacist, other than—

''(A) a sale at retail made pursuant to dispensing the drug to a customer of the pharmacist or organization; or

''(B) a sale or trade of the drug to a pharmacy or a wholesaler registered to import drugs under section 804.

''(2) The sale or trade by an individual of a qualifying drug that under section 804(a)(2)(B) was imported by the individual.

''(3) The making of a materially false, fictitious, or fraudulent statement or representation, or a material omission, in a notice under clause (i) of section 804(g)(2)(B) or in an application required under section 804(g)(2)(F), or the failure to submit such a notice or application.

''(4) The importation of a drug in violation of a registration condition or other requirement under section 804, the falsification of any record required to be maintained, or provided to the Secretary, under such section, or the violation of any registration condition or other requirement under such section.''; and

(2) in section 303(a) (21 U.S.C. 333(a)), by striking paragraph (6) and inserting the following:

''(6) Notwithstanding subsection (a), any person that knowingly violates section 301(i)(2) or (3) or section 301(aa)(4) shall be imprisoned not more than 10 years, or fined in accordance with title 18, United States Code, or both.''.

(c) AMENDMENT OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

''(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that is not shipped by a registered exporter under section 804, and that is refused admission under subsection (a), the Secretary shall notify the individual that—

''(1) the drug has been refused admission because the drug was not a lawful import under section 804;

''(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

''(3) the individual may under section 804 lawfully import certain prescription drugs from exporters registered with the Secretary under section 804; and

''(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration or through a toll-free telephone number required under section 804.''.

(2) ESTABLISHMENT REGISTRATION.—Section 510(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) is amended in paragraph (1) by inserting after ''import into the United States'' the following: '', including a drug that is, or may be, imported or offered for import into the United States under section 804,''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 90 days after the date of enactment of this Act.

(d) EXHAUSTION.—

(1) IN GENERAL.—Section 271 of title 35, United States Code, is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively; and

(B) by inserting after subsection (g) the following:

''(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.''.

(2) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed to affect the ability of a patent owner or licensee to enforce their patent, subject to such amendment.

(e) EFFECT OF SECTION 804.—

(1) IN GENERAL.—Section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall permit the importation of qualifying drugs (as defined in such section 804) into the United States without regard to the status of the issuance of implementing regulations—

(A) from exporters registered under such section 804 on the date that is 90 days after the date of enactment of this Act; and

(B) from permitted countries, as defined in such section 804, by importers registered under such section 804 on the date that is 1 year after the date of enactment of this Act.

(2) REVIEW OF REGISTRATION BY CERTAIN EXPORTERS.—

(A) REVIEW PRIORITY.—In the review of registrations submitted under subsection (b) of such section 804, registrations submitted by entities in Canada that are significant exporters of prescription drugs to individuals in the United States as of the date of enactment of this Act will have priority during the 90 day period that begins on such date of enactment.

(B) PERIOD FOR REVIEW.—During such 90-day period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is, as applied to such entities, deemed to be 30 days.

(C) LIMITATION.—That an exporter in Canada exports, or has exported, prescription drugs to individuals in the United States on or before the date that is 90 days after the date of enactment of this Act shall not serve as a basis, in whole or in part, for disapproving a registration under such section 804 from the exporter.

(D) FIRST YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') may limit the number of registered exporters under such section 804 to not less than 50, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(E) SECOND YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 100, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(F) FURTHER LIMIT ON NUMBER OF EXPORTERS.—During any 1-year period beginning on a date that is 2 or more years after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 25 more than the number of such exporters during the previous 1-year period, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(3) LIMITS ON NUMBER OF IMPORTERS.—

(A) FIRST YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 100 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs imported into the United States.

(B) SECOND YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 2 years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 200 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs into the United States.

(C) FURTHER LIMIT ON NUMBER OF IMPORTERS.—During any 1-year period beginning on a date that is 3 or more years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 50 more (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups) than the number of such importers during the previous 1-year period, so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs to the United States.

(4) NOTICES FOR DRUGS FOR IMPORT FROM CANADA.—The notice with respect to a qualifying drug introduced for commercial distribution in Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 30 days after the date of enactment of this Act if—

(A) the U.S. label drug (as defined in such section 804) for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period most recently completed before the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(5) NOTICE FOR DRUGS FOR IMPORT FROM OTHER COUNTRIES.—The notice with respect to a qualifying drug introduced for commercial distribution in a permitted country other than Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act if—

(A) the U.S. label drug for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period that is first completed on the date that is 120 days after the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(6) NOTICE FOR OTHER DRUGS FOR IMPORT.—

(A) GUIDANCE ON SUBMISSION DATES.—The Secretary shall by guidance establish a series of submission dates for the notices under subsection (g)(2)(B)(i) of such section 804 with respect to qualifying drugs introduced for commercial distribution as of the date of enactment of this Act and that are not required to be submitted under paragraph (4) or (5).

(B) CONSISTENT AND EFFICIENT USE OF RESOURCES.—The Secretary shall establish the dates described under subparagraph (A) so that such notices described under subparagraph (A) are submitted and reviewed at a rate that allows consistent and efficient use of the resources and staff available to the

Secretary for such reviews. The Secretary may condition the requirement to submit such a notice, and the review of such a notice, on the submission by a registered exporter or a registered importer to the Secretary of a notice that such exporter or importer intends to import such qualifying drug to the United States under such section 804.

(C) PRIORITY FOR DRUGS WITH HIGHER SALES.—The Secretary shall establish the dates described under subparagraph (A) so that the Secretary reviews the notices described under such subparagraph with respect to qualifying drugs with higher dollar volume of sales in the United States before the notices with respect to drugs with lower sales in the United States.

(7) NOTICES FOR DRUGS APPROVED AFTER EFFECTIVE DATE.—The notice required under subsection (g)(2)(B)(i) of such section 804 for a qualifying drug first introduced for commercial distribution in a permitted country (as defined in such section 804) after the date of enactment of this Act shall be submitted to and reviewed by the Secretary as provided under subsection (g)(2)(B) of such section 804, without regard to paragraph (4), (5), or (6).

(8) REPORT.—Beginning with the first full fiscal year after the date of enactment of this Act, not later than 90 days after the end of each fiscal year during which the Secretary reviews a notice referred to in paragraph (4), (5), or (6), the Secretary shall submit a report to Congress concerning the progress of the Food and Drug Administration in reviewing the notices referred to in paragraphs (4), (5), and (6).

(9) USER FEES.—

(A) EXPORTERS.—When establishing an aggregate total of fees to be collected from exporters under subsection (f)(2) of such section 804, the Secretary shall, under subsection (f)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered exporters during the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365.

(B) IMPORTERS.—When establishing an aggregate total of fees to be collected from importers under subsection (e)(2) of such section 804, the Secretary shall, under subsection (e)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered importers during—

(i) the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365; and

(ii) the second fiscal year in which this title is in effect to be $3,000,000,000.

(C) SECOND YEAR ADJUSTMENT.—

(i) REPORTS.—Not later than February 20 of the second fiscal year in which this title is in effect, registered importers shall report to the Secretary the total price and the total volume of drugs imported to the United States by the importer during the 4-month period from October 1 through January 31 of such fiscal year.

(ii) REESTIMATE.—Notwithstanding subsection (e)(3)(C)(ii) of such section 804 or subparagraph (B), the Secretary shall reestimate the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during the second fiscal year in which this title is in effect. Such reestimate shall be equal to—

(I) the total price of qualifying drugs imported by each importer as reported under clause (i); multiplied by

(II) 3.

(iii) ADJUSTMENT.—The Secretary shall adjust the fee due on April 1 of the second fiscal year in which this title is in effect, from each importer so that the aggregate total of fees collected under subsection (e)(2) for such fiscal year does not exceed the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during such fiscal year as reestimated under clause (ii).

(D) FAILURE TO PAY FEES.—Notwithstanding any other provision of this section, the Secretary may prohibit a registered importer or exporter that is required to pay user fees under subsection (e) or (f) of such section 804 and that fails to pay such fees within 30 days after the date on which it is due, from importing or offering for importation a qualifying drug under such section 804 until such fee is paid.

(E) ANNUAL REPORT.—

(i) FOOD AND DRUG ADMINISTRATION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e), (f), or (g)(2)(B)(iv) of such section 804, the Secretary shall prepare and submit to the House of Representatives and the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for the fiscal year for which the report is made and credited to the Food and Drug Administration.

(ii) CUSTOMS AND BORDER PROTECTION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e) or (f) of such section 804, the Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall prepare and submit to the House of Representatives and the Senate a report on the use, by the Bureau of Customs and Border Protection, of the fees, if any, transferred by the Secretary to the Bureau of Customs and Border Protection for the fiscal year for which the report is made.

(10) SPECIAL RULE REGARDING IMPORTATION BY INDIVIDUALS.—

(A) IN GENERAL.—Notwithstanding any provision of this title (or an amendment made by this title), the Secretary shall expedite the designation of any additional permitted countries from which an individual may import a qualifying drug into the United States under such section 804 if any action implemented by the Government of Canada has the effect of limiting or prohibiting the importation of qualifying drugs into the United States from Canada.

(B) TIMING AND CRITERIA.—The Secretary shall designate such additional permitted countries under subparagraph (A)—

(i) not later than 6 months after the date of the action by the Government of Canada described under such subparagraph; and

(ii) using the criteria described under subsection (a)(4)(D)(i)(II) of such section 804.

(f) IMPLEMENTATION OF SECTION 804.—

(1) INTERIM RULE.—The Secretary may promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section.

(2) NO NOTICE OF PROPOSED RULEMAKING.—The interim rule described under paragraph (1) may be developed and promulgated by the Secretary without providing general notice of proposed rulemaking.

(3) FINAL RULE.—Not later than 1 year after the date on which the Secretary promulgates an interim rule under paragraph (1), the Secretary shall, in accordance with procedures under section 553 of title 5, United States Code, promulgate a final rule for implementing such section 804, which may incorporate by reference provisions of the interim rule provided for under paragraph (1), to the extent that such provisions are not modified.

(g) CONSUMER EDUCATION.—The Secretary shall carry out activities that educate consumers—

(1) with regard to the availability of qualifying drugs for import for personal use from an exporter registered with and approved by the Food and Drug Administration under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by this section, including information on how to verify whether an exporter is registered and approved by use of the Internet website of the Food and Drug Administration and the toll-free telephone number required by this title;

(2) that drugs that consumers attempt to import from an exporter that is not registered with and approved by the Food and Drug Administration can be seized by the United States Customs Service and destroyed, and that such drugs may be counterfeit, unapproved, unsafe, or ineffective;

(3) with regard to the suspension and termination of any registration of a registered importer or exporter under such section 804; and

(4) with regard to the availability at domestic retail pharmacies of qualifying drugs imported under such section 804 by domestic wholesalers and pharmacies registered with and approved by the Food and Drug Administration.

(h) EFFECT ON ADMINISTRATION PRACTICES.—Notwithstanding any provision of this title (and the amendments made by this title), the practices and policies of the Food and Drug Administration and Bureau of Customs and Border Protection, in effect on January 1, 2004, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use, shall remain in effect.

(i) REPORT TO CONGRESS.—The Federal Trade Commission shall, on an annual basis, submit to Congress a report that describes any action taken during the period for which the report is being prepared to enforce the provisions of section 804(n) of the Federal Food, Drug, and Cosmetic Act (as added by this title), including any pending investigations or civil actions under such section.

SEC. 3005. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION INTO UNITED STATES.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 3004, is further amended by adding at the end the following section:

"SEC. 805. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION.

''(a) IN GENERAL.—The Secretary of Homeland Security shall deliver to the Secretary a shipment of drugs that is imported or offered for import into the United States if—

''(1) the shipment has a declared value of less than $10,000; and

''(2)(A) the shipping container for such drugs does not bear the markings required under section 804(d)(2); or

''(B) the Secretary has requested delivery of such shipment of drugs.

''(b) NO BOND OR EXPORT.—Section 801(b) does not authorize the delivery to the owner or consignee of drugs delivered to the Secretary under subsection (a) pursuant to the execution of a bond, and such drugs may not be exported.

''(c) DESTRUCTION OF VIOLATIVE SHIPMENT.—The Secretary shall destroy a shipment of drugs delivered by the Secretary of Homeland Security to the Secretary under subsection (a) if—

''(1) in the case of drugs that are imported or offered for import from a registered exporter under section 804, the drugs are in violation of any standard described in section 804(g)(5); or

''(2) in the case of drugs that are not imported or offered for import from a registered exporter under section 804, the drugs are in violation of a standard referred to in section 801(a) or 801(d)(1).

''(d) CERTAIN PROCEDURES.—

''(1) IN GENERAL.—The delivery and destruction of drugs under this section may be carried out without notice to the importer, owner, or consignee of the drugs except as required by section 801(g) or section 804(i)(2). The issuance of receipts for the drugs, and recordkeeping activities regarding the drugs, may be carried out on a summary basis.

''(2) OBJECTIVE OF PROCEDURES.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to described in subsection (c) are identified and destroyed.

''(e) EVIDENCE EXCEPTION.—Drugs may not be destroyed under subsection (c) to the extent that the Attorney General of the United States determines that the drugs should be preserved as evidence or potential evidence with respect to an offense against the United States.

''(f) RULE OF CONSTRUCTION.—This section may not be construed as having any legal effect on applicable law with respect to a shipment of drugs that is imported or offered for import into the United States and has a declared value equal to or greater than $10,000.''.

(b) PROCEDURES.—Procedures for carrying out section 805 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

SEC. 3006. WHOLESALE DISTRIBUTION OF DRUGS; STATEMENTS REGARDING PRIOR SALE, PURCHASE, OR TRADE.

(a) STRIKING OF EXEMPTIONS; APPLICABILITY TO REGISTERED EXPORTERS.—Section 503(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e)) is amended—

(1) in paragraph (1)—

(A) by striking ''and who is not the manufacturer or an authorized distributor of record of such drug'';

(B) by striking ''to an authorized distributor of record or''; and

(C) by striking subparagraph (B) and inserting the following:

''(B) The fact that a drug subject to subsection (b) is exported from the United States does not with respect to such drug exempt any person that is engaged in the business of the wholesale distribution of the drug from providing the statement described in subparagraph (A) to the person that receives the drug pursuant to the export of the drug.

''(C)(i) The Secretary shall by regulation establish requirements that supersede subparagraph (A) (referred to in this subparagraph as 'alternative requirements') to identify the chain of custody of a drug subject to subsection (b) from the manufacturer of the drug throughout the wholesale distribution of the drug to a pharmacist who intends to sell the drug at retail if the Secretary determines that the alternative requirements, which may include standardized anti-counterfeiting or track-and-trace technologies, will identify such chain of custody or the identity of the discrete package of the drug from which the drug is dispensed with equal or greater certainty to the requirements of subparagraph (A), and that the alternative requirements are economically and technically feasible.

''(ii) When the Secretary promulgates a final rule to establish such alternative requirements, the final rule in addition shall, with respect to the registration condition established in clause (i) of section 804(c)(3)(B), establish a condition equivalent to the alternative requirements, and such equivalent condition may be met in lieu of the registration condition established in such clause (i).'';

(2) in paragraph (2)(A), by adding at the end the following: ''The preceding sentence may not be construed as having any applicability with respect to a registered exporter under section 804.''; and

(3) in paragraph (3), by striking ''and subsection (d)—'' in the matter preceding subparagraph (A) and all that follows through ''the term 'wholesale distribution' means'' in subparagraph (B) and inserting the following: ''and subsection (d), the term 'wholesale distribution' means''.

(b) CONFORMING AMENDMENT.—Section 503(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(d)) is amended by adding at the end the following:

''(4) Each manufacturer of a drug subject to subsection (b) shall maintain at its corporate offices a current list of the authorized distributors of record of such drug.

''(5) For purposes of this subsection, the term 'authorized distributors of record' means those distributors with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on January 1, 2012.

(2) DRUGS IMPORTED BY REGISTERED IMPORTERS UNDER SECTION 804.—Notwithstanding paragraph (1), the amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on the date that is 90 days after the date of enactment of this Act with respect to qualifying drugs imported under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by section 3004.

(3) EFFECT WITH RESPECT TO REGISTERED EXPORTERS.—The amendment made by subsection (a)(2) shall take effect on the date that is 90 days after the date of enactment of this Act.

(4) ALTERNATIVE REQUIREMENTS.—The Secretary shall issue regulations to establish the alternative requirements, referred to in the amendment made by subsection (a)(1), that take effect not later than January 1, 2012.

(5) INTERMEDIATE REQUIREMENTS.—The Secretary shall by regulation require the use of standardized anti-counterfeiting or track-and-trace technologies on prescription drugs at the case and pallet level effective not later than 1 year after the date of enactment of this Act.

(6) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, the Secretary shall, not later than 18 months after the date of enactment of this Act, require that the packaging of any prescription drug incorporates—

(i) a standardized numerical identifier unique to each package of such drug, applied at the point of manufacturing and repackaging (in which case the numerical identifier shall be linked to the numerical identifier applied at the point of manufacturing); and

(ii)(I) overt optically variable counterfeit-resistant technologies that—

(aa) are visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

(bb) are similar to that used by the Bureau of Engraving and Printing to secure United States currency;

(cc) are manufactured and distributed in a highly secure, tightly controlled environment; and

(dd) incorporate additional layers of nonvisible convert security features up to and including forensic capability, as described in subparagraph (B); or

(II) technologies that have a function of security comparable to that described in subclause (I), as determined by the Secretary.

(B) STANDARDS FOR PACKAGING.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to this paragraph, the manufacturers of such drugs shall incorporate the technologies described in subparagraph (A) into at least 1 additional element of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

SEC. 3007. INTERNET SALES OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503B the following:

''SEC. 503C. INTERNET SALES OF PRESCRIPTION DRUGS.

''(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

''(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

''(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

''(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

''(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

''(i) are not intended to be accessed by purchasers or prospective purchasers; or

''(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

''(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

''(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

''(i) The name of such person.

''(ii) Each State in which the person is authorized by law to dispense prescription drugs.

''(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

''(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

''(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations;

each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

''(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words 'licensing and contact information'.

''(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

''(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

''(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

''(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

''(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

''(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to—

''(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

''(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

''(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

''(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

''(3) QUALIFYING MEDICAL RELATIONSHIP.—

''(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

''(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

''(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

''(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

''(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

''(4) RULES OF CONSTRUCTION.—

''(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (e)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

''(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

''(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

''(c) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

''(A) to intervene in such action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(5) ACTIONS BY OTHER STATE OFFICIALS.—

''(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

''(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

''(d) EFFECT OF SECTION.—This section shall not apply to a person that is a registered exporter under section 804.

''(e) GENERAL DEFINITIONS.—For purposes of this section:

''(1) The term 'practitioner' means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

''(2) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(3) The term 'qualifying medical relationship', with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

''(f) INTERNET-RELATED DEFINITIONS.—

''(1) IN GENERAL.—For purposes of this section:

''(A) The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(B) The term 'link', with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

''(i) to move from viewing one portion of a page on such site to another portion of the page;

''(ii) to move from viewing one page on such site to another page on such site; or

''(iii) to move from viewing a page on one Internet site to a page on another Internet site.

''(C) The term 'page', with respect to the Internet, means a document or other file accessed at an Internet site.

''(D)(i) The terms 'site' and 'address', with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

''(ii) The term 'domain name' means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as '.com', '.edu', '.gov', '.net', or '.org'.

''(iii) The term 'Internet Protocol numbers' includes any successor protocol for determining a specific location on the Internet.

''(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

''(g) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person's selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.

''(h) NO EFFECT ON OTHER REQUIREMENTS; COORDINATION.—The requirements of this section are in addition to, and do not supersede, any requirements under the Controlled Substances Act or the Controlled Substances Import and Export Act (or any regulation promulgated under either such Act) regarding Internet pharmacies and controlled substances. In promulgating regulations to carry out this section, the Secretary shall coordinate with the Attorney General to ensure that such regulations do not duplicate or conflict with the requirements described in the previous sentence, and that such regulations and requirements coordinate to the extent practicable.''.

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

''(l) The dispensing or selling of a prescription drug in violation of section 503C.''.

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503C of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF FEDERAL AND STATE LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of Federal or State laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated $100,000 for each of the first 3 fiscal years in which this section is in effect.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect 90 days after the date of enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

SEC. 3008. PROHIBITING PAYMENTS TO UNREGISTERED FOREIGN PHARMACIES.

(a) IN GENERAL.—Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following:

''(h) RESTRICTED TRANSACTIONS.—

''(1) IN GENERAL.—The introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system is prohibited.

''(2) PAYMENT SYSTEM.—

''(A) IN GENERAL.—The term 'payment system' means a system used by a person described in subparagraph (B) to effect a credit transaction, electronic fund transfer, or money transmitting service that may be used in connection with, or to facilitate, a restricted transaction, and includes—

''(i) a credit card system;

''(ii) an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service; and

''(iii) any other system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic fund transfers, or money transmitting services.

''(B) PERSONS DESCRIBED.—A person referred to in subparagraph (A) is—

''(i) a creditor;

''(ii) a credit card issuer;

''(iii) a financial institution;

''(iv) an operator of a terminal at which an electronic fund transfer may be initiated;

''(v) a money transmitting business; or

''(vi) a participant in an international, national, regional, or local network used to effect a credit transaction, electronic fund transfer, or money transmitting service.

''(3) RESTRICTED TRANSACTION.—The term 'restricted transaction' means a transaction or transmittal, on behalf of an individual who places an unlawful drug importation request to any person engaged in the operation of an unregistered foreign pharmacy, of—

''(A) credit, or the proceeds of credit, extended to or on behalf of the individual for the purpose of the unlawful drug importation request (including credit extended through the use of a credit card);

''(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the individual for the purpose of the unlawful drug importation request;

''(C) a check, draft, or similar instrument which is drawn by or on behalf of the individual for the purpose of the unlawful drug importation request and is drawn on or payable at or through any financial institution; or

''(D) the proceeds of any other form of financial transaction (identified by the Board by regulation) that involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the individual for the purpose of the unlawful drug importation request.

''(4) UNLAWFUL DRUG IMPORTATION REQUEST.—The term 'unlawful drug importation request' means the request, or transmittal of a request, made to an unregistered foreign pharmacy for a prescription drug by mail (including a private carrier), facsimile, phone, or electronic mail, or by a means that involves the use, in whole or in part, of the Internet.

''(5) UNREGISTERED FOREIGN PHARMACY.—The term 'unregistered foreign pharmacy' means a person in a country other than the United States that is not a registered exporter under section 804.

''(6) OTHER DEFINITIONS.—

''(A) CREDIT; CREDITOR; CREDIT CARD.—The terms 'credit', 'creditor', and 'credit card' have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(B) ACCESS DEVICE; ELECTRONIC FUND TRANSFER.—The terms 'access device' and 'electronic fund transfer'—

''(i) have the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a); and

''(ii) the term 'electronic fund transfer' also includes any fund transfer covered under Article 4A of the Uniform Commercial Code, as in effect in any State.

''(C) FINANCIAL INSTITUTION.—The term 'financial institution'—

''(i) has the meaning given the term in section 903 of the Electronic Transfer Fund Act (15 U.S.C. 1693a); and

''(ii) includes a financial institution (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)).

''(D) MONEY TRANSMITTING BUSINESS; MONEY TRANSMITTING SERVICE.—The terms 'money transmitting business' and 'money transmitting service' have the meaning given the terms in section 5330(d) of title 31, United States Code.

''(E) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(7) POLICIES AND PROCEDURES REQUIRED TO PREVENT RESTRICTED TRANSACTIONS.—

''(A) REGULATIONS.—The Board shall promulgate regulations requiring—

''(i) an operator of a credit card system;

''(ii) an operator of an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service;

''(iii) an operator of any other payment system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic transfers or money transmitting services where at least one party to the transaction or transfer is an individual; and

''(iv) any other person described in paragraph (2)(B) and specified by the Board in such regulations,

to establish policies and procedures that are reasonably designed to prevent the introduction of a restricted transaction into a payment system or the completion of a restricted transaction using a payment system

''(B) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In promulgating regulations under subparagraph (A), the Board shall—

''(i) identify types of policies and procedures, including nonexclusive examples, that shall be considered to be reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; and

''(ii) to the extent practicable, permit any payment system, or person described in paragraph (2)(B), as applicable, to choose among alternative means of preventing the introduction or completion of restricted transactions.

''(C) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTION.—

''(i) IN GENERAL.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, and any participant in such payment system that prevents or otherwise refuses to honor transactions in an effort to implement the policies and procedures required under this subsection or to otherwise comply with this subsection shall not be liable to any party for such action.

''(ii) COMPLIANCE.—A person described in paragraph (2)(B) meets the requirements of this subsection if the person relies on and complies with the policies and procedures of a payment system of which the person is a member or in which the person is a participant, and such policies and procedures of the payment system comply with the requirements of the regulations promulgated under subparagraph (A).

''(D) ENFORCEMENT.—

''(i) IN GENERAL.—This subsection, and the regulations promulgated under this subsection, shall be enforced exclusively by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

''(ii) FACTORS TO BE CONSIDERED.—In considering any enforcement action under this subsection against a payment system or person described in paragraph (2)(B), the Federal functional regulators and the Federal Trade Commission shall consider the following factors:

''(I) The extent to which the payment system or person knowingly permits restricted transactions.

''(II) The history of the payment system or person in connection with permitting restricted transactions.

''(III) The extent to which the payment system or person has established and is maintaining policies and procedures in compliance with regulations prescribed under this subsection.

''(8) TRANSACTIONS PERMITTED.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, is authorized to engage in transactions with foreign pharmacies in connection with investigating violations or potential violations of any rule or requirement adopted by the payment system or person in connection with complying with paragraph (7). A payment system, or such a person, and its agents and employees shall not be found to be in violation of, or liable under, any Federal, State or other law by virtue of engaging in any such transaction.

''(9) RELATION TO STATE LAWS.—No requirement, prohibition, or liability may be imposed on a payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, under the laws of any state with respect to any payment transaction by an individual because the payment transaction involves a payment to a foreign pharmacy.

''(10) TIMING OF REQUIREMENTS.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, must adopt policies and procedures reasonably designed to comply with any regulations required under paragraph (7) within 60 days after such regulations are issued in final form.

''(11) COMPLIANCE.—A payment system, and any person described in paragraph (2)(B), shall not be deemed to be in violation of paragraph (1)—

''(A)(i) if an alleged violation of paragraph (1) occurs prior to the mandatory compliance date of the regulations issued under paragraph (7); and

''(ii) such entity has adopted or relied on policies and procedures that are reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; or

''(B)(i) if an alleged violation of paragraph (1) occurs after the mandatory compliance date of such regulations; and

''(ii) such entity is in compliance with such regulations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day that is 90 days after the date of enactment of this Act.

(c) IMPLEMENTATION.—The Board of Governors of the Federal Reserve System shall promulgate regulations as required by subsection (h)(7) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333), as added by subsection (a), not later than 90 days after the date of enactment of this Act.

SEC. 3009. IMPORTATION EXEMPTION UNDER CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.

Section 1006(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)(2)) is amended by striking ''not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.'' and inserting ''import into the United States not more than 10 dosage units combined of all such controlled substances.''.

SEC. 3010. SEVERABILITY.

If any provision of this title, an amendment by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not affected thereby.

SA 3689. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 1502. NO PAY RAISE FOR MEMBERS OF CONGRESS UNTIL THEY BALANCE THE BUDGET.

(a) RESTRICTION ON COLA ADJUSTMENTS.—Notwithstanding any other provision of law, no adjustment shall be made under section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) (relating to cost of living adjustments for Members of Congress) during fiscal year 2011 or any succeeding fiscal year, until the fiscal year following the first fiscal year that the annual Federal budget deficit is $0 as determined in the report submitted under subsection (b).

(b) DETERMINATIONS AND REPORTS.—

(1) IN GENERAL.—Not later than 30 days after the end of each fiscal year, the Secretary of the Treasury shall—

(A) make a determination of whether or not the annual Federal budget deficit was $0 for that fiscal year; and

(B) if the determination is that the annual Federal budget deficit was $0 for that fiscal year, submit a report to Congress of that determination.

(2) RESTRICTION OF COLA ADJUSTMENTS.—Not later than the end of each calendar year, the Secretary of the Treasury shall submit a report to the Secretary of the Senate and the Chief Administrative Officer of the House of Representatives on—

(A) any determination made under paragraph (1); and

(B) whether or not the restriction under subsection (a) shall apply to the succeeding fiscal year.

SA 3690. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 113, after line 21, add the following:

SEC. 1502. RELOCATION OF THE UNITED STATES EMBASSY TO JERUSALEM.

(a) REMOVAL OF WAIVER AUTHORITY.—The Jerusalem Embassy Act of 1995 (Public Law 104–45; 109 Stat. 398) is amended—

(1) by striking section 7; and

(2) by redesignating section 8 as section 7.

(b) TIMETABLE.—Not more than 50 percent of the funds appropriated to the Department of State for fiscal year 2012 for ''Acquisition and Maintenance of Buildings Abroad'' may be obligated until the Secretary of State determines and reports to Congress that the United States Embassy in Jerusalem has officially opened.

(c) FISCAL YEARS 2010 AND 2011 FUNDING.—

(1) FISCAL YEAR 2010.—Of the funds authorized to be appropriated for ''Acquisition and Maintenance of Buildings Abroad'' for the Department of State for fiscal year 2010, such sums as may be necessary shall be made available until expended only for construction and other costs associated with the establishment of the United States Embassy in Israel in the capital of Jerusalem.

(2) FISCAL YEAR 2011.—Of the funds authorized to be appropriated for ''Acquisition and Maintenance of Buildings Abroad'' for the Department of State for fiscal year 2011, such sums as may be necessary shall be made available until expended only for construction and other costs associated with the establishment of the United States Embassy in Israel in the capital of Jerusalem.

(d) DEFINITION.—In this section, the term ''United States Embassy'' means the offices of the United States diplomatic mission and the residence of the United States chief of mission.

SA 3691. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, add the following:

SEC. 1502. PAYMENT FOR ILLEGAL UNAPPROVED DRUGS.

(a) LISTING OF DRUGS AND DEVICES.—Section 510 of the Food, Drug and Cosmetic Act (21 U.S.C. 360) is amended—

(1) in subsection (j)(1)(B)—

(A) in clause (i), by inserting ''in the case of a drug, the authority under this Act that does not require such drug to be subject to section 505 and section 512,'' after ''labeling for such drug or device,''; and

(B) in clause (ii), by inserting '', in the case of a drug, the authority under this Act that does not require such drug to be subject to section 505 and section 512,'' after ''for such drug or device''; and

(2) in subsection (f)—

(A) by striking ''(f) The Secretary'' and inserting the following:

''(f) INSPECTION BY PUBLIC OF REGISTRATION.—

''(1) IN GENERAL.—The Secretary''; and

(B) by adding at the end the following:

''(2) LIST OF DRUGS THAT ARE NOT APPROVED UNDER SECTION 505 OR 512.—Not later than January 1, 2011, the Secretary shall make available to the public on the Internet website of the Food and Drug Administration a list that includes, for each drug described in subsection (j)(1)(B)—

''(A) the drug;

''(B) the person who listed such drug; and

''(C) the authority under this Act that does not require such drug to be subject to section 505 and section 512, as provided by such person in such list.''.

(b) PAYMENT FOR COVERED OUTPATIENT DRUGS.—Section 1927 of the Social Security Act (42 U.S.C. 1396r-8) is amended by inserting at the end the following:

''(l) CONDITION.—Beginning January 1, 2011, no State shall make any payment under this section for any covered outpatient drug unless such State first verifies with the Food and Drug Administration that such covered outpatient drug has been approved by the Food and Drug Administration under a new drug application under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) or an abbreviated new drug application under section 505(j) of such Act, or that such drug is not subject to such section 505 or section 512 due to the application of section 201(p) of such Act (21 U.S.C. 321(p)). The Secretary shall have the authority to proscribe regulations to create an information sharing protocol to allow States to verify that a covered outpatient drug has been approved by the Food and Drug Administration.''.

SA 3692. Mr. GRASSLEY submitted an amendment intended to be proposed

by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

On page 82, after line 9, insert the following:

SEC. _____. EXTENSION AND EXPANSION OF OVERSIGHT FOR CLAIMS OF DME SUPPLIERS.

Section 1866(j) of the Social Security Act, as amended by section 1304, is further amended—

(1) in paragraph (4)—

(A) in the heading, by striking ''90-DAY'' and inserting ''180-DAY''; and

(B) by striking ''90-day'' and inserting ''180-day'';

(2) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively; and

(3) by inserting after paragraph (4) the following new paragraph:

''(5) 180-DAY PERIOD OF ENHANCED OVERSIGHT AND ADDITIONAL REVIEW FOR OTHER CLAIMS OF DME SUPPLIERS.—For periods beginning after January 1, 2011, if the Secretary determines that there is a significant risk of fraudulent activity among suppliers of durable medical equipment, in the case of a supplier of durable medical equipment not described in paragraph (4) who is within a category or geographic area under title XVIII identified pursuant to such determination, the Secretary shall, notwithstanding sections 1816(c), 1842(c), and 1869(a)(2)—

''(A) withhold payment under such title with respect to durable medical equipment furnished by such supplier during the 180-day period beginning on the date of such determination; and

''(B) conduct a review of claims for payment under such title with respect to durable medical equipment furnished by such supplier submitted during the 12-month period prior to the date of such determination.''.

SA 3693. Ms. MURKOWSKI submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

In section 1402, strike subsection (a).

SA 3694. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

On page 144, between lines 2 and 3, insert the following:

SEC. 2214. SAVINGS TO FUND FEDERAL PELL GRANTS.

Notwithstanding any other provision of this Act, the savings resulting from this subtitle that are spent on healthcare under subtitle B shall instead be used to provide additional funding for the Federal Pell Grant program under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a), in order to address budgetary shortfalls for such program for fiscal years 2010 through 2019.

SA 3695. Mr. ALEXANDER submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

On page 143, strike lines 1 through 13 and insert the following:

''(7) INTEREST RATE DISCLOSURE.—

''(A) PROVISION OF ASSISTANCE.—The Secretary shall provide annual disclosures to student and parent borrowers of student loans under this part on the annual and cumulative difference of the interest rate and amounts owed in interest paid by the student, as compared to the interest rate paid by the Department of Education to the Department of the Treasury.

''(B) FUNDS.—There are authorized to be appropriated, and there are appropriated, to carry out this paragraph (in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated), $5,000,000 for each of the fiscal years 2010 through 2019.''.

SA 3696. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

Strike section 1002 and insert the following:

SEC. 1002. REPEAL OF INDIVIDUAL MANDATE.

Sections 1501 and 1502 and subsections (a), (b), (c), and (d) of section 10106 of the Patient Protection and Affordable Care Act (and the amendments made by such sections and subsections) are repealed and the Internal Revenue Code of 1986 shall be applied and administered as if such provisions and amendments had never been enacted.

SA 3697. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of section 1402(a), insert the following:

(5) INFLATION ADJUSTMENT.—Section 1411 of the Internal Revenue Code of 1986, as added by paragraph (1), is amended by adding at the end the following new subsection:

''(f) ADJUSTMENT FOR INFLATION.—In the case of any taxable year beginning after December 31, 2013, each of the dollar amounts under paragraphs (1) and (3) of subsection (b), subparagraphs (A) and (C) of section 3101(b)(2), and clauses (i) and (iii) of section 1401(b)(2)(A) shall be increased by an amount equal to—

''(1) such amount, multiplied by

''(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting 'calendar year 2012' for 'calendar year 1992' in subparagraph (B) thereof. If any increase determined under this subsection is not a multiple of $1,000, such increase shall be rounded to the next lowest multiple of $1,000.''.

SA 3698. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, insert the following:

SEC. 1___. LIMITATION ON APPLICATION OF ACTS.

Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not implement the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2011 until the Office of the Actuary at the Centers for Medicare & Medicaid Services certifies to Congress that such Acts will reduce National health expenditures relative to the level of such expenditures under current law.

SA 3699. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 4872, to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13); as follows:

At the end of the bill, insert:

TITLE III—TEMPORARY EXTENSION OF CERTAIN PROGRAMS

SEC. 300. SHORT TITLE.

This title may be cited as the ''Continuing Extension Act of 2010''.

SEC. 301. EXTENSION OF UNEMPLOYMENT INSURANCE PROVISIONS.

(a) IN GENERAL.—(1) Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(A) by striking ''April 5, 2010'' each place it appears and inserting ''May 5, 2010'';

(B) in the heading for subsection (b)(2), by striking ''APRIL 5, 2010'' and inserting ''MAY 5, 2010''; and

(C) in subsection (b)(3), by striking ''September 4, 2010'' and inserting ''October 2, 2010''.

(2) Section 2002(e) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438), is amended—

(A) in paragraph (1)(B), by striking ''April 5, 2010'' and inserting ''May 5, 2010'';

(B) in the heading for paragraph (2), by striking ''APRIL 5, 2010'' and inserting ''MAY 5, 2010''; and

(C) in paragraph (3), by striking ''October 5, 2010'' and inserting ''November 5, 2010''.

(3) Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444), is amended—

(A) by striking ''April 5, 2010'' each place it appears and inserting ''May 5, 2010''; and

(B) in subsection (c), by striking ''September 4, 2010'' and inserting ''October 2, 2010''.

(4) Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking ''September 4, 2010'' and inserting ''October 2, 2010''.

(b) FUNDING.—Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) by inserting after subparagraph (D) the following new subparagraph:

''(E) the amendments made by section 2(a)(1) of the Continuing Extension Act of 2010; and''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 2 of the Temporary Extension Act of 2010 (Public Law 111–144).

SEC. 302. EXTENSION AND IMPROVEMENT OF PREMIUM ASSISTANCE FOR COBRA BENEFITS.

Subsection (a)(3)(A) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), as amended by section 3(a) of the Temporary Extension Act of 2010 (Public Law 111–144), is amended by striking ''March 31, 2010'' and inserting ''April 30, 2010''.

SEC. 303. INCREASE IN THE MEDICARE PHYSICIAN PAYMENT UPDATE.

Paragraph (10) of section 1848(d) of the Social Security Act, as added by section 1011(a) of the Department of Defense Appropriations Act, 2010 (Public Law 111–118) and as amended by section 5 of the Temporary Extension Act of 2010 (Public Law 111–144), is amended—

(1) in subparagraph (A), by striking ''March 31, 2010'' and inserting ''April 30, 2010''; and

(2) in subparagraph (B), by striking ''April 1, 2010'' and inserting ''May 1, 2010''.

SEC. 304. EHR CLARIFICATION.

(a) QUALIFICATION FOR CLINIC-BASED PHYSICIANS.—

(1) MEDICARE.—Section 1848(o)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(o)(1)(C)(ii)) is amended by striking ''setting (whether inpatient or outpatient)'' and inserting ''inpatient or emergency room setting''.

(2) MEDICAID.—Section 1903(t)(3)(D) of the Social Security Act (42 U.S.C. 1396b(t)(3)(D)) is amended by striking ''setting (whether inpatient or outpatient)'' and inserting ''inpatient or emergency room setting''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of the HITECH Act (included in the American Recovery and Reinvestment Act of 2009 (Public Law 111–5)).

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the amendments made by this section by program instruction or otherwise.

SEC. 305. ELIMINATION OF A SWEETHEART DEAL THAT INCREASES MEDICARE REIMBURSEMENT JUST FOR FRONTIER STATES.

Effective as if included in the enactment of the Patient Protection and Affordable Care Act, section 10324 of such Act (and the amendments made by such section) is repealed.

SEC. 306. EXTENSION OF USE OF 2009 POVERTY GUIDELINES.

Section 1012 of the Department of Defense Appropriations Act, 2010 (Public Law 111–118), as amended by section 7 of the Temporary Extension Act of 2010 (Public Law 111–144), is amended by striking ''March 31, 2010'' and inserting ''April 30, 2010''.

SEC. 307. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.

(a) EXTENSION.—Section 129 of the Continuing Appropriations Resolution, 2010 (Public Law 111–68), as amended by section 8 of Public Law 111–144, is amended by striking ''by substituting'' and all that follows through the period at the end and inserting ''by substituting April 30, 2010, for the date specified in each such section.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be considered to have taken effect on February 28, 2010.

SEC. 308. SATELLITE TELEVISION EXTENSION.

(a) AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.—

(1) IN GENERAL.—Section 119 of title 17, United States Code, is amended—

(A) in subsection (c)(1)(E), by striking ''March 28, 2010'' and inserting ''April 30, 2010''; and

(B) in subsection (e), by striking ''March 28, 2010'' and inserting ''April 30, 2010''.

(2) TERMINATION OF LICENSE.—Section 1003(a)(2)(A) of Public Law 111–118 is amended by striking ''March 28, 2010'', and inserting ''April 30, 2010''.

(b) AMENDMENTS TO COMMUNICATIONS ACT OF 1934.—Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended—

(1) in paragraph (2)(C), by striking ''March 28, 2010'' and inserting ''April 30, 2010''; and

(2) in paragraph (3)(C), by striking ''March 29, 2010'' each place it appears in clauses (ii) and (iii) and inserting ''May 1, 2010''.

SEC. 309. COMPENSATION AND RATIFICATION OF AUTHORITY RELATED TO LAPSE IN HIGHWAY PROGRAMS.

(a) COMPENSATION FOR FEDERAL EMPLOYEES.—Any Federal employees furloughed as a result of the lapse in expenditure authority from the Highway Trust Fund after 11:59 p.m. on February 28, 2010, through March 2, 2010, shall be compensated for the period of that lapse at their standard rates of compensation, as determined under policies established by the Secretary of Transportation.

(b) RATIFICATION OF ESSENTIAL ACTIONS.—All actions taken by Federal employees, contractors, and grantees for the purposes of maintaining the essential level of Government operations, services, and activities to protect life and property and to bring about orderly termination of Government functions during the lapse in expenditure authority from the Highway Trust Fund after 11:59 p.m. on February 28, 2010, through March 2, 2010, are hereby ratified and approved if otherwise in accord with the provisions of the Continuing Appropriations Resolution, 2010 (division B of Public Law 111–68).

(c) FUNDING.—Funds used by the Secretary to compensate employees described in subsection (a) shall be derived from funds previously authorized out of the Highway Trust Fund and made available or limited to the Department of Transportation by the Consolidated Appropriations Act, 2010 (Public Law 111–117) and shall be subject to the obligation limitations established in such Act.

(d) EXPENDITURES FROM HIGHWAY TRUST FUND.—To permit expenditures from the Highway Trust Fund to effectuate the purposes of this section, this section shall be deemed to be a section of the Continuing Appropriations Resolution, 2010 (division B of Public Law 111–68), as in effect on the date of the enactment of the last amendment to such Resolution.

SEC. 310. USE OF STIMULUS FUNDS TO OFFSET SPENDING.

The unobligated balance of each amount appropriated or made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) (other than under title X of division A of such Act) is rescinded pro rata such that the aggregate amount of such rescissions equals $9,200,000,000 in order to offset the net increase in spending resulting from the provisions of, and amendments made by, sections 2 through 10. The Director of the Office of Management and Budget shall report to each congressional committee the amounts so rescinded within the jurisdiction of such committee.

SEC. 311. ELIMINATION OF ADVANCE REFUNDABILITY OF EARNED INCOME CREDIT.

(a) IN GENERAL.—Section 3507, subsection (g) of section 32, and paragraph (7) of section 6051(a) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 6012(a) is amended by striking paragraph (8) and by redesignating paragraph (9) as paragraph (8).

(2) Section 6302 is amended by striking subsection (i).

(c) EFFECTIVE DATE.—The repeals and amendments made by this section shall apply to taxable years beginning after December 31, 2010.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on March 24, 2010, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PERSONNEL

Mr. REED. Mr. President, I ask unanimous consent that the Subcommittee on Personnel of the Committee on Armed Services be authorized to meet during the session of the Senate on March 24, 2010, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. BINGAMAN. Mr. President, I ask unanimous consent that Nassim Zecavati and Jason Ackleson, who are fellows in my office, be granted the privilege of the floor during the pendency of H.R. 4872, the health care reconciliation bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that Brittney Balduf of my staff be granted floor privileges for the duration of the debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CASEY. Mr. President, I ask unanimous consent that a fellow in my office, Avni Shridharani, be granted floor privileges for the remainder of the Senate's consideration of H.R. 4872.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, MARCH 25, 2010

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that when the Senate completes its business, it adjourn until 9:45 a.m. today, Thursday, March 25; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 4872, as provided for under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. WHITEHOUSE. Mr. President, Senators should expect a series of rollcall votes in relation to amendments and motions to the reconciliation bill at approximately 9:45 a.m.

Under the agreement reached tonight, we expect to complete action on the bill around 2 o'clock tomorrow. There are other matters that need to be considered during tomorrow's session. Therefore, Senators should be prepared for additional votes upon disposition of the bill.

ADJOURNMENT UNTIL 9:45 A.M.

Mr. WHITEHOUSE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 2:56 a.m., adjourned until Thursday, March 25, 2010, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate:

EXECUTIVE OFFICE OF THE PRESIDENT

CARL WIEMAN, OF COLORADO, TO BE AN ASSOCIATE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY, VICE SHARON LYNN HAYS, RESIGNED.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

RAFAEL MOURE-ERASO, OF MASSACHUSETTS, TO BE CHAIRPERSON OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS, VICE JOHN S. BRESLAND, RESIGNED.

RAFAEL MOURE-ERASO, OF MASSACHUSETTS, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS, VICE GARY LEE VISSCHER, TERM EXPIRED.

MARK A. GRIFFON, OF NEW HAMPSHIRE, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS, VICE CAROLYN W. MERRITT, TERM EXPIRED.

ASIAN DEVELOPMENT BANK

ROBERT M. ORR, OF FLORIDA, TO BE UNITED STATES DIRECTOR OF THE ASIAN DEVELOPMENT BANK, WITH THE RANK OF AMBASSADOR, VICE CURTIS S. CHIN.

DISCHARGED NOMINATION

The Senate Committee on Homeland Security and Governmental Affairs was discharged from further consideration of the following nomination under the authority of the order of the Senate of 01/07/2009 and the nomination was placed on the Executive Calendar:

*ARTHUR ALLEN ELKINS, JR., OF MARYLAND, TO BE INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY.

*Nominee has committed to respond to requests to appear and testify before any duly constituted committee of the Senate.