EXECUTIVE COMMITTEE MEETING TO CONSIDER
HEALTH CARE REFORM
FRIDAY, SEPTEMBER 25, 2009
U.S. Senate,
Committee on Finance,
Washington, DC.

The meeting was convened, pursuant to notice, at
9:54 a.m., in room 215, Dirksen Senate Office Building,
Hon. Max Baucus (chairman of the committee) presiding.

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

Also present: Democratic Staff: Bill Dauster,
Deputy Staff Director and General Counsel; Russ Sullivan,
Staff Director; Elizabeth Fowler, Senior Counsel to the
Chairman and Chief Health Counsel; Cathy Koch, Chief Tax
Counsel; Kelcy Poulson, Tax Research Assistant; Toni
Miles, Fellow; Kelly Whitener, Fellow; Andrew Hu, Health
Research Assistant; and David Hughes, Senior Business and
Accounting Advisor. Republican Staff: Kolan Davis,
Staff Director and Chief Counsel; Mark Hayes, Republican
Health Policy Director and Chief Health Counsel; Sue
Walden, Health Policy Advisor; Andrew McKechnie, Health
Policy Advisor; Rodney Whitlock, Health Policy Advisor;
Kevin Courtois, Health Staff Assistant; and Becky Shipp,
Health Policy Advisor.
Also present: Yvette Fontenot, Professional Staff; David Schwartz, Professional Staff; Shawn Bishop, Professional Staff; Josh Levasseur, Deputy Chief Clerk and Historian, Athena Schritz, Archivist; and Thomas Barthold, Chief of Staff of the Joint Committee on Taxation.
The Chairman. The committee will come to order.

A few short announcements. When we left yesterday evening, I announced that we would vote on the Grassley GPCI amendment, or a side-by-side of that same subject.

Over the evening, there has been further discussion between Senators on both sides, including Senator Grassley and myself. We are trying to work out, and we have in principal worked out, an agreement. We are writing up that language now and I hope to get that modified Senator Grassley up, and I think it will be agreed to on both sides. It is basically addressing the allocation of dollars under Medicare to doctors under GPCI, the geographic disparities, in terms of cost of living in different parts of the country.

It is very important, obviously, to certain parts of the country who feel that the formula works very much to their disadvantage, and of course those other parts of the country do not want any significant reductions to dollars that already go to those areas. So we will work that out, and hopefully bring that up soon.

Next, there was some discussion that perhaps this morning we would take up a public option amendment.
There are a couple of public option amendments. It is also somewhat related to the co-op provision that is in the bill.

On further discussion, we have decided that we are going to try to work out in combination how we vote on them and how we deal with them, so we are going to bring up public option amendments when we get back, that is, next week. Because Monday is a holiday, when we adjourn today we will not go back in session until Tuesday morning.

So sometime Tuesday, I expect--and hopefully earlier rather than later on Tuesday--we will bring up the public option amendment. I want to take that up soon. It is an extremely important amendment. But I also want to do the best I can, and we as a committee want to do the best we can, to work out the series, the order in which amendments are offered and what nature of public option amendments, just in the most expeditious way. We do not have time today to do all that, but we are going to bring it up when we get back Tuesday.

This will not be a long session today. We will recess today about noon and not come back until Tuesday morning, next week. I expect to go into session about 9:30 next Tuesday morning.

The first amendment now will be --
Senator Roberts. Mr. Chairman? A question, if I might, sir.

The Chairman. Senator Roberts? Absolutely.

Senator Roberts. There are five CER amendments by Mr. Kyl and myself. We would like very much to have them considered at the same time so that we could have some continuity.

The Chairman. I appreciate that.

Senator Roberts. If you are looking for something on Tuesday morning, why, that --

The Chairman. Right. I am just curious. If there are five CER amendments between the two of you, is there any thought that maybe you can kind of combine?

Senator Roberts. Well, there were 10 and we got it down to 5. We had another 5, but there was some bellowing in there and we thought that was not permissible. So, I am just giving you a hard time. Happy Friday, Mr. Chairman.

[Laughter].

Senator Roberts. No. There are five and we can talk about that on Tuesday. I just thought it would be a good time Tuesday morning, if there was some time there where there would be some continuity to it, I think it would be helpful rather than bouncing around.

The Chairman. Well, again, I do not know if you
are serious or not, but if there is any way to combine
those five, that would --

Senator Roberts. I am always serious of intent, sir.

The Chairman. Yes, you are.

Senator Roberts. But these are five very
important --

The Chairman. How are you feeling this morning?

Senator Roberts. Here, feel me. It seems I am
feeling pretty good.

[Laughter].

The Chairman. Good. All right. All right.

The first amendment is an amendment offered by

Senator Ensign.

Senator Ensign. Good morning, Mr. Chairman. My
amendment, I believe, is an important amendment, whether
you are a Republican or a Democrat, simply on the idea
that the Congress--once again, hearkening back to the
Constitution--has a very, very serious role to play when
it comes--especially the U.S. Senate, the advice and
consent clause--to oversight of the administration. That
process, I believe, over the years -- by the way, this is
Amendment Number C10. It has to do with transparencies
and czars.

We are now facing a situation where there is almost
a shadow cabinet that is being developed and it is
thwarting the authority of the U.S. Congress. These
czars in the various positions -- you know, we have the
Secretary of Health and Human Services, but yet we have a
health care czar who is not subject to being called
before the U.S. Senate to testify. We cannot compel her
to come up here and testify because they are not part of
the confirmation process because the administration
claims about this executive privilege, their
communication.

So we have somebody with tremendous power and yet is
not subject to the confirmation process. I think that
this is something that the Congress, whether we have a
Republican President or a Democrat President, we have got
to get a handle on. It started slipping in there with a
czar here and a czar there, but it is completely out of
control now. This committee at least should assert its
authority, saying that a health care czar ought to be
part of the Senate confirmation process.

So, Mr. Chairman, earlier this year President Obama
even said, "My administration will take appropriate
action, consistent with law and policy, to disclose
information rapidly and inform so the public can readily
find and use."

Well, part of that information is having people from
the administration come here and testify. This is, once again, about sunshine. This is about letting light in and open government. If we have administrations, because of the use of executive privilege, trying to get around the balance of powers between the administration and the legislative branch, I think that this is out of line. President Obama has created 18 new czars. These are political appointees with broad powers to create and coordinate policy. Once again, they are not accountable.

The Chairman. Could we be in order, please, so we can hear the Senator from Nevada?

Senator Ensign. Thank you.

The Chairman. There are too many side conversations.

Senator Ensign. I appreciate that, Mr. Chairman.

According to Article 2 of the Constitution, the President is empowered in relevant part to "nominate, and by and with the advice and consent to this Senate, public ministers, consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law." So we clearly have the authority to do this and I think that it is really important.

Once again, this is not a question of going after a Democrat President. We probably should have done this.
We probably should have gotten together and done this before. It is just that it has gotten 18 new ones on top of the ones that were already there. It is just getting out of hand.

I think that we as the Congress need to say to the President, we are not allowing this any more. We are going to take back the power that is rightfully in the legislative branch because the balance of powers is getting out of balance. The Constitution clearly outlined, to keep that balance of power, we need to step up and do the right thing. That is what this amendment is really stating.

The Chairman. Senator, I have a question to ask. I am a little unclear what you have in mind and what this amendment covers. The description I have of the amendment, it would require that czars be subject to Senate confirmation. Does this mean all czars?

Senator Ensign. No. This actually says "any czar handling health care issues."

The Chairman. Oh.

Senator Ensign. It is under the --

The Chairman. That must be a modification.


The Chairman. And that would be in this committee's jurisdiction.
Senator Ensign. Yes.

The Chairman. The problem I have with this fundamentally is, the job title "czar" does not exist. That is, those are not officers --

Senator Ensign. Well, this is a --

The Chairman. I am sorry, Senator. I have the floor.

Senator Ensign. Sorry.

The Chairman. That these are not officers established by law. Any administration can informally designate any name for any person not established by law. The Cabinet Secretaries are established by law, Assistant Secretaries, et cetera. For example, the administration could say, this is the chief, this is the superintendent, this is the captain.

We could make up all kinds of examples, and they are not established by law, they are just designated by the administration. We already, in this committee -- I daresay, about 40 different officers established by law appear before this committee for Senate confirmation, and those are not all health. Those are not all health. I am talking about tax and health and so forth.

But the HHS Secretary clearly does appear before this committee for Senate confirmation, as do Assistant Secretaries. I think this committee has a pretty good
handle on the confirmation process with those officers that are established by law and named by law to be subject to Senate confirmation.

Senator Ensign. Well, Mr. Chairman --

The Chairman. I have a hard time, frankly, of coming to the conclusion that this Senate should require a confirmation process, Congress should require a confirmation process of people within the administration that have job titles not established by law.

Senator Ensign. Mr. Chairman, we have a conceptual mark before us. That conceptual mark, we all know what we are talking about here as far as czars are concerned. Everybody calls them czars. I mean, we know who the czars are. So as a conceptual, we can come up with the legal language in the actual drafting of the amendment when we get to the legal language. But we all know what that is. We cannot call Nancy up here. We cannot compel her to testify right now. She has broad powers.

Most of these czars are not confirmed today. They should be confirmed. If they have broad powers -- this is a question of balance of powers. This is not a shot at the administration. This is a question of any administration, that the Congress should take back its power under the Constitution on this balance of powers.

If we do not step up, you can get more and more
power concentrated in the administration. That, I
believe, is something that we should not do. We should,
as the Senate, stand up and say this is rightful under
the Constitution for us to have the advice and consent
clause and to be able to compel folks to testify. If
they are under the advice and consent clause, they cannot
refuse to testify up here.

The Chairman. Well, I might say, too, that first
of all, I totally agree with transparency. I mean, this
whole process is probably the most transparent
legislative process this Congress has seen, as we are
trying to pass health care legislation. I mean, no
legislative process has been more transparent than the
one we have undertaken here in our committee.

I want every Cabinet Secretary, Assistant Secretary
that is relevant to this committee’s jurisdiction to come
up and testify, and when we call them, they do. Now, we
could go down the administration -- I do not know what
the book is, the executive directory, whatever it is, and
look for somebody like Nancy-Ann Min DeParle and say,
well, she is the czar, so we will make her subject to
Senate confirmation.

Well, let us say we do that. What is the next step?
The next step is--and all administrations do this,
Republican and Democrat--they will say, fine, we will get
somebody else who is sort of the President's private advisor on health care matters that is not subject to Senate confirmation. They will accomplish, with somebody else, the purpose that they all pursue. It gets close to executive privilege. It gets close to separation of powers issues between the U.S. Congress and the executive branch.

I think that we would be wasting our time to try to track down every czar or czar-like person in the administration and say that person is subject to Senate confirmation. We should rather spend our time, frankly, working with the great people we have now that are subject to Senate confirmation we can bring up here, and also just talking informally to Nancy-Ann. I mean, she has given us lots of good information and she is good to work with, but I do not know that having her testify here would really advance the cause of health care reform.

Senator Rockefeller. Mr. Chairman?

Senator Ensign. With all due respect, Mr. Chairman, I do not believe that it is a waste of time for the Congress to assert its authority in this idea of -- there is a constant struggle between the branches of government. There is a constant struggle between the Judiciary, the Congress, and the President. There has, throughout the history of our country. If you do not
fight for each branch of power, you can get more and more power concentrated into that branch.

That is the reason that our founders even set up this idea of separation of powers and splitting of the powers, but they did not want all the power concentration or too much power concentration in the executive branch, in the legislative branch, or the judicial branch. This is a way for the administration to skirt that balance of power, and if they are doing it and we are not asserting our authority, then we are allowing them to get away with it.

Senator Rockefeller. Mr. Chairman?

Senator Ensign. That is why this is worth the fight.

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller?

Senator Rockefeller. Mr. Chairman, I would say to my friend from Nevada two things. One, is that Nancy-Ann is not, and was not, appointed as a czar. That has been created by people trying to push the idea that everything belongs to the government and there is no private sector. But if you want to take somebody who is available to all of us to facilitate, who is a director -- when I was governor, I appointed people like that. They were not cabinet-level, director-level.
But if you want to create that czar that is in your mind, then go to the Senate confirmation process and then you will elevate that person to a level of power that that person, in the case of health care, certainly, does not have. That person is a facilitator, available to you and to all of us. She does not have the "czar" powers that you presume her to have. But if you want to give them to her, then put her through the Senate confirmation and then she will be right up there with Sebelius. I just do not think that is what you want to do.

Senator Conrad. Mr. Chairman?

The Chairman. Senator Kerry sought recognition.

Senator Kerry. Well, one of the reasons that the chief executive is forced to try to create a coordinator is because the Senate confirmation process is such that we do not confirm a lot of people on time. There are a lot of empty positions right now and Senators ought to probably investigate the hold process in that regard.

I am trying to break some people out right now, any number of nominations, two in Treasury right now, and other places. So if you are the chief executive, you say, how am I going to get this coordinated? I cannot get the person in I want to have coordinate it. That is number one.

Number two, in principle, the concept of a czar is a
term of fiction and it has been created in places where very legitimate internal coordination efforts are under way. People have dubbed it as "czar", but really it is perfectly within the rights of a chief executive to try to figure out how to do that.

If we all of a sudden create this confirmed position that goes through the normal confirmation process here, you are just going to have someone else designated to be the person who can get things done. A whole bunch of things would simply not have gotten done in the first months of this administration if somebody was required to be confirmed or if they had not been given authority to try to get the job done. Part of that is our fault because we do not get the confirmations done fast enough.

A third point. I happen to believe there are too many "coordinators" and there are too many special envoys, and there is discussion of even more of them. I think what it does, is it strips the people who have been given that kind of authority within many of these places of the ability to get things done. So we have got these layers of add-on government today, which is a lot of people's fault.

I think the better way to proceed, rather than to have this sort of one-shot, we-are-going-to-do-this-on-health-care-now amendment, would be for all of us to
agree to review the overall connection between the
confirmation process and the ability of government to
govern, and us to have accountability. If we did that in
a competent, comprehensive way, we would be a lot better
off.

And I absolutely agree, I think there are too many
folks running around doing some of this. I know that in
the State Department, where I have a special interest,
there are Assistant Secretaries of State, Deputies, and
others who are totally stripped of any legitimacy in
their effort to do things because there is a special
envoy who does the whole thing. So I think we have got
to look at this very, very carefully, Senator Ensign. I
think you raise a very good point. But I would like to
see us do it in a more comprehensive way, where we come
at it more effectively.

The Chairman. Is there other debate? I might add,
too -- this is a sideline. It is kind of interesting:
there is now a whole on all health confirmations. If we
make this health czar is subject to Senate confirmation,
I will bet there will be holds on her, too. All these
holds that current exist on current health nominees is a
problem. It is really interesting to me.

Not interesting, but I would just tell you: many
Secretaries and the administration has complained
mightily to me about how much they need their Secretaries or their Assistant Secretaries for this position or that, they have just got to get their work done. But because the confirmation process is so slow -- now, in some respects that is the administration's fault, in some respects we are holding it up. But many, many, many times the administration has complained that they do not have their people so they cannot get their work done.

I might say, just 49 presidential nominees come before this committee. Lots of opportunities for holds, but we have an opportunity to grill these people as much as we want. All right.

Senator Ensign. Senator Carper was seeking recognition.

The Chairman. All right. Senator Carper, do you want to speak?

Senator Carper. Just very briefly. In my old job as governor, we had the secretaries of Education, we had secretaries of Health and Social Services. But among the priorities in our administration, one was to raise student achievement. I had an education advisor, not confirmable by the legislature, but someone who worked with me and actually worked very closely with the legislature to develop our standards and accountability and measurement process.
Another major priority of my administration was to strengthen families. We focused on welfare reform, we focused on teenaged pregnancy, and focused on recruiting thousands of mentors in our State. I had a person, not confirmed by the legislature, who worked within the governor's office who helped me on all of those and worked very closely with the legislature.

Another priority was land use reform, to make sure we did not use up all of our open space. Again, not a confirmable position, but somebody who worked from within our administration with the legislature and, I think, to very good effect.

I want to just back up what I think I heard the Chairman saying, and maybe some others saying. I think we have too many confirmable positions. They take too long to get confirmed. If you or I were President, we would be going crazy, trying to get our people confirmed even this late into the first year of an administration. There are a lot of vacancies, a lot of holds on positions that need to be filled. I would just urge us not to create another confirmable position. I think we need fewer rather than more.

Thanks. Thanks, Mr. Chairman.

The Chairman. Senator Ensign?

Senator Ensign. Yes. If I could just conclude
here. Senator Kerry, I think you were exactly right when you said that the Cabinet-level people are having their power usurped. They are. There is no question about that. Who is in charge? Is it Secretary Sebelius or is it Nancy-Ann? We do not know. I mean, from what I understand, you had a meeting, briefed this last weekend with Democratic staff, not with the Secretary, but was with Nancy-Ann.

So, I mean, the bottom line is that it is about accountability. It is about establishing, according to the Constitution—let me read it again—"nominate, and by and with the advice and consent of the Senate, public ministers, consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law." So we have the authority to do this, and this is a question of establishing the balance of powers between and making sure that we are fighting for that balance of powers which is rightfully ours.

Thank you, Mr. Chairman.

Senator Schumer. Would my colleague yield for a question? We find ourselves between a rock and a hard place. As the Chairman mentioned, every health care nominee has been put on hold. We cannot debate them on the floor. Each one is filibustered. You say, bring
more before us, but the ones who have the actual line
authority to do things -- would my colleague be willing
to talk to his leadership about lifting the holds so we
can stop debating some of these health care nominees?

Senator Ensign. And I would say to my friend that
I do think that the nomination process has been broken,
and that is something that maybe this debate is going to
bring out for us to fix. I believe that it was broken in
the last Congress. Remember, this happened when you guys
were putting holds on the last administration as well.

We heard from them, every administration, whether it
is Republican or Democrat, the nomination process is
broken up here, it takes too long, it is too cumbersome,
and things like that. But to get around that and to give
huge powers on people who then cannot be called and
forced to testify, to have that open accountability, I
believe is the wrong solution for it. The right solution
is to fix it, but we should not allow the administration
to get around the laws that are in place and give vast
powers to people who are not accountable to the U.S.
Congress.

The Chairman. All right. Are you ready to vote,
Senator?

Senator Ensign. Yes. Roll call vote.

The Chairman. A roll call vote is requested. The
Clerk will call the roll.

The Clerk. Mr. Rockefeller?

Senator Rockefeller. No.

The Clerk. Mr. Conrad?

Senator Conrad. No.

The Clerk. Mr. Bingaman?

Senator Bingaman. No.

The Clerk. Mr. Kerry?

Senator Kerry. No.

The Clerk. Mrs. Lincoln?

Senator Lincoln. No.

The Clerk. Mr. Wyden?

Senator Wyden. No.

The Clerk. Mr. Schumer?

Senator Schumer. No.

The Clerk. Ms. Stabenow?

Senator Stabenow. No.

The Clerk. Ms. Cantwell?

Senator Cantwell. No.

The Clerk. Mr. Nelson?

Senator Nelson. No.

The Clerk. Mr. Menendez?

The Chairman. No by proxy.

The Clerk. Mr. Carper?

Senator Carper. No.
The Clerk. Mr. Grassley?
Senator Grassley. Aye.
The Clerk. Mr. Hatch?
Senator Grassley. Hatch, aye by proxy.
The Clerk. Ms. Snowe?
Senator Snowe. Aye.
The Clerk. Mr. Kyl?
Senator Kyl. Aye.
The Clerk. Mr. Bunning?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Crapo?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Roberts?
Senator Roberts. Aye.
The Clerk. Mr. Ensign?
Senator Ensign. Aye.
The Clerk. Mr. Enzi?
Senator Enzi. Aye.
The Clerk. Mr. Cornyn?
Senator Cornyn. Aye.
The Clerk. Mr. Chairman?
The Chairman. No.
The Clerk will tally the vote.
The Clerk. Mr. Chairman, the final tally is 10 ayes and 13 nays.
The Chairman. The amendment does not pass.

The next amendment is the Senator from Massachusetts, the age rating amendment, as I recall.

Senator Kerry. Mr. Chairman, I am going to just talk about this very briefly. I want to raise this issue. Hopefully we can work on this between now and the floor. I am confident the position that I am advocating on this amendment, which is Amendment 240, Kerry C15, will be part of the melding of the two bills. I think it is an important one for us ultimately to confront on the floor of the Senate.

That is the question of, what is the appropriate age rating band? My amendment is designed to put a 2:1 rating band, which is what is in the HELP bill. So we are going to have to confront this issue at some point in time. Allowing insurers to charge older Americans vastly higher premiums--5:1 is what we have in the bill now--simply because they are older is a step in the wrong direction of health reform. It is an arbitrary status, if you will, that automatically treats everybody similarly and can wind up in major unfairness and discrimination.

I think insurers ought to be forced to compete on the basis of price, value, and customer satisfaction and not by avoiding the sick and the elderly. So I
appreciate the modification that you have already put in the mark. You have moved it from 5:1 to 4:1, and that is a good step, but I really strongly believe that that is not enough.

I am concerned that the current mark will allow insurers to charge older Americans four times more for premiums than younger people. It just does not make sense. We have people, 65, 70, 80 years old who are healthier than some younger people and who exercise more, and who lead a better lifestyle et cetera. I do not think it is fair, just because of their age, to say you are going to pay four to five times more. It will make insurance unaffordable for more than 7 million Americans who are aged 50 to 65 who now lack health insurance altogether.

Allowing a 4:1 age gap is excessive. I prefer 2:1.

We operate that way in our State, and other States do too. If age rating is not seriously constrained, then insurers are likely to charge older people higher rates as a way of circumventing the prohibition on rating that is based on health status, and in a reformed system you cannot rate based directly on that, obviously. So with strong risk adjustment and reinsurance provisions contained in the mark, we are creating a very safe environment, I think, to eliminate discriminatory rating
practices.

In many States, age differentials are actually 600 percent or more. This puts insurance completely out of the reach of many Americans over the age of 50. It is particularly a problem for older women, where uninsured rates are high because coverage is not affordable. I am glad we eliminated gender rating that I had suggested earlier.

In Massachusetts, Mr. Chairman, we already have a guaranteed issue and renewal requirement to prevent insurers from denying coverage based on preexisting conditions. For small businesses and individuals, insurers may vary rates on a limited number of factors, but rate variation based on age is, as I said, limited to a 2:1 ratio. Seniors cannot be charged more than double the premiums that are charged to younger people. I think that true health reform ought to end the discrimination based on health or age once and for all. This is an important first step, Mr. Chairman.

Senator Wyden. Would my colleague yield on this point?

The Chairman. First, Senator, I would like to ask Ms. Fontenot, just educate us a little bit here about rating bands and tell us what the practice, in general, of States is in terms of bands and the wide variation.
It is all over the lot, basically. As we are moving toward health insurance reform, it is not only asking insurance companies, especially the individual and small group market, to not only not be able to deny coverage based on preexisting conditions, health status, et cetera, but also a second layer or level of reform in this bill is the rating bands.

Could you just tell us a little bit about what States do and what variation there is among States, and just a word or two about the trade-off between the young and the old and the need to get the young in the system, and just some of the considerations that we have to face in striking that balance.

Ms. Fontenot. Sure. The current marketplace, particularly in the individual market, is that the majority of States have no restrictions whatsoever in terms of the rating. There are a handful of States that --

The Chairman. And what does that mean? If there is no restriction, what is the practical effect of that?

Ms. Fontenot. The practical effect of that is that the insurance plan can ultimately charge each individual a separate premium that is based on whatever they deem reasonable. So what has resulted in the market is that the majority of insurers rate based on health status; if
you have been sick in the past you will pay significantly more. They rate based on age at an unlimited extent. They rate based on gender. Women often get charged more. In the small group market they will rate based on your group size, so if you work for a smaller employer you will pay a higher premium. If you work in a more risky industry you will pay a higher premium. It is virtually unlimited, the number of factors.

The Chairman. All right. And in the mark, what have we done about all that?

Ms. Fontenot. So in the mark, what we have done is we have limited rating in both the individual and small group market to the fact that you can only rate based on family composition, so if you have more people in your family you can pay a little more; age, but only to 4:1, so we have compressed that to 4:1; and tobacco use, so if you smoke you can pay 1.5 times more than a non-smoker.

The Chairman. And what is the trade-off between the young and old, and what is the importance of that trade-off?

Ms. Fontenot. So the trade-off between the young and old is that the more you compress the age rating, so the difference between, say, 5:1 and 2:1, is that it forces younger individuals in the marketplace to pay a little more to subsidize the older individuals that are
coming in.

So the trade-off is, as much as we want to make it affordable for older individuals to purchase insurance, it is critical to have what we call the "young immortals" or "young invincibles" purchase coverage and come into the marketplace, because without them premiums are going to go up for everyone.

If the insurers anticipate that they will not have a risk pool that is balanced between the older/sicker and the younger/healthier, then they will charge a premium that reflects the fact that they anticipate getting a sicker risk pool, which also goes back to the personal responsibility requirement and the need for that requirement. So we have tried to strike a balance in the mark between making it affordable for older people and making it more attractive for younger people to make sure that they get into the marketplace.

The Chairman. All right. So right now the mark is 4:1.

Senator Wyden?

Senator Wyden. Mr. Chairman, I think Senator Kerry is making an extremely important point. If you look today at the countryside as it relates to health policy, the people that are getting hammered the hardest in America are the people between the ages of 55 and 64.
These are folks that are essentially a decade away from Medicare and they also are, in a bad economy, feeling some of the most direct pain of getting laid off, because they are not in a position to get additional economic opportunities.

One additional area I would like us to look at as we go forward is trying to reduce this discrimination against older people. I had filed an amendment--Senator Kerry and I have worked together on this--to try, as we get into the exchanges, to get as many of the people between 55 and 64 into large groups, because if they are in large groups, that is where you are likely to see the least age discrimination.

Mr. Chairman, you and your staff have been very helpful in working with us on this issue. I just agree with Senator Kerry. It is going to take a lot more work, because to have the people between the ages of 55 and 64 getting hit this hard in a bad economy, we just need to stay at it and find some additional relief for them.

The Chairman. Thank you.

Senator Grassley?

Senator Grassley. Yes. I think what I would try to do is just emphasize some of the things that Ms. Fontenot brought up, but with some specifics I had and some remarks I was going to make. This would be in
regard to being against the Kerry amendment. So I am kind of asking a question of you. At one time in our discussion of the group of six, it seems to me I remember that we were talking about some States having a division of 28:1. So, there are some really extreme differences. So what we are trying to do is modify it, but do it in a way where it is not too harmful to young people coming into the system and not too bad for older people as well.

So I thought I would quote Oliver Wineman, a highly regarded actuarial. He concluded that moving to 5:1 would result in a 48 percent price increase for the youngest/healthiest, one-third of individuals, in the year 2013. So we have already exacerbated that situation a little bit for younger people when we move to 4:1 in the Chairman's modification. Now we are debating this further increase. Then Oliver Wineman concluded that tightening the rating bands down to 2:1 would result in yet another increase of almost 50 percent.

So I think they have made it very clear that as these prices increase, more young people will choose not to buy coverage. Getting them into the system is the goal that the Chairman's mark wants to accomplish, so I hope that we will not move in the direction that Senator Kerry wants us to move.

Senator Conrad. Mr. Chairman?
The Chairman. Senator Conrad?

Senator Conrad. Mr. Chairman, if I can inquire of the staff, because, Senator Grassley, you and I remember the discussions in a very similar way, that there is this tension and balance—I think the Chairman was getting at that in the questioning of the staff—between being fair to all age groups.

The fact is, there is a difference in risk, the older you are. If you do not reflect that in some way, you are going to put tremendous upward pressure on the premiums of young people. That will create a disincentive for them to buy insurance. That will keep healthier people out of the pool. That will raise the risk premiums for everyone who is left in the pool and raise rates for everyone. I just hope that we think about the balance.

I would ask Ms. Fontenot, I remember during the group of six deliberations that we had a series of charts that showed an analysis of what happens to the premiums of younger people if you go from, I think we were then at 5:1 on an age variation, to 2:1. Do you have those tables available to you?

Ms. Fontenot. Yes.

Senator Conrad. And what do they tell us about looking at a younger cohort? What would happen to their
premiums if we were to shift from the 4:1 that is in the Chairman's mark to 2:1?

Ms. Fontenot. So the move from 5:1 to 4:1, at a certain actuarial value, results in an increase for the young immortals of probably a little under $150. So if you were to move to 2:1, you would probably exacerbate that three times or so.

Senator Conrad. How much?

The Chairman. Is that per month?

Ms. Fontenot. That is per year.

The Chairman. Per year. One hundred fifty dollars per year?

Ms. Fontenot. Yes.

Senator Conrad. And you would increase that by how much if you went from 4:1 to 2:1?

Ms. Fontenot. There would probably be a doubling.

About a doubling.

Senator Conrad. So, $300.

Ms. Fontenot. You would have to ask an actuary.

But I would say that this was all done before we added the young immortal plan that is now in the Chairman's mark. The addition of that plan, which makes coverage more affordable for younger individuals, is the reason we were comfortable then moving to 4:1 in the mark.

Senator Conrad. Yes. And could I just end on this
question, Mr. Chairman? In terms of adding the young
immortals--and I do not know how we ever got that
terminology--the idea is that young people are reluctant
to buy insurance because they do not think they are going
to get sick.

Ms. Fontenot.   Right.

Senator Conrad.   Or some awful thing is going to
happen to them.

Ms. Fontenot.   Right.

Senator Conrad.   But, of course, unfortunately,
awful things do happen. They know that if they are in a
car accident, they are going to go to the emergency room
and they are going to get treated at a hospital.

Ms. Fontenot.   Right.

Senator Conrad.   Maybe you could share with us the
tables that you are referencing, because I think it would
be useful for all members to see those because there is a
price to be paid, is there not, for those who are in the
younger cohorts, if we change the rating bands further
from what has already been done?

Ms. Fontenot.   Yes. Absolutely, there is. We can
get you those tables. We have had actuarial firms who
have run numbers for us on them.

The Chairman.   Senator Nelson?

Senator Nelson.   Thank you, Ms. Fontenot, for your
explanation. I want to ask you, the larger that the pool is of which the insurance is spread over, does that or does that not affect the charges that you have just been talking about with regard to the differential in age?

Ms. Fontenot. Absolutely. I mean, if you have a larger pool, there is going to be more risk to spread across.

Senator Nelson. Aha! So, to protect elderly people that Senator Kerry wants to do, you can do that by making your pools much larger, so that if you are doing 9 million Federal employees and Federal retirees, you have got a much better chance of having that differential a lot less. So why do we not consider making these pools instead of just organized around a State?

If it is a State like mine, it has got lots of millions of people. But if it is a State like Senator Conrad's, it is a very small State and he does not have a lot of people that are going to be in that health insurance exchange. So why do we not address this problem by making those health insurance exchanges much larger?

The Chairman. Well, Senator, the mark allows that. It provides for that.

Senator Nelson. All right. It would be necessary to do that, but you could even force that if you brought
the differential between old and young down, as Senator Kerry is suggesting. That would even force a small State to make that a much larger pool of people, millions of people, instead of a few hundred thousand.

The Chairman. Well, there are a lot of factors that would encourage States to get larger pools. This would be one factor. There are many factors. But we have changed the mark, though, to do two things to help address this contention that we have been discussing here.

One, is to reduce the 5:1 to 4:1 wraps, as Senator Kerry is suggesting, to go still further. We also add the younger invincibles in too to help them get insurance, because the more you compress, the more pressure there is on them. So we take some of the pressure off to buy it for the young invincibles.

Senator Kerry. Mr. Chairman?

Senator Nelson. I think you have done steps in the right direction. I think what Ms. Fontenot has taught us here is that you can correct a lot of this problem by making the pools a lot bigger. Now, you know there are other things in here that are discriminating against the elderly. One of them is that we are putting that excise tax on Cadillac plans. Well, guess who the biggest portion of the population is that has the Cadillac plans?
It is those that are the elderly. What we want to do is to reverse that differential of 5:1--you have got it 4:1 here--even more. As you go forward over the years and expanding the pools, the health insurance exchange side is certainly a way.

Senator Kerry. Mr. Chairman?

The Chairman. Senator Kerry? Go ahead, Senator Kerry.

Senator Kerry. Well, I want you to be able to also hear me.

The Chairman. I am sorry.

Senator Kerry. I am sorry.

The Chairman. I am sorry.

Senator Kerry. But I want to put this in the context of what we are trying to do here. The whole theory of this effort is to deliver better quality care to Americans at lower cost. I guarantee, this is a balance. Also, part of delivering better quality care to Americans is to get people to be able to be covered who cannot be today. So we are trying to make insurance affordable so you can include more people.

Now, we subsidize young people to buy. A number of the older people will be less subsidized because they earn more, but they do not earn enough to be able to pay 400, 500, 600 percent on the premium. So if the whole
theory here is to be more inclusive and create a bigger pool of people covered and therefore have better health in America, we want to try to even out what it costs. The HELP Committee--Senator Enzi is on it, Senator Bingaman is on it--came to a 2:1.

Now, I have recommended 2:1 because we do that in Massachusetts. We have a mandate that everybody is covered. Young people have had to buy in in Massachusetts, and we subsidize them. We have a subsidy up to 300 percent of poverty to help people buy in.

But we have also provided a 2:1 restraint on what could be charged to the elderly, which is, in a sense, discrimination too, folks. We are already allowing them to charge twice as much as you have charged the younger person, which is a reflection of risk. Now, in our mark, Mr. Chairman, you have $20 billion of reinsurance. We also have risk adjustment in this mark, correct, Ms. Fontenot?

Ms. Fontenot. Yes.

Senator Kerry. That risk adjustment takes into account the very thing we are talking about, which is the differential between older people--who may be more prone to being sick, et cetera. To some degree it also takes into account younger people who engage in more adventuresome activities of sports, for instance, and
wind up in more catastrophic accidents.

Senator Conrad. Kite surfing.

Senator Kerry. There you go. Kite surfing, for instance. I am being teased here.

[Laughter].

The Chairman. That was a little low there.

[Laughter].

Senator Kerry. Actually, it is not.

So my point, Mr. Chairman, is that if we were to work at -- I would take 3:1. I will tell you that right now. I am not going to ask for a vote on this now. We are going to get to this when we get into the melding with the HELP Committee. But we need to think about this, because there is a dynamic here that we must consider. Also, I appreciate that you put in the piece I was trying to get on the early retirees. There is $5 billion in here to provide reinsurance for early retirees. That is helpful. And eliminating gender discrimination is helpful too. I had a bill to eliminate gender discrimination, and I appreciate that that is in there. That helps reduce some of this pressure. But the age piece still remains a problem.

The final comment I would make, Mr. Chairman, we are trying to create a sort of legitimate insurance concept here, which I talked about a little bit yesterday. In
the insurance of homes, you do not discriminate based on age. You look at sort of the events, and you look at what the insurance is going to have to pay out, and people pay the same premiums based on a different calculation.

We are trying to create a similar kind of risk assessment calculation here. I believe the current gender discrimination leaves us open to gross distortions in how insurance is available to people and who gets charged what for it.

The Chairman. Senator Stabenow?

Senator Stabenow. Mr. Chairman, if I might just add, I wanted to --

The Chairman. Senator Kyl, did you seek recognition?

Senator Kyl. Yes. I have been seeking recognition.

The Chairman. I am sorry.

Senator Stabenow. Please. I would be happy to.

The Chairman. Senator Kyl? Senator Kyl? I apologize. I did not see you.

Senator Kyl. We are on a parallel and you have got Senator Grassley between us, so I know it is not easy.

The Chairman. He is a big man.

Senator Kyl. He is, indeed.
[Laughter].

Senator Kyl. I would like to just make about three quick points here. First of all, to the last point that Senator Kerry made, with all due respect, I do not think it is correct. In comparing this to car insurance, you said we do not use age, but rather events. Well, that is not true. Age is one of the biggest determinants in car insurance; I know, because I had a car that, when my son turned 16, was going to quadruple my insurance payments, so I sold the car.

The Chairman. We have all gone through that.

Senator Kyl. Exactly. And go to the older citizens' type of car. Second, basically, age is about the only proxy for health status left, since we have taken out all of the things like preexisting conditions and so on. There really is not, except for tobacco, any other proxy here to evaluate a person's condition. There is no question, as Ms. Fontenot said, without young people in the pool, premiums will go up for all. That is a point that we have been trying to make for a long time. Insurance premiums, under this bill, are going up, not down.

With respect to young people, with the kind of issues we're talking about here, there is no question that they will go up. So to the notion here that somehow
people are going to see a reduction in their insurance
premiums, that is just not going to happen.

Let me give you some very specific examples. I have
just gotten four here from people on the committee who
happen to be here right now. This is from the Council
for Affordable Health Insurance and their insurance
actuary, Mark Littau, who made a study of this. Here is
a chart. These are actual plans. I will start with the
one in Phoenix. It is a Cigna plan, a $2,000 deductible
PPO. It should be a pretty inexpensive plan. The
current cost is $512, with the 2:1 age band application
it would go to $998. That is a 95 percent increase.

In Florida--Senator Nelson is here--a United policy,
with a $1,500 deductible network, would start at $432,
pretty good, but it would double to $842. In Des Moines,
Iowa, United, the same kind of $1,500 deductible PPO
would go from $369.15 to $719.84. And in Topeka, Kansas,
a $1,000 deductible United network plan goes from $601 to
$1,172. Those are substantial increases.

So let us do not deceive ourselves, that adjusting
these percentages will make a huge difference. I
appreciate the fact that the 2:1 is what exists in
Massachusetts, but remember, Massachusetts has the
highest premiums in the country. I do not think that is
where we want to go.
The last point that I would make, Mr. Chairman, is, I am just astounded, when I read through the mark, at how our constituents must look at us. Here we are in the U.S. Senate, writing these kind of details into insurance policy. I mean, we are regulating every aspect of insurance here. On page 2 of the Chairman's mark in this particular section, in our great wisdom we have decided that for tobacco use, it should be 1.5:1. That sounds a bit arbitrary to me, but that is our collective wisdom.

On family composition, it should be 1:1, but an adult with a child, it should be 1.8:1. What on earth leads us to believe that we have the perspicacity--to repeat that word, the wisdom, the judgment--to make all of these decisions and write them into law? And remember what we are doing: we are controlling the prices of insurance policies.

When the American people appreciate the full extent to which we are meddling in everything that has to do with health care, I think they are going to rightly conclude that the composite of this bill, two big notebooks' worth here, provides for the government take-over of insurance, and therefore, because of the way that insurance is delivered and providers are paid for, the way that health care is delivered as well. That is what we mean when we say there is too much government.
intrusion, that we do not have the wisdom to get all of these things right.

The private sector is much more agile and adept at adapting at conditions and, at a minimum, leaving these kind of decisions to the State, which has a better handle on that situation than here at the Federal Government, and is more agile to respond to them as well and makes more sense. This is one of the reasons why we are very skeptical of the degree of detailed meddling in the marketplace that this bill represents, and would even be exacerbated with the amendment of Senator Kerry.

The Chairman. Senator Stabenow?

Senator Stabenow. Thank you, Mr. Chairman.

First, to respond to my friend from Arizona, I have a very different view about how the private marketplace has worked for families, for people in America. We compare insurance company profit increases of 425 percent in the last 8 years with a 200 percent increase in premiums, and wages, on average, during that period going up 25 percent, and certainly less in my State.

I think the public is asking us to intervene and do something about a product that is not optional. If you do not want to have car insurance, you can not buy an automobile. If you do not want to have house insurance, you do not have to buy a house. But you do not have a
choice as to whether or not you have a body and you might get sick, and you probably will get sick, or somebody in your family will get sick.

So health insurance is different. I believe that, in fact, the public is asking us to create a system that is more fair and that gets rid of the abuses. We have made a decision in this framework to do it within the context of maintaining private insurance, but you cannot say to folks, you are going to have to participate in the private insurance marketplace and not make sure the rules are fair for them, and they are not right now, for too many people. So I just have a very different view, and I believe this legislation comes at this from a very different view about whether or not this works right now.

Mr. Chairman, on the amendment in front of us, I just want to lend my voice to Senator Kerry. I believe the mark moves in the right direction. I appreciate that. I would like very much to see it move farther. I think when it is coupled with what is happening around ratings for older people, particularly retirees--early retirees--and then you couple it with what Senator Nelson spoke about in terms of the excise tax on what have been called Cadillac plans--I think there are a lot of Chevys in there, and I like both of those, by the way, and hope that everyone will go buy one of those two vehicles.
[Laughter].

Senator Stabenow. But the reality is that pre-
Medicare retirees, folks that are being forced to retire
at 52, 55, 57, 62 years old, are paying more just because
they are in a marketplace where they are rated
differently because they are older. In fact, when we
compare it to active workers and retirees, their
benefits, in many cases, are actually less. What they
are getting is actually less and they are paying a lot
more.

So I will, at a later point, have an amendment. I
have offered the amendment, but will exempt retirees,
those early retirees, from that excise tax. I think we
have to look very, very carefully at that. The mark,
again, moves in the right direction, but we have got a
lot of people, because of what is happening in this
economy, that have had to make the choice to retire
early, and I am concerned about them, Mr. Chairman.

Senator Wyden. Mr. Chairman, just very briefly.

The Chairman. Senator Wyden?

Senator Wyden. On Senator Kyl's point, because
Senator Kyl knows that I am very sympathetic with this
argument about creating a market in American health care,
my sense is that you start this discussion by looking at
the evidence that indicates that when you get people into
big pools, the marketplace will deal with much of this. That is one of the reasons that the Federal Employees Health Benefit Plan is so good for people, particularly in this age group that we are concerned about in the private sector, the 50-64 group.

These people come to us at our town hall meetings and say, I am just praying that I can hang on until I am 65 because if I do not have coverage, I go into this broken individual marketplace, I get hammered, I get discriminated against on the basis of age. I think, in response to Senator Kyl's point, there are a lot of us who want to create a new working marketplace in health care. I will be offering an amendment later on to get as many people in big pools as possible in a fashion that will help both employers and employees. Then I think we get to where Senator Kyl wants to go, which is a larger role for a genuine working marketplace in American health care.

Thank you, Mr. Chairman.

Senator Kyl. Mr. Chairman, may I respond directly to what Senator Wyden just said?

The Chairman. Senator Kyl?

Senator Kyl. Thank you.

I absolutely agree with Senator Wyden, of course. The Republicans have a different approach to expanding
the pools. We have mentioned two of them here. One is
the association health plan, or small business health
plan, or other methodologies for allowing groups of
individuals, organizations, small businesses to combine
together and have the same marketing power as big
business does because they have a larger pool.

Second, not restricting sales to a particular State,
particularly in the low population States. Argument has
been made earlier, and it is correct, if you can combine
the populations of States through compacts, the sale of
insurance across State lines, you have a much bigger
pool. Those are free-market solutions to the problem of
increasing the risk pool. But I just go back to
something that I said earlier--nobody has refuted this--
we are not helping people when we increase their
insurance from 75 to 95 percent.

That was exactly the result of the study here by the
Council for Affordable Health Insurance, which took into
account the provisions of the mark on universal coverage,
guaranteed issue, modified community ratings and these
rating bands, and they concluded that these "reforms are
going to increase the cost of insurance from 75 to 95
percent" for small business workers, the self-employed,
early retirees, we talked about, millions of Americans
who buy their own coverage.
And so when they looked at the capital city of all of the different States with a representative plan and did these calculations, this is what they came up with. I am not making these numbers up. Almost every one of them are almost a doubling of the price of the premium. I just ask my colleagues again: how are we helping our constituents when we are mandating conditions which result in a doubling of the price of the premium?

Now, the doubling does assume Senator Kerry's 2:1 ratio here, but that is what we would get under the Kerry amendment. It just does not seem to me that we could, with a straight face, say to our constituents that we are helping them when we are putting in policies that double their insurance costs.

Senator Kerry. Actually, Mr. Chairman?

The Chairman. Senator Kerry?

Senator Kerry. Mr. Chairman, as I mentioned earlier, I wanted to have this discussion. It is important. I am going to ask to withdraw the amendment. But I would just say two things to Senator Kyl. If you do not have the 2:1 restraint, you are going to wind up with older Americans having to pay prohibitively high rates for insurance policies in various parts of the country. This is actually a limitation, number one. Number two, I will show you that we do not have the
highest insurance rates in the country.

Number three, you are correct that there is an automatic presumption made about young people with respect to auto insurance. In fact, there is a discrimination between boys and girls. But they also get points for good behavior, good driving. You can reduce the rates in a number of different ways, which we do not even entertain here.

Second, it is about a 2:1. That is exactly what we are permitting, or what I sought to permit. The HELP Committee permits a 2:1. We ourselves in this mark are at 4:1. I am just trying to drive it down to a level where you have a fairer distribution of the risk and cost.

I am convinced that because we subsidize younger folks as they purchase insurance when they are healthy, we are spreading the risk, as true insurance should do. Indeed, it will cost more to insure older people. We all understand that. But those younger people will one day be those older people and they will appreciate that younger people are paying in to help equalize the cost so everybody can afford to buy in over a longer period of time.

Now, with that said, Mr. Chairman, this debate, I know we are going to have it on the floor. Hopefully we
can work the ratio and the melding with the Help bill. I
ask unanimous consent to withdraw my amendment.

The Chairman. The Senator has that right.

Two things, frankly. I would not be averse to
trying to work this out in this committee, frankly. We
have got next week. Let us see if we can work it out.

Senator Kerry. Well, I think if we could, I would
be delighted.

The Chairman. Second, there may be a budget
consideration here, because the more we compress the
band, the more upward pressure on the younger.

Senator Kerry. Mr. Chairman, CBO said there is no
budget consideration.

The Chairman. Well, I would like to talk to CBO
about that. But just, logically --

Senator Kerry. I will try to help you find the
same person we talked to.

[Laughter].

The Chairman. All right. That would be helpful.

Senator Cornyn. Mr. Chairman?

The Chairman. All right. The amendment is
withdrawn. Thank you.

Senator Cornyn?

Senator Cornyn. Thank you, Mr. Chairman.

Mr. Chairman, I am back with heeding the Chairman's
admonition about my earlier amendment, C23.

The Chairman. C23.

Senator Cornyn. This is as modified in order to try to address the Chairman's concern. You will recall previously we had asked that the scoring on any amendments that were rejected due to a point of order, or that were accepted where the score turned out to be erroneous, that there be an opportunity to come back and correct those later on. The Chairman pointed out how difficult it would be to post those on the Internet for a period of time, 24 hours and the like.

What I have done is omit that requirement, but to retain the ability to come back and fix our inadvertent mistakes. This requires that all amendments accepted or ruled out of order during the committee's proposal be re-scored by the Congressional Budget Office and Joint Tax for accuracy before the committee can vote to report the bill.

If the initial score is found to be inaccurate or an amendment is found to have been incorrectly ruled out of order, the committee shall debate and reconsider the amendment. I hope that comes close to addressing the Chairman's concern about unnecessary delays, but also gives us a mechanism to correct inadvertent errors.

The Chairman. Is there discussion?
[No response].

The Chairman. Senator, I appreciate your concern about transparency. It is a concern we all have, clearly. I take great pride in the great transparency within which we have conducted our deliberations here. Let me begin by saying I committed to get a CBO score of this bill. After all amendments have been adopted, I will get a score. I am committed to get a score after all amendments are adopted. We need to get that score.

Second, I am committed that the bill will be paid for as budget neutral over 10 years. That is a strong commitment of mine. I will not agree to a bill that is not deficit neutral over 10 years. I am also committed that the bill reduce Federal deficits significantly in the second 10 years to bend the cost curve.

We are going to report out a bill that has that effect, and that is not going to be easy to do. There are a lot of amendments we are talking about here post-modification. The modification itself is going to put additional strain on those principles, but some of these amendments here are going to put additional strain on those principles and it is going to be difficult for us to get a bill through this committee that meets those objectives. I daresay that, just as I just enunciated, are those shared by a large majority of this committee,
if not virtually every member of this committee.

The mark-up, I think, has been conducted with unprecedented transparency. The mark was available almost a full week before mark-up, publicly available on the web site. Before that, the basic ideas of this mark were in the November white paper. There is not a lot of change from the ideas and the options paper that we put out last November. As you know, all the days we have had, with roundtables, walk-throughs, and the unprecedented number of hours this committee has deliberated over all of this.

My concern is that your amendment, on the other hand, even given these commitments that I have enunciated, would create an unworkable set of delays in the mark-up process. The vast majority of mark-ups in this committee have been concluded in one day, the vast majority. Recently, the CHIP bill, the economic recovery bill, those are examples of one day. But this amendment requires additional scoring by CBO of amendments that this committee has disposed of before the committee can come to closure on any measure.

As our experience has shown, many, many times CBO often requires multiple days to score any single proposition. Requiring them to score multiple amendments simultaneously just multiplies those delays. I wish you
could be on telephone conversations I have had with CBO-- it would be quite an experience, maybe even educational-- to get CBO to move to score more quickly.

So I urge my colleagues, let our process work. We know we are not going to report a bill out that is, as I said, not deficit neutral. So we are going to get a final score and all that, so let the process work. When we dispose of amendments, let us put those amendments to bed. I urge my colleagues not to build up a system of constant repetition and delay, which will be the consequence of this amendment.

Senator Cornyn. Mr. Chairman, may I respond?

The Chairman. Sure.

Senator Cornyn. Mr. Chairman, I appreciate the steps that you have outlined that have let the public know what we are doing here. I think this is about fundamental fairness in the committee process and making sure we get it done right. The delays that you are concerned about, I would just note again that the spending in this bill does not start until 2013, so there does not need to be any rush, at least one that would cause us to make unnecessary mistakes.

The Chairman. Senator, I just want to make sure we have the right amendment here. You said 2013. I want to make sure we have the right amendment.
Senator Cornyn. C23, as modified.

The Chairman. All right. Thank you.

Senator Cornyn. Yes, sir.

The Chairman. Thank you.

Senator Cornyn. As you will recall last night, there was a $600 million mistake made. CBO initially said there was no score to Senator Stabenow's amendment, later came back and said there was a mistake and it cost $600 million. There was no offset offered subsequently, so we know the cost of this bill went up $600 million as a result of that mistake. Again, I am not blaming anyone. I am saying it was inadvertent.

Earlier, you will recall, I offered an amendment that had not been scored by CBO because not all the amendments have been able to be scored by CBO because of the number, and the Chair ruled it out of order because you said you believed there would be a cost, even though there was no CBO score. Of course, the appeal of the Chair's ruling was unsuccessful.

So I do not understand how a documented $600 million mistake is glossed over, where my amendment, which was not scored by CBO, was ruled out of order. So this is a matter of fundamental fairness. Plus, I do not know how you ultimately determine what the score of these amendments are, and we can intelligently do our business
with any sense that it is accurate, unless we have the capacity to go back and to correct our errors. I have tried to eliminate the delays that I know you are concerned about, with the posting and the waiting for 24 hours in order to address this. But I think this is a way for us to get it done right and to be fair in terms of the amendments offered by various members, and I would urge you to accept it.

The Chairman. Well, looking at this again, I have got a couple of thoughts. One, is it is even more pernicious than I thought because the amendment provides that all amendments accepted during the consideration be re-scored. I mean, I do not get that. What if CBO has given us a score on an amendment and we accept it? As I read your amendment, it has to be re-scored again. I do not quite understand the need for that.

Senator Cornyn. Well, I do not know that that would entail any more work if it has already been scored once or if it is adopted. It would incrementally add to the bill. Or if there is some dynamic or interplay between various amendments which would cause the need to re-score the overall bill, I mean, I do not think, when we are talking about trillions of dollars, that this is unnecessary or unreasonable to ask.

The Chairman. Senator, I think we are
accomplishing the purpose that you are seeking when you say we will wait for the final bill. For example, let us say an amendment which is scored by CBO passes this committee. As I read this amendment, it has to be re-scored. Let us say another amendment comes up, initially scored by CBO, and we adopt the amendment. Under this amendment--yours--it has to be re-scored again. We know that there is some interaction among amendments.

Frankly, we pushed CBO away from silo scoring. Very often in the past, when we ask CBO for an estimate, they will look at just the narrow aspect of one part of it, but not look to see how it scores in relation to some other parts of, say, this bill. We finally got CBO to score the interrelationship of different provisions in the underlying bill, and they started to do that.

So by the end of the process, that is, we get to final passage and we then get the final score, we will have done what you want. Namely, CBO will have gone through all amendments again, by definition, and looked at the interaction among all amendments, by definition, because it is looking at a final number.

What we really want, I think, is the final number here: is it correct or is it incorrect? Unfortunately, this is not precise. Look at the discussion we had yesterday with Senator Enzi, and I have forgotten who
else--with Senator Conrad--on the Medicaid numbers runs. We get different runs, and so it is not precise. We just do the best we can.

These are economists. This is not precise stuff. We just do the very best we can with what we have got. I think they work hard, very hard. They are honest, they are objective. They are economists, they are academics. They are so committed to this public process and they work so hard. They do not get their names in lights, they do not get credit for all they do. They get a lot of criticism, but they get very little credit for what they do. I probably should compliment them more than I actually do. But you are going to accomplish your purpose when we get that final score at the end.

Just one final point here. Over the night, we found another mistake. This other mistake is not CBO this time. Alas, it is the Joint Committee on Taxation. It is about a $1.6 billion mathematical error, last night, in our favor. My thought was, we would use some of that money to pay the $600 million mistake with respect to the Stabenow amendment, so that is scored. Then we also use the balance of it to help with this GPCI question that Senator Grassley is so ardently working on. But at the end of the day, we will push CBO to get a precise result.

Senator Snowe. Mr. Chairman?
Senator Cornyn. Mr. Chairman, I share your admiration and respect for the professionals at CBO and the work that they are doing. Obviously they are being put under tremendous pressure to try to score amendments in this legislation. I think they are doing the best they can, but they are only human. I do not understand the rush, when the spending is not going to occur for four years. If they did the job correctly in the first instance in scoring it, then I would not expect it would take much to confirm the accuracy. But, in fact, there was a $600 million mistake.

I appreciate you are going to try to accommodate Senator Stabenow with the other $1.2 billion mistake in the committee's favor to try to find a pay-for. In the meantime, my amendment was ruled out of order because it did not have a CBO score. Frankly, due to the Chairman's ruling, I do not see that I get an opportunity to get a score. So I just think it is a double standard when it comes to deciding on --

The Chairman. Well, Senator, if you want to get a score, fine. That is fine. Re-offer the amendment with a score. That is fine. That would be more than copacetic.

Senator Conrad. Mr. Chairman?

The Chairman. Senator Snowe is seeking
Senator Snowe. Mr. Chairman, I just would like to pose a question regarding what the ability of the committee will be with respect to making any adjustments in the event that there are changes in those numbers, in the bottom line or with respect to various provisions. You cited Medicaid, and that is a good example. We have had several reevaluations and the bottom line keeps changing on that with respect to what the States' contribution will be over the next 10 years, or 6 years within that budget window.

So any time that there is a miscalculation or a variation in those numbers, I think that the committee ought to have that opportunity to respond, make adjustments, contribute to any changes in policy regarding those numbers, whether there is a plus or minus in that.

The Chairman. Well, frankly, Senator, I think you raise a very good point. The traditional process might not be sufficient. The traditional process is we report a bill. We do not pass legislation, we report legislation out to the floor, and there is a budget score. If it turns out that it is not what we thought it was, traditionally then we delegate the staff the authority to make changes and adjustments so it does
score.

Now, I think we need to get a better, more evolved process of Senators. This is an extraordinary situation, this bill, and we have got to find some way to deal with that.

Senator Conrad. Mr. Chairman?

The Chairman. I do not want to gloss that point over at all.

Senator Snowe. Thank you. I appreciate it.

Senator Conrad. Mr. Chairman?

The Chairman. Senator Conrad?

Senator Conrad. Mr. Chairman, could I just say to the Senator from Texas, who I admire, and he has got a concern here that has legitimacy. Senator Stabenow's amendment was adopted. Subsequently, CBO changed their score, but the Chairman has indicated that he is going to attempt to address that.

On the gentleman's amendment that the Chairman ruled out of order, I did not speak on it, but having dealt with CBO for 20 years, there is no question. There really was no question that your amendment would have scored, would have cost money. There really is no question that that is the case.

The Chairman has said that if you get a score that shows that it does not cost money, that you have a chance
to re-offer that amendment. That is eminently fair. But let us be square. There is no question: your amendment costs money. The solution that you are offering here would just create chaos on this committee and it would create chaos at CBO.

Requiring that all amendments accepted or ruled out of order be re-scored by CBO, my goodness, I mean, we will have CBO chasing their tail endlessly. At some point, you have to make a decision here. I think the Chairman has been absolutely fair in his conducting this mark-up. He has indicated there was an inadvertent mistake, and you have gracious said you are not blaming anybody. I do not think there was anybody to blame. I think you are right about that, but he is going to do his best now to fix it. And with respect to your amendment, if you could demonstrate that it did not cost money, that you would have a chance to re-offer.

I think it is that spirit that infuses this committee, and always has. You are a relatively new member of this committee. I have been on here a long time. Whether it was Republicans or Democrats running this committee, it has not been anything other than professional, collegial, as bipartisan as one can make it, as fair to members as one can make it.

I would say that through the leadership of every
Chairman, Republican or Democrat, that has been on this committee. This committee has not operated in a kind of "gotcha" mentality that exists on some committees around here that are hyper-partisan. So, I just feel compelled to say that.

Senator Cornyn. Mr. Chairman, if I can just close.

The Chairman. Senator Cornyn?

Senator Cornyn. I accept your offer to get my amendment scored. And the one thing that I would say to my friend Senator Conrad, is if there is a cost, it gives me an opportunity then to point out a pay-for, an offset, right, so it would be revenue neutral? That is the opportunity I am asking for, and I appreciate the Chairman giving me that opportunity.

The Chairman. Senator, you have got it. Score it, offset, then it is germane.

Senator Cornyn. I do think that the safety net provision of this amendment is important, and I would ask for a roll call vote.

The Chairman. All right. And I urge my colleagues to vote not in favor of this amendment.

The Clerk will call the roll.

The Clerk. Mr. Rockefeller?

The Chairman. No by proxy.

The Clerk. Mr. Conrad?
Senator Conrad.   No.
The Clerk.   Mr. Bingaman?
The Chairman.   No by proxy.
The Clerk.   Mr. Kerry?
Senator Kerry.   No.
The Clerk.   Mrs. Lincoln?
The Clerk.   Mr. Wyden?
Senator Wyden.   No.
The Clerk.   Mr. Schumer?
Senator Schumer.   No.
The Clerk.   Ms. Stabenow?
Senator Stabenow.   No.
The Clerk.   Ms. Cantwell?
Senator Cantwell.   No.
The Clerk.   Mr. Nelson?
The Chairman.   No by proxy.
The Clerk.   Mr. Menendez?
Senator Menendez.   No.
The Clerk.   Mr. Carper?
Senator Carper.   No.
The Clerk.   Mr. Grassley?
Senator Hatch.   Aye by proxy.
The Clerk.   Mr. Hatch?
Senator Hatch.   Aye.
The Clerk. Ms. Snowe?

Senator Snowe. Aye.

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Bunning?

Senator Hatch. Aye by proxy.

The Clerk. Mr. Crapo?

Senator Crapo. Aye.

The Clerk. Mr. Roberts?

Senator Roberts. Aye.

The Clerk. Mr. Ensign?

Senator Ensign. Aye.

The Clerk. Mr. Enzi?

Senator Enzi. Aye.

The Clerk. Mr. Cornyn?

Senator Cornyn. Aye.

The Clerk. Mr. Chairman?

The Chairman. Senator Lincoln?

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Chairman?

The Chairman. No.

The Clerk will tally the vote.

The Clerk. Mr. Chairman, the final tally is 11 ayes, 12 nays.
The Chairman. The amendment is not agreed to.

Senator Kerry seeks recognition. Before proceeding to the Senator, I just want to say, the next amendment will be the Cantwell Amendment Number C2. But Senator Kerry would like to be recognized.

Senator Kerry. Senator Kyl, for colleagues, because of the time we took on the last discussion, I just want to make one point that I think is important. We were talking about the 2:1 age rating band in Massachusetts. Senator Kyl asserted that we had the highest premiums in the country in Massachusetts. I think it is important that people not think that that is the consequence of what happens here. We have a very high cost of living.

There are cost of living differentials all across the country. We have high real estate costs, we have high energy costs because we are at the end of the pipeline, et cetera. When you adjust for the differentials, just of cost of living, we are in the bottom half of premiums in the Nation. I want that impact to be understood with respect to the 2:1. Thank you.

The Chairman. Thank you, Senator.

Senator Cantwell?

Senator Cantwell. Thank you, Mr. Chairman. I
would like to call up Cantwell Amendment Number C2, as modified. This amendment, Mr. Chairman, deals with pharmacy benefit managers and transparency. Now, we are obviously trying to get health care reform because we are trying to cut down the cost of health care to Americans. One of the biggest aspects of health care bills that Americans have today is the prescription drugs that they are receiving.

One of the reasons that we have had a lot of discussion about pharmacy benefit managers in the past is because pharmacy benefit managers have become the middleman in delivering prescription drug benefits. My colleagues may remember a few years ago there was a question, when pharmacy benefit managers were actually part of the same drug companies that they were working with, to deliver prescription benefit discounts. So we changed that law so that you could no longer be negotiating with your own parent company and keeping part of the discount instead of passing it on to the consumer.

Well, as the Federal Government has become an even bigger purchaser through the Part D prescription drug benefit, we have the same questions about transparency in drug pricing. We want to know that, as a purchaser of the Federal Government, we are also going to be getting the best price, that if people are negotiating to deliver
a drug benefit, that we know that that benefit, in
discount, is not just being pocketed by the PBM in a
larger number than should be going to consumers.

So this is about transparency through the Secretary
of HHS, and to also make sure, because a new phenomenon
has now arisen. Pharmacy benefit managers and mail-order
pharmacies have gone into business together, so now you
have a pharmacy benefit manager owning the mail-order
system and being able to deliver better discounts, bigger
discouts to them than to the individual pharmacists that
are out in the market.

Again, what we are after here is transparency of
drug pricing, to know what the most competitive offer is
being put on the table, to make sure that the consumer in
the end, when you are making a large purchase and a
discount is being negotiated on behalf of the consumer,
that the consumer actually knows the benefit and we as a
purchasing entity, the Federal Government, know that we
are getting that benefit as well.

This kind of transparency, we believe, will help
drive down drug prices in a significant fashion. We have
made a modification, at the request of Senator Grassley,
to make sure that the penalties for disclosure of this
information that would be at the Secretary of HHS would
have the same penalties that apply in current statute to
Medicaid laws on any kind of disclosure, unlawful
disclosure, of rebate data.

So this is a very important amendment. I encourage
my colleagues to support it. The more transparency we
can have as new systems are developed in the delivery of
partnerships, it will help the consumers really benefit
from the large purchasing that they are doing and to reap
the benefits themselves instead of having the middleman
pocket the money.

Senator Hatch. Mr. Chairman?
The Chairman. Senator Hatch?

Senator Hatch. I would just like to ask a
question. Please, yourself or your counsel, explain how
this amendment is budget neutral. I would like to know,
how does this amendment differ from the one you offered
during the Medicare Modernization Act, the Senate floor
debate? The amendment, while well-intentioned, was very
expensive at the time, if I recall it. There were also
concerns regarding proprietary information not being
protected. So I just want to know if there is some
difference between this and that amendment, because it
was considered to be very expensive.

Senator Cantwell. The original amendment offered
on the floor several years ago was more broadly drafted
and the amendment would have the information reported on
a larger basis. So there was a concern that that would have an impact in the market, a chilling effect, and so CBO then scored that impact that it would have. We have now drafted it more narrowly so that the information is only through the Secretary of HHS, so that information, as a purchaser we should have access to it, so that is why it is now a neutral score.

Senator Hatch. All right. Thank you.

The Chairman. Further discussion?

[No response].

The Chairman. Frankly, I think it is a very good amendment. I strongly approve of it. I mean, this information is needed.

Senator Ensign. Mr. Chairman, do we have --

The Chairman. It is --

Senator Ensign. Oh. Sorry.

The Chairman. It is more transparency, more information. Proprietary interests are protected and there are penalties here for failure to disclose the appropriate information. I think it is a good idea.

Senator Ensign?

Senator Ensign. I just had a question, going back to Senator Hatch. Did CBO officially score this as budget neutral?

The Chairman. Let me ask. Mr. Schwartz?
Mr. Schwartz. Yes, they did.

The Chairman. All right.

Senator Kyl. Mr. Chairman, could I ask a question, too?

The Chairman. Senator Kyl?

Senator Kyl. I do not quite understand the concept here. If the information is proprietary, how are we going to use it to make sure that we can squeeze more from the drug companies, number one? And, second, this has been one of the best examples of where -- I mean, these pharmacy benefit managers have reduced the drug prices dramatically from what the predictions were when this legislation was passed.

I mean, it is one of the really good examples of how competition with the three or four major PBMs have really squeezed a lot of savings out, as a result of which the seniors' premiums have been reduced. So I am not quite sure, A) what the necessity for this is, and B) what the presumed effect is, and C) how it can have an effect if the information is going to be kept proprietary and we are not going to use it against the companies.

Senator Cantwell. So, Mr. Chairman, if I could, in addressing Senator Kyl's issues.

The Chairman. Senator Cantwell?

Senator Cantwell. There is nothing wrong with
pharmacy benefit managers trying to negotiate, on behalf of a purchaser, a discount because they represent a large pool. And, yes, they have been able to get discounts for the population that they are trying to buy a plan for. What we have concerns about is when there is a conflict of interest. As a member of the Judiciary Committee, you may remember some of this debate when it went back to the fact that PBMs were actually owned by drug companies.

People said, well, wait a minute. If you are negotiating with the drug company for a discount and then pocketing that discount, is there not a conflict of interest? We have the same concern now as PBMs and mail-order pharmacies are also partnering up, so you are having the majority of drugs -- and you could have a consolidation through some of these entities that are now the largest supplier of drugs in America, having a true conflict in how they are passing on the savings to the consumer.

If you basically are the subsidiary, you are negotiating with your parent company, you are negotiating a savings and then pocketing part of that savings back to the same entity. Where is the consumer, the large purchaser, really getting the benefit? So this information is for us, the government--in this case, the Department of Health and Human Services--to say, as a
purchaser for Medicare of Part D prescription benefits, we are going to find out what kind of discounts you are actually passing on.

If the pharmacy benefit manager negotiates on behalf of the Federal Government or, say, in this case maybe a county government and basically gets a 50 percent discount, but pockets 45 percent of that and only passes 5 percent on to the consumer, that is a problem. This gives the government, as a purchaser, the ability to get access to this information. I think it is very important that we do not have the kind of conflicts in the interest here that the Judiciary Committee had stamped out before between drug companies and pharmacy benefit managers.

Senator Kyl. Mr. Chairman, if I might ask Senator Cantwell a question here.

The Chairman. Senator Kyl?

Senator Kyl. Thank you.

Would the issue not then be resolved by requiring the disclosure of all relationships? In other words, if there are any legal relationships, whether they are subsidiary, or have contracts with, and in fact rebate money to somebody else? That all could be resolved by simply requiring a disclosure of all relationships rather than seeking the information as to the way that they deal financially with the reductions that they achieve and
translate that into premium reductions.

It seems to me that the idea to avoid conflicts is solved if you simply indicate who the relationships are, and if there are close relationships, then the government would, as you noted, be able to look behind that to see whether or not the conflict or the relationship has resulted in a true conflict of interest.

Senator Cantwell. Well, again, Mr. Chairman, if I could.

The Chairman. Senator Cantwell?

Senator Cantwell. I think I am more than happy, if the Judiciary Committee -- I think it was U.S. Attorneys across American who first started bringing these cases against PBMs that were owned by drug companies into the public eye, and later than was followed up by the Judiciary Committee.

I will be more than happy if the Judiciary Committee looks into the fact that CVS is now becoming one of the largest deliverers of drugs in America, and there could possibly be an antitrust issue here if they end up dominating the market and passing their own savings on to themselves. I think that is truly an issue worth looking at.

But that aside does not mean that the should not be able to get access to accurate information from drug
companies that they are doing business with about the
types of discounts that are being provided in the
marketplace, and how much of the discount that the PBM is
going to negotiate on is actually going to go to the
consumer. I think that as a purchaser, we ought to know
that information.

So this is the kind of access and transparency that
I think will help keep a healthy, competitive system in
America and it will more directly make sure that the
consumer is getting the cheapest price for drugs
possible. That is what we truly want. We want the
consumer to benefit as greatly as possible from the
discounts that they are helping to negotiate.

The Chairman. Is there any further debate?
[No response].

The Chairman. Frankly, I might add that I think
the Senator's amendment is very important. There have
been, in recent years, several lawsuits filed by the
Federal Government, by State governments, and by PBM
clients alleging PBMs have been operating against their
clients' interests, that is, breaching their fiduciary
duties to their clients by secretly retaining rebates and
discounts that the PBMs were obligated to pass on to
their clients. I think that disclosure of the
relationships is fine, but that is not going to solve the
problem.

We all know, in corporate America there are so many
interlocking relationships, it makes even the health care
reform bill look simple, trying to figure out all this
relationships. I think the mere disclosure of
relationship is not going to solve the problem we have.
We need the data and the proprietary interests are being
protected, and I urge us to support the Senator's
amendment.

All those in favor of her amendment, please signify
by saying aye.

[A Chorus of Ayes].

The Chairman. Those opposed, no.

[No response].

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

Senator Kyl, do you have an amendment? It is my
understanding you do.

Senator Kyl. Mr. Chairman, the amendment is Number
C10, entitled "Ensuring Consumer Choice of Health
Benefits". This relates to the mandated benefit and
definition of benefit requirement.

Mr. Chairman, it has been argued that Federal
regulation of health insurance will not drive up costs.
The truth of the matter is, it will. There is plenty of
experience and study to demonstrate that is true.

I referred earlier to a report by the Council for Affordable Health Insurance, CAHI, which found that mandating universal coverage, imposing the regulations that are outlined in the Chairman's mark—for example, like guaranteed issue and modified community rating—will increase the cost of health insurance between 75 and 95 percent.

Additionally, it is well-established that mandated benefits increase the cost of health insurance. Individually, each mandate may have a relatively small cost, but the cumulative effect significantly drives up the cost of coverage. We have already begun to see, in our deliberations yesterday, efforts to expand, or define and thereby expand, the kinds of things that would be required to be covered.

CAHI estimates that current mandated benefits increase the cost of basic health coverage from a little less than 20 percent to perhaps as much as 50 percent. We are talking about the State mandates, now. They have identified 2,133 benefit and provider mandates across the States, which include mandatory coverage for things like the following: port wine stain elimination—that is actually a birthmark removal; varicose veins; Oriental medicine; protein screening; residential crisis service;
athletic trainers; massage therapists. We are all familiar with some of the others.

Making matters worse, the modification of the mark gives the Secretary the responsibility to define these benefits on an annual basis. Let me read the language specifically, amending Title 1, subtitle 3: "To require the Secretary, for individually purchased plans, to define and update no less than annually the categories of covered treatments, items and services within benefit classes."

This is exactly what Republicans have been warning about when we discussed an individual mandate. It is the foundational building block for the government to define Americans' health coverage. When you say you have to have it, you first have to define it. Now we are going to say it is on an annual basis. We already understand the effect of State mandates on premium expenses, and now we have studies that verify this will substantially increase the cost when combined with the other features of the Chairman's mark.

It is a perfect example of how this kind of regulation will increase costs. It will also mean fewer plan options, which ultimately lead to the choice of a government-loaded benefit plan, or essentially no plan at all. This is not what our constituents asked of us back...
in August when they talked about this. They do not want a Federal health board, a health czar, Secretary defining their health coverage, or Federal mandates that are going to increase their premiums, basically Washington making more and more of the health care decisions for them and their families.

I also would like to mention one other study, the Milliman study, which analyzed the Finance proposal, the mark, the imposition, first of all, of the minimum benefit plan, and then second, the bronze actuarial value of 65 percent. In their study they concluded "it will materially increase premiums. For example, premiums could increase by as much as 35 percent with those with a high-deductible health plan. Those insured in a typical lean individual insurance plan would have to increase benefits and rates by as much as 18 percent," this according to Milliman.

So, Mr. Chairman, regardless of which study you turn to, I think it is pretty clear that the result of the defined, now on an annual basis, mandated coverage is going to increase premiums for our constituents, something we have, I gather, promised we are not going to do but would be the inevitable result of this legislation.

If it was necessary before the Chairman's mark or
modification, it is even more necessary now. So the
bottom line is, it would prohibit the Federal Government
from limiting consumer choice by defining the health care
benefits offered through the private insurers.

The Chairman. Thank you, Senator.

This will be the last amendment of the day.
Frankly, I would like to limit Senators to five minutes.
That was the original understanding on remarks. I will
be very brief with mine, saying that I oppose the
amendment. If we are going to require insurance, clearly
insurance companies have to know what they have to cover.
It is pretty simple. In the mark, we have the four
benefit categories and we have the definition of levels.
We indicate what plans generally must include.

This package of inclusions is generally what is
practiced and accepted in the commercial market. We were
not very proscriptive. We just gave categories. We felt
we should not be too proscriptive here. I do believe
this is a good basis for moving forward. Namely, we have
to have some definition of benefits.

I will just name some of the few in the beginning
that are not all that long. But plans must provide
preventive and primary care, they must provide emergency
services, hospitalization, et cetera. It is page 17 of
the mark. So, I oppose the amendment. We have to know
what the coverage will be and what the benefits will be.
We are getting categories here where we are not being too
proscriptive.

Senator Conrad. Mr. Chairman?
The Chairman. Senator Conrad?

Senator Conrad. Mr. Chairman. I do not know the
source, Senator Kyl, of your assertion that there are
going to be these big increases in premiums as a result
of this mark. But in the group of six, we asked CBO for
their analysis. Their analysis was that this would
reduce premiums by 7 to 8 percent in the individual
market, by 3 percent in the small group market. They
have now sent a letter I have not seen, but my staff
informs me, refining that estimate, saying that this
would reduce premiums, the Chairman's mark, by 4 to 5
percent.

Now, that is certainly not everything we would like
to accomplish in terms of reduction in premiums. There
are other amendments that will be considered here and on
the floor to reduce premiums even further. But CBO's
analysis, professional analysis, was that the Chairman's
mark will reduce premiums, not increase them.

The Chairman. Senator Rockefeller?

Senator Rockefeller. This is just an observation.

This is one of dozens and dozens of amendments that come
from across the aisle. It occurs to me that they all
seem to be saying that government is trying to decide
everything, which is not the case. Government does have
a responsibility. I mean, the Congress was not created
for no purpose whatsoever, it as created to help do
policy, and we do that policy. We could be in a position
where we pass some very good policy here. That is not
defined yet.

But what strikes me as ironic is that the result of
all of these amendments that come from the other side,
they have decided, I think, that they want to make sure
that insurance companies get more money, the point that
Senator Cantwell was making. More money. So if you keep
government out, that has some resonance with the American
people, of course.

But what the American people are going to learn from
this series of mark-up sessions and our product is that
they are being done over, had for lunch, by the insurance
companies. Everybody has to make their sort of pick as
to how they are going to go philosophically. I think the
picks that are made with respect to the two sides of this
aisle are fairly clear.

The Chairman. Thank you, Senator.

On this point, just one final. We have to wrap up
pretty quickly here, so I will be very quick. I might
say to my good friend from Arizona, as a fellow westerner, we love the west. This is really a Wild West amendment. It is basically saying insurance companies can provide whatever benefits they want. I do not know if that is the result that we want. People need to know there has to be some consistency in what we are doing here, and I think the mark starts that in the right process.

Senator Snowe? No, Senator Stabenow.

Senator Stabenow. Mr. Chairman, just an example of why this does not work for real people. If we are indicating again that people need to participate in the individual or small marketplace for health insurance, right now 60 percent of the insurance companies in the individual marketplace do not offer maternity care. At least for four of us on this panel, that is a pretty big deal, and I think for all of us, actually.

But the idea that we would move forward and not have some basic parameters—again, this is about consumers, this is about describing a basic insurance plan within a system that we are setting up, a universal system. I do not think you can go forward and allow 60 percent of the insurance companies not to provide basic maternity care in the new system we are setting up that hopefully is going to be better than the old one.
Thanks, Mr. Chairman.

Senator Kyl. Mr. Chairman?

The Chairman. Senator Kyl?

Senator Kyl. First of all, I do not need maternity care, so requiring that to be in my insurance policy is something that I do not need and will make the policy more expensive.

Senator Stabenow. If I could just say to my colleague, I think your mom probably did.

[Laughter].

The Chairman. All right. Senator Kyl has the floor.

Senator Kyl. Yes. Over 60 years ago, my mom did.

[Laughter].

Senator Kyl. You notice, I was not too specific with regards to that.

[Laughter].

Senator Kyl. Sure, you have to have a general definition. If you are going to mandate something, you have to generally define what it is. But you do not have to define it in all of the specificity that is contemplated by the mark. What makes it worse, as I said, is the modification to the mark, which puts the Secretary into the position every year. Think about the political pressures that are going to exist on the
Secretary every year to add more.

Staff informs me, and this is intuitive, that CBO has commented that over time, as the political pressures mount to add more and more, the expense will increase and the premiums will increase. So you have to ask two questions. First of all, with regard to the effect on premiums, it is for whom and when? Premiums will clearly go up for some. One of my colleagues asked what my sources were, and I will state them a third time here. Milliman is one, Council for Affordable Health is another.

Here is a letter dated September 22 of this year to the Chairman from the CBO: "At the same time, premiums in the new insurance exchanges would tend to be higher than the average premiums in the current-law individual market, again, with other factors held equal, because the new policies would have to cover preexisting medical conditions and could not deny coverage to people with high expected costs for health care. CBO has not analyzed the magnitude of that effect. Of course, some people with high expected costs for health care do not purchase insurance today because of high premiums they would be charged. Those premium amounts do not enter the average for the current market because they are not purchased." They go on, "People
with low expected costs for health care, however, would
generally pay higher premiums."

Now, my understanding is, this is from Doug
Elmendorf, so I am not sure of the source for the
statement that premiums would go down. Second, is it not
correct, I ask the staff here, that the CBO only scored
the mark? The modified mark--at least this provision in
the modified mark--has not been scored. Is that correct?

Ms. Fontenot. I am sorry. Which provision,

Senator?

Senator Kyl. The modified Chairman's mark with
respect to the mandated benefits.

Ms. Fontenot. CBO has --

Senator Kyl. The secretarial annual revision of
coverage.

Ms. Fontenot. CBO did score that provision as
budget neutral. The provision requires the Secretary to
stay within the bounds of what is covered under a typical
employer plan.

Senator Kyl. Yes.

Ms. Fontenot. They have scored that as budget
neutral.

Senator Kyl. Right. But budget neutral is not the
question.

The Chairman. Senator? Senator?
Senator Kyl. The question is, with respect to the premiums charged to the beneficiaries, is their conclusion different than in the September 23rd?

Ms. Fontenot. The premiums tied to the beneficiaries are really dependent on the actuarial value of the plan, not the benefits covered. So to the extent that we have not changed the actuarial value, the premium will remain within the range that it was.

Senator Kyl. So then presumably the conclusion of CBO, with respect to the modified mark, would be the same as the September 22nd letter relating to the mark, which says that the premiums in the new insurance exchanges would tend to be higher than the average premiums.

Ms. Fontenot. The CBO letter specifies that the mark would lower the administrative costs 7 to 8 percent, which is what Senator Conrad was referring to.

Senator Kyl. All right. There is a difference between administrative costs and premiums. I have been talking about premiums all along here. So we can then agree that with respect to premiums, this mandate and the other provisions of the mark would tend to be higher. Premiums in the new insurance exchanges would tend to be higher than the average premiums in the current-law individual market.

Ms. Fontenot. I believe it says premiums would be
higher for some and lower for others, but that more of
the premium dollars will be spent on medical costs and
fewer on administrative costs.

    The Chairman. Senator, I just wonder, as a
courtesy to members, many members really are rushed to
leave. Could we vote on this now?

    Senator Kyl. Yes, Mr. Chairman.

    The Chairman. Thank you very much.

    Senator Kyl. But let me just make this point.

    The Chairman. If we could, as a courtesy to
members, I would really like to have the Clerk call the
roll.

    Senator Kyl. All right. But Mr. Chairman, you
asked me to bring up my amendment.

    The Chairman. Correct.

    Senator Kyl. I did.

    The Chairman. Yes.

    Senator Kyl. And we are in a very important
discussion about whether premiums will increase under
this bill, and the CBO has said they will. There has
been an assertion, I thought, that premiums would not go
up. Now that is clarified. We are talking about
administrative expenses. Our constituents deserve to
know that, according to CBO, premiums will go up as
compared to current-law individual market, and my
amendment seeks to try to ameliorate that bad effect on our constituents.

Senator Rockefeller. We are ready to vote. The Clerk will call the roll.

The Clerk. Mr. Rockefeller?
Senator Rockefeller. No.
The Clerk. Mr. Conrad?
Senator Conrad. No.
The Clerk. Mr. Bingaman?
Senator Bingaman. No.
The Clerk. Mr. Kerry?
Senator Rockefeller. No by proxy.
The Clerk. Mrs. Lincoln?
Senator Rockefeller. No by proxy.
The Clerk. Mr. Wyden?
Senator Wyden. No.
The Clerk. Mr. Schumer?
Senator Rockefeller. No by proxy.
The Clerk. Ms. Stabenow?
Senator Stabenow. No.
The Clerk. Ms. Cantwell?
Senator Cantwell. No.
The Clerk. Mr. Nelson?
Senator Rockefeller. No by proxy.
The Clerk. Mr. Menendez?
Senator Menendez.  No.

The Clerk.  Mr. Carper?

Senator Rockefeller.  No by proxy.

The Clerk.  Mr. Grassley?

Senator Snowe.  Aye by proxy.

The Clerk.  Mr. Hatch?

Senator Snowe.  Aye by proxy.

The Clerk.  Ms. Snowe?

Senator Snowe.  No.

The Clerk.  Mr. Kyl?

Senator Kyl.  Aye.

The Clerk.  Mr. Bunning?

Senator Snowe.  Aye by proxy.

The Clerk.  Mr. Crapo?

Senator Crapo.  Aye.

The Clerk.  Mr. Roberts?

Senator Roberts.  Aye.

The Clerk.  Mr. Ensign?

Senator Snowe.  Aye by proxy.

The Clerk.  Mr. Enzi?

Senator Enzi.  Aye.

The Clerk.  Mr. Cornyn?

Senator Snowe.  Aye by proxy.

The Clerk.  Mr. Chairman?

Senator Rockefeller.  No by proxy.
Senator, do you want to vote in person?

The Clerk. Mr. Schumer?

Senator Schumer. No.

Senator Rockefeller. The Clerk will tally.

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

Senator Rockefeller. So the amendment fails.

Before I put the committee in recess, I want to genuinely, I think, speak for all the Senators to thank the staff, behind us and before us, for the overwhelming amount of nonstop work which they have done. We get to go home at night; they do not. This point needs to be made to the American public and it needs to be made by all of us to them, because it is very, very sincere.

That said, the committee stands in recess until 9:30 a.m. Tuesday morning.

[Whereupon, at 11:53 a.m., the meeting was recessed.]
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THE HONORABLE MAX BAUCUS
A United States Senator
from the State of Montana 3