''(v) OUTSTATIONING ENROLLMENT STAFF.—The State provides for the receipt and initial processing of applications for benefits under this title and for children under title XIX at facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(l)(2)(B) consistent with section 1902(a)(55).''.

SEC. 2. TECHNICAL CORRECTION.

(a) TEMPORARY INCREASE OF THE MEDICAID FMAP.—Section 401(a)(6)(A) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108–027) is amended by inserting ''after September 2, 2003,'' after ''(42 U.S.C. 1315))''.

(b) RETROACTIVE EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 401 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108–027).

PRESCRIPTION DRUG AND MEDICARE IMPROVEMENT ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. I thank the Chair. Mr. President, I would like to make a couple comments before we begin voting.

This legislation is historic. It is incredibly important. It is the first reform in a major way to the Medicare Program since we wrote it over 35 years ago in 1965.

To get this legislation adopted by the Congress and signed into law by the President, there obviously has to be a great deal of work, a great deal of legitimate compromise among the various parties that have put this package together. That is what this bill does.

There are some Members of Congress who argue the Federal Government should do nothing with regard to Medicare—that the private sector should do everything and that the Federal Government should do nothing. There are others, on the other hand, who take the position that with regard to Medicare the Federal Government should do everything and the private sector should do nothing.

What we have been able to put together, under the leadership of the chairman and ranking member and many others who have worked so hard, is a compromise that says let's combine the best of what the Government can do with the best of what the private sector can do and put that package together. That is why we have gotten to the point we are today.

We saw a bill come out of the Senate Finance Committee in a bipartisan fashion with 16 votes in favor; only five votes against it. I predict when the final vote comes on this bill, we will see the same type of bipartisan representation with a significant number, maybe over three-fourths of the Senate saying, yes, this has sufficient improvement and reform in it for me to support it.

It has enough Government involvement to make sure it is paid for, enough Government involvement to make sure it is run properly but not micromanaged, and it has enough private sector involvement to deliver, for the very first time, through a competitive private delivery system, prescription drugs for all seniors regardless of where they are or in what program they happen to be.

It also says the private sector will offer, for the first time on a voluntary basis, to seniors who want to move into a new system a private delivery system that will cover drugs, will cover hospitals, and will also cover physician charges under the program. This is a historic opportunity to combine the best of what Government can do with the best of what the private sector can do.

There is going to be a very important amendment offered by Chairman GRASSLEY and the ranking member, Senator BAUCUS. Because we were able to get a score that said there is $12 billion extra money available, the question then became, How do we divide it? I never thought we would have such a difficult time spending money. We normally get into fights when we do not have enough money. Lo and behold, we found there was $12 billion in extra funds.

The question then for the Senate is how are we going to allocate that money? Senator BAUCUS and Senator GRASSLEY, working with Senator KENNEDY and others, came up with a plan that is fair.

It says to the Republican Members: Take half of it, and they want to utilize it for a demonstration program to determine whether PPOs or the provider networks in the private sector will work. We are not certain. We think they will. But let's do a test. And if it costs more, there will be $6 billion available to pay for it starting in the year 2009. That is what many Republicans thought was the right way to use half of the money.

On the other hand, Members on my side said, We need to do more for traditional fee-for-service. If they are going to experiment with the preferred providers in the private sector, we want to also know what will happen if we are able to put in more money for preventive health care and for people who want to stay in the old program.

What Senator BAUCUS and Senator GRASSLEY did, working with Senator KENNEDY, was to say to people who are inclined to the Democratic perspective, we are going to let you use $6 billion for people who want to stay in the old program. Here is what you can do with it: You can use the money to provide enhanced benefits for people who stay in traditional Medicare. What we mean by that is to give them additional care for chronic care coordination, for the chronically ill, to coordinate better how they are getting their health care.

We have more money for disease management, which is incredibly important. When we are talking about saving money and giving people a better quality of life; disease management is important. Also, they can use the money for other benefits and services that the Secretary determines will improve preventive health care for the beneficiaries.

What we have crafted is an effort to take the extra money and allow for a legitimate experiment, a legitimate test of whether the preferred provider system will cost less money—I think it will; they can provide services that I think are better and at a better price, but we do not know that for sure, so let's do some testing on it in certain regions of the country. If it saves money, hallelujah for everybody. But if it costs money, they will have $6 billion to help pay for those extra charges.

The Democrats, on the other hand, have the provisions to have $6 billion over the period in order to provide disease management and preventive health care services in the traditional Medicare Program. That is as fair as it can be in a divided Senate. If one side had their way, they would do it all with the preferred providers. If our side perhaps had their will, it would provide all the money to be put back in traditional Medicare, but we all know in a divided Senate that is not possible.

So the best possible compromise has been crafted by the chairman, Senator GRASSLEY; by the ranking member, Senator BAUCUS; and by Senator KENNEDY's involvement and many others who have worked on this issue.

This is a good amendment. It is an important amendment. We are on the edge of an historic day in being able to enact real Medicare reform with prescription drugs for all of our Nation's seniors. We cannot let that goal be lost while we fight over how to divide extra funds. I think this division is as fair as it possibly can be, and I urge all of our Members to vote for it. In fact, I think the vote should be approximately like it came out in the Finance Committee. We lost a few what I would say were on the left, we lost a few what I would say were on the right, of the political spectrum. But in the end the vast majority supported this legislation in the committee and will do so on the Senate floor.

I certainly ask them to support the Grassley-Baucus amendment when it is voted on as well.

I yield the floor.

The PRESIDING OFFICER. All time has expired.

VOTE ON AMENDMENT NO. 1102

The PRESIDING OFFICER. The question is on agreeing to the McConnell amendment No. 1102.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 252 Leg.]

YEAS—98

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (FL)	Reed
Bunning	Graham (SC)	Reid
Burns	Grassley	Roberts
Byrd	Gregg	Rockefeller
Campbell	Hagel	Santorum
Cantwell	Harkin	Sarbanes
Carper	Hatch	Schumer
Chafee	Hollings	Sessions
Chambliss	Hutchison	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden
DeWine	Lincoln	

NOT VOTING—2

Kerry	Lieberman

The amendment (No. 1102) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1102, AS MODIFIED

Mr. HATCH. Mr. President, I ask unanimous consent that amendment 1102, which was just agreed to, be modified with the changes that are the desk.

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

The amendment (No. 1102), as modified, is as follows:

(Purpose: To protect seniors with cardiovascular disease, cancer, diabetes, or Alzheimer's disease)

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

SEC. ___. PROTECTING SENIORS WITH CARDIOVASCULAR DISEASE, CANCER, OR ALZHEIMER'S DISEASE.

Any eligible beneficiary (as defined in section 1860D(3) of the Social Security Act) who is diagnosed with cardiovascular disease, cancer, diabetes or Alzheimer's disease shall be protected from high prescription drug costs in the following manner:

(1) SUBSIDY ELIGIBLE INDIVIDUALS WITH AN INCOME BELOW 100 PERCENT OF THE FEDERAL POVERTY LINE.—If the individual is a qualified medicare beneficiary (as defined in section 1860D–19(a)(4) of such Act), such individual shall receive the full premium subsidy and reduction of cost-sharing described in section 1860D–19(a)(1) of such Act, including the payment of—

(A) no deductible;

(B) no monthly beneficiary premium for at least one Medicare Prescription Drug plan available in the area in which the individual resides; and

(C) reduced cost-sharing described in subparagraphs (C), (D), and (E) of section 1860D–19(a)(1) of such Act.

(2) SUBSIDY ELIGIBLE INDIVIDUALS WITH AN INCOME BETWEEN 100 AND 135 PERCENT OF THE FEDERAL POVERTY LINE.—If the individual is a specified low income medicare beneficiary (as defined in paragraph 1860D–19(4)(B) of such Act) or a qualifying individual (as defined in paragraph 1860D–19(4)(C) of such Act) who is diagnosed with cardiovascular disease, cancer, or Alzheimer's disease, such individual shall receive the full premium subsidy and reduction of cost-sharing described in section 1860D–19(a)(2) of such Act, including payment of—

(A) no deductible;

(B) no monthly premium for any Medicare Prescription Drug plan described paragraph (1) or (2) of section 1860D–17(a) of such Act; and

(C) reduced cost-sharing described in subparagraphs (C), (D), and (E) of section 1860D–19(a)(2) of such Act.

(3) SUBSIDY-ELIGIBLE INDIVIDUALS WITH INCOME BETWEEN 135 PERCENT AND 160 PERCENT OF THE FEDERAL POVERTY LEVEL.—If the individual is a subsidy-eligible individual (as defined in section 1860D–19(a)(4)(D) of such Act) who is diagnosed with cardiovascular disease, cancer, or Alzheimer's disease, such individual shall receive sliding scale premium subsidy and reduction of cost-sharing for subsidy-eligible individuals, including payment of—

(A) for 2006, a deductible of only $50;

(B) only a percentage of the monthly premium (as described in section 1860D–19(a)(3)(A)(i)); and

(C) reduced cost-sharing described in clauses (iii), (iv), and (v) of section 1860D–19(a)(3)(A).

(4) ELIGIBLE BENEFICIARIES WITH INCOME ABOVE 160 PERCENT OF THE FEDERAL POVERTY LEVEL.—If an individual is an eligible beneficiary (as defined in section 1860D(3) of such Act), is not described in paragraphs (1) through (3), and is diagnosed with cardiovascular disease, cancer, or Alzheimer's disease, such individual shall have access to qualified prescription drug coverage (as described in section 1860D–6(a)(1) of such Act), including payment of—

(A) for 2006, a deductible of $275;

(B) the limits on cost-sharing described section 1860D–6(c)(2) of such Act up to, for 2006, an initial coverage limit of $4,500; and

(C) for 2006, an annual out-of-pocket limit of $3,700 with 10 percent cost-sharing after that limit is reached.

Mr. HATCH. Mr. President, I ask unanimous consent that the next three votes be 10 minutes in length each.

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

AMENDMENT NO. 1108

Under the previous order, there will 2 minutes equally divided on the Durbin amendment No. 1108.

Mr. DURBIN. Mr. President, with all due respect to my colleagues, the amendment we just agreed to did nothing. It did not add one penny or one new benefit to any senior suffering from Alzheimer's. This amendment I offer, along with Senator HARKIN, will put $12 billion into providing prescription drug coverage for the seniors we represent who suffer from heart disease, cancer, Alzheimer's, diabetes and its complications. Take your pick—a $6 billion tax subsidy for HMO and private insurance companies or $12 billion for your seniors struggling to pay impossible prescription drug bills who will be cut off under this bill. It is an easy choice for me. If you take it home to your State, you will find it is an easy choice, too.

I hope you will vote for this amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise in opposition. I want to stress my opposition is not because I do not understand or am not sympathetic to the difficult situation beneficiaries who are afflicted with cardiovascular disease, cancer, or Alzheimer's disease experience.

But I also recognize there are millions and millions of other seniors who suffer from diseases just as debilitating and life-threatening as the ones my colleague has identified here. Under this proposal they would be treated as second-class citizens because they do not suffer from the right disease.

The most basic, and really the most important, tenet of the Medicare program is to provide a universal benefit to all seniors. We have done that under S. 1.

We crafted a prescription drug benefit that helps every senior and also targets the most help to those who are less able to afford the appropriate care.

While I am sympathetic to my colleagues' desire to enhance the benefit, I can't support a proposal that pits one group of seniors against the other based solely on this disease.

I urge my colleagues to vote against this amendment so we can remain faithful to the most basic tenet of the Medicare program, a universal benefit, and to ensure that the Senate does not discriminate against seniors based on their disease.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 253 Leg.]

YEAS—57

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Baucus	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Roberts
Brownback	Graham (SC)	Santorum
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Campbell	Hagel	Smith
Chafee	Hatch	Snowe
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Jeffords	Sununu
Collins	Kennedy	Talent
Cornyn	Kyl	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner

NAYS—41

Akaka	Dorgan	Levin
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Byrd	Graham (FL)	Pryor
Cantwell	Harkin	Reed
Carper	Hollings	Reid
Clinton	Inouye	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kohl	Schumer
Daschle	Landrieu	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Leahy	

NOT VOTING—2

Kerry	Lieberman

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1103 TO AMENDMENT NO. 1092

The PRESIDING OFFICER. Under the previous order, there are 2 minutes equally divided on the Dorgan second-degree amendment.

Who yields time?

Mr. DORGAN. Mr. President, the importance of this amendment is answering the question, what to do with $12 billion. I propose we use that $12 billion to reduce the premium that senior citizens will be required to pay for this prescription drug benefit, roughly $7 a month, from $35 to $28.

The rebuttal to my amendment has been: This really doesn't mean very much. Only in this Chamber would $12 billion not mean very much. Frankly, this means a great deal to senior citizens. The underlying amendment represents the worst of all worlds. It says, let's give $6 billion to insurance companies. And I guarantee, you dye that money purple, you will have purple pockets in the insurance industry. That is where it is going. Let's have $6 billion go to the insurance industry to conduct an experiment that we already know has failed.

I don't understand why that is the way we want to use billions of dollars. Why not use it to help senior citizens close the coverage gap or, as I suggest, to reduce monthly premiums which start at $35 a month in this bill and then ratchet up and up and up as prescription drug prices increase. Pass my amendment and help senior citizens reduce these premiums.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Yes, $12 billion is a lot of money; $6 billion of that $12 billion he wants to take away from this provision, this bipartisan provision, that would be used for things he stands for. He has been talking about chronic disease management. He has been talking about managing to a better extent people with chronic diseases. We have put $6 billion into demonstration projects like that to save the taxpayers' money. Why? Because 5 percent of the seniors cause 50 percent of the costs to Medicare. That is why those demonstration projects are very important. That is why I hope you will vote against this amendment.

Mr. SANTORUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 39, nays 59, as follows:

[Rollcall Vote No. 254 Leg.]

YEAS—39

Akaka	Dorgan	Levin
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Byrd	Graham (FL)	Pryor
Cantwell	Harkin	Reed
Clinton	Hollings	Reid
Conrad	Inouye	Rockefeller
Corzine	Johnson	Sarbanes
Daschle	Kohl	Schumer
Dayton	Lautenberg	Stabenow
Dodd	Leahy	Wyden

NAYS—59

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Baucus	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Roberts
Brownback	Graham (SC)	Santorum
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Campbell	Hagel	Smith
Carper	Hatch	Snowe
Chafee	Hutchison	Specter
Chambliss	Inhofe	Stevens
Cochran	Jeffords	Sununu
Coleman	Kennedy	Talent
Collins	Kyl	Thomas
Cornyn	Landrieu	Voinovich
Craig	Lott	Warner
Crapo	Lugar	

NOT VOTING—2

Kerry	Lieberman

The amendment (No. 1103) was rejected.

AMENDMENT NO. 1092

The PRESIDING OFFICER. Under the previous order, there are now 2 minutes equally divided on the Grassley amendment.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I say to my colleagues, this is the key amendment that will provide for the passage of this legislation and, therefore, prescription drug benefits for seniors. It is the key amendment.

Why do I say key amendment? Very simply because we have $12 billion, and we have to find a way, in an even-handed, balanced way, to spend that $12 billion. We have to marry two competing philosophies: private competition and Medicare.

We have, therefore, designed the solution that the $12 billion will be evenly divided to keep the balance so that we can get this legislation passed and, more importantly, so seniors get a prescription drug benefit as quickly as possible.

If this amendment is not adopted, we are going to be in the soup. There are going to be Senators from one side of the aisle who are going to want to spend all of it their way; there are going to be Senators on the other side of the aisle who want it all spent their way; and we are going to be nowhere. We are going to be back where we have been the last 4 years, talking about prescription drugs benefits but not doing something about it, not providing the benefits to our seniors.

This is a key amendment. This is the amendment which will allow benefits to go to seniors.

The PRESIDING OFFICER (Mr. SMITH). The Senator's time has expired.

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, to pick up on what Senator BAUCUS said, let me tell you what this does. There will be $6 billion spent on our side of the aisle to do the things about which we are concerned. What? Allow the competitive model to work, allow the new blueprint for Medicare to be successful, starting in 2009, because that is when the money is available, but what JON KYL and so many others on this side of the aisle have been concerned about is in this amendment. If my colleagues want to give competition a chance, this is the amendment they vote for.

On that side of the aisle, what is $6 billion? For chronic care and disease management. Senator KENNEDY has worked on this tirelessly. Five percent of Medicare recipients consume 50 percent of the Medicare benefits. What we need in the fee-for-service plan is programs for disease management and chronic illness management. As the Senator from Massachusetts said to me just a few minutes ago, nowhere else will we be able to find $6 billion to do this very important, cost-saving, quality improvement to the basic Medicare system. It is what both sides want.

We have come together and we hope we will get strong support for this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DORGAN. Mr. President, parliamentary inquiry. Who is recognized to speak in opposition to the amendment?

The PRESIDING OFFICER. The majority leader was recognized.

Mr. FRIST. Mr. President, very briefly, this amendment is the culmination of several days of debate where both Democrats and Republicans have come together, again bringing different issues to the table, but together it is a positive, strong amendment for the American people and for seniors.

On the one hand, it invests $6 billion, that is not in the underlying bill, in preventive medicine, which almost does not exist in traditional Medicare, and in chronic disease management. All of us know 5 percent of the beneficiaries are responsible for 50 percent of the cost and we know we need to manage those people better. So we have $6 billion for preventive medicine and chronic disease management.

In addition, there is $6 billion to support the concept of private enterprise, competition, the private entities, which we believe is not the only salvation but critical if we are going to address the long-term, 75-year unfunded liabilities that are incurred when we add a new prescription drug benefit.

For that reason, I urge our colleagues on both sides of the aisle to recognize that we worked together, Democrats and Republicans, to come to this carefully negotiated agreement that will be to the benefit of seniors and individuals with disabilities.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, parliamentary inquiry. My understanding was prior to a vote there was to be time divided between opponents and supporters. We have just heard from three supporters.

The PRESIDING OFFICER. The agreement was the time was to be evenly divided.

Mr. DORGAN. Evenly divided between whom?

The PRESIDING OFFICER. The managers.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senator from North Dakota be given 2 minutes.

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

The Senator from North Dakota.

Mr. DORGAN. Mr. President, there does need to be opposition, it seems to me, for those of us who believe this is not the right way to use $12 billion. The $12 billion was made available. Twelve billion is what we discovered. The CBO estimate was below the $400 billion available for this program. So the question was: How shall the $12 billion be used?

We have spent all of our lives in this Chamber making choices. Too often we make the wrong choices in circumstances such as this. We come back with a plan that says let's use the $12 billion for two purposes, and both of them are for experiments. In both cases, we know the answer to the experiments. One, $6 billion to the insurance companies so we can incentivize—subsidize—the insurance companies to see if they can provide the prescription drug benefit at equivalent or less cost than Medicare does. We know the answer to that. That experiment has been done.

Ask senior citizens all across this country what would you rather have, better benefits or lower costs or would you like to have $12 billion in demonstration projects? That is the choice. The choice has been presented to us at this point in this amendment to say let's bifurcate this into two $6 billion pots, both of which will be demonstration projects, the answer to which we know in both cases. First, the circumstance with subsidizing the insurance companies, we know the answer to that. They are going to provide this benefit at higher costs. We know that. Second, does wellness and chronic care help? Yes, we know that. Why do we not take the $12 billion and use it to provide better benefits or lower costs for senior citizens? After all, that is why we started this process, to provide a prescription drug benefit that works for senior citizens.

We come to the end of this process, and we have a group of people who go into a closed room and come out with a deal that says we have decided how the $12 billion should be used.

Ask senior citizens how they would like it used and I guarantee there is only one answer from every corner of this country: Use it to provide us benefits that were promised, deliver that which was promised to us.

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

Mr. SANTORUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 1092, as modified.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Ohio (Mr. VOINOVICH) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 71, nays 26, as follows:

[Rollcall Vote No. 255 Leg.]

YEAS—71

Alexander	Crapo	Lugar
Allard	DeWine	McCain
Allen	Dole	McConnell
Baucus	Domenici	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Biden	Feinstein	Nickles
Bingaman	Fitzgerald	Pryor
Bond	Frist	Reid
Breaux	Graham (SC)	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Schumer
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Carper	Hutchison	Smith
Chafee	Inhofe	Snowe
Chambliss	Inouye	Specter
Cochran	Jeffords	Stevens
Coleman	Kennedy	Sununu
Collins	Kyl	Talent
Conrad	Landrieu	Thomas
Cornyn	Lautenberg	Warner
Corzine	Lincoln	Wyden
Craig	Lott	

NAYS—26

Akaka	Durbin	Levin
Boxer	Edwards	Mikulski
Byrd	Feingold	Murray
Cantwell	Graham (FL)	Nelson (FL)
Clinton	Harkin	Reed
Daschle	Hollings	Rockefeller
Dayton	Johnson	Sarbanes
Dodd	Kohl	Stabenow
Dorgan	Leahy	

NOT VOTING—3

Kerry	Lieberman	Voinovich

The amendment (No. 1092) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. ENSIGN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senate will be in order.

The Senator from Montana.

Mr. BAUCUS. Mr. President, on behalf of myself and the chairman of the committee, Senator GRASSLEY, I ask unanimous consent that at 5 p.m. today the Senate proceed to a vote in relation to the Sessions amendment, No. 1011, to be followed by a vote in relation to the Rockefeller amendment numbered 975, as modified; to be followed by a vote in relation to the Bingaman amendment numbered 1066; provided further that there be no amendment in order to the amendments prior to the votes, and there be 2 minutes equally divided for debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the time between now and 5 o'clock be equally divided.

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

Who yields time?

Mr. REID. Mr. President, I suggest the absence of a quorum, and I ask

unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I thank the distinguished ranking member of the Finance Committee.

AMENDMENT NO. 975, AS MODIFIED

Mr. President, in accordance with the agreement just entered into, I send a modification of my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 975), as modified, is as follows:

On page 10, lines 12 and 13, strike ''(other than a dual eligible individual, as defined in section 1860D–19(a)(4)(E))''.

On page 21, strike lines 22 through 25, and insert ''title XIX through a waiver under 1115 where covered outpatient drugs are the sole medical assistance benefit.

On page 107, line 3, strike ''30 percent'' and insert ''27.5 percent''.

On page 116, line 10, insert ''and'' after the semi-colon.

On page 116, line 12, strike ''; and'' and insert a period.

On page 116, strike lines 13 through 17.

On page 116, line 24, insert ''and'' after the semi-colon.

On page 117, line 2, strike ''; and'' and insert a period.

On page 117, strike lines 3 through 7.

On page 117, line 13, insert ''and'' after the semicolon.

On page 117, line 17, strike ''; and'' and insert a period.

On page 117, strike lines 18 through 23.

On page 118, line 6, insert ''and'' after the semicolon.

On page 118, in line 13, insert ''or'' after the semi-colon.

On page 118, line 14, strike ''; or'' and insert a period.

On page 118, strike line 15.

Beginning on page 118, strike line 16 and all that follows through page 119, line 9.

On page 119, line 10, strike ''(F)'' and insert ''(E)''.

On page 119, line 15, strike ''(G)'' and insert ''(F)''.

On page 119, line 19, strike ''(C), (D), or (E)'' and insert ''(C), or (D)''.

On page 120, line 3, strike ''(H)'' and insert ''(G)''.

On page 120, lines 5 and 6, strike ''who is a dual eligible individual or an individual''.

Beginning on page 121, line 24, strike ''dual eligible'' and all that follows through ''and'' on page 122, line 1.

On page 146, line 6, insert before the period ''and to the design, development, acquisition or installation of improved data systems necessary to track prescription drug spending for purposes of implementing section 1935(c)''.

Beginning on page 146, strike line 23 and all that follows through page 149, line 21, and insert the following:

''(c) FEDERAL ASSUMPTION OF MEDICAID PRESCRIPTION DRUG COSTS FOR DUALLY ELIGIBLE BENEFICIARIES.—

''(1) IN GENERAL.—For purpose of section 1903(a)(1) for a State for a calendar quarter in a year (beginning with 2006) the amount computed under this subsection is equal to the product of the following:

''(A) STANDARD PRESCRIPTION DRUG COVERAGE UNDER MEDICARE.—With respect to individuals who are residents of the State, who are entitled to, or enrolled for, benefits under part A of title XVIII, or are enrolled under part B of title XVIII and are receiving medical assistance under subparagraph (A)(i), (A)(ii), or (C) of section 1902(a)(10) (or as the result of the application of section 1902(f)) that includes covered outpatient drugs (as defined for purposes of section 1927) under the State plan under this title (including such a plan operated under a waiver under section 1115)—

''(i) the total amounts attributable to such individuals in the quarter under section 1860D–19 (relating to premium and cost-sharing subsidies for low-income medicare beneficiaries); and

''(ii) the actuarial value of standard prescription drug coverage (as determined under section 1860D–6(f)) provided to such individuals in the quarter.

''(B) STATE MATCHING RATE.—A proportion computed by subtracting from 100 percent the Federal medical assistance percentage (as defined in section 1905(b)) applicable to the State and the quarter.

''(C) PHASE-OUT PROPORTION.—Subject to subparagraph (D), the phase-out proportion for a quarter in—

''(i) 2006 is 100 percent;

''(ii) 2007 is 95 percent;

''(iii) 2008 or 2009, is 90 percent;

''(iv) 2010 is 86 percent; or

''(v) 2011, 2012, or 2013 is 80 percent.

''(d) MEDICAID AS SECONDARY PAYOR.—In the case of an individual who is entitled to a Medicare Prescription Drug plan under part D or drug coverage under a MedicareAdvantage plan, and medical assistance including covered outpatient drugs under this title, medical assistance shall continue to be provided under this title for covered outpatient drugs to the extent payment is not made under the Medicare Prescription Drug plan or a MedicareAdvantage plan.''

Beginning on page 152, strike line 3 and all that follows through page 153, line 15, and insert the following:

''(f) DEFINITION.—For purposes of this section, the term 'subsidy-eligible individual' has the meaning given that term in subparagraph (D) of section 1860D–19(a)(4).''.

(C) CONFORMING AMENDMENTS.—

(1) Section 1903(a)(1) (42 U.S.C. 1396a(a)(1)) is amended by inserting before the semicolon the following: '', reduced by the amount computed under section 1935(c)(1) for the State and the quarter''.

(2) Section 1108(f) (42 U.S.C. 1308(f)) is amended by inserting ''and section 1935(e)(1)(B)'' after ''Subject to subsection (g)''.

Beginning on page 157, strike line 21 and all that follows through page 158, line 4.

On page 173, beginning on line 15, strike ''that is not'' and all that follows through ''includes'' on line 18 on that page, and insert ''that includes but is limited solely to''.

On page 190, in line 18, strike ''and''.

On page 190, between lines 18 and 19, insert the following:

''(B) is not a dual eligible beneficiary as defined under section 1807(i)(1)(B); and''.

On page 190, line 19, strike ''(B)'' and insert ''(C)''.

On page 529, between lines 8 and 9, insert the following:

SEC. 455. MEDICARE SECONDARY PAYOR (MSP) PROVISIONS.

(a) TECHNICAL AMENDMENT CONCERNING SECRETARY'S AUTHORITY TO MAKE CONDITIONAL PAYMENT WHEN CERTAIN PRIMARY PLANS DO NOT PAY PROMPTLY.—

(1) IN GENERAL.—Section 1862(b)(2) (42 U.S.C. 1395y(b)(2)) is amended—

(A) in subparagraph (A)(ii), by striking ''promptly (as determined in accordance with regulations)'';

(B) in subparagraph (B)—

(i) by redesignating clauses (i) through (iii) as clauses (ii) through (iv), respectively; and

(ii) by inserting before clause (ii), as so redesignated, the following new clause:

''(i) AUTHORITY TO MAKE CONDITIONAL PAYMENT.—The Secretary may make payment under this title with respect to an item or service if a primary plan described in subparagraph (A)(ii) has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations). Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund in accordance with the succeeding provisions of this subsection.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective as if included in the enactment of title III of the Medicare and Medicaid Budget Reconciliation Amendments of 1984 (Public Law 98-369).

(b) CLARIFYING AMENDMENTS TO CONDITIONAL PAYMENT PROVISIONS.—Section 1862(b)(2) (42 U.S.C. 1395y(b)(2)) is further amended—

(1) in subparagraph (A), in the matter following clause (ii), by inserting the following sentence at the end: ''An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.'';

(2) in subparagraph (B)(ii), as redesignated by subsection (a)(2)(B)—

(A) by striking the first sentence and inserting the following: ''A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this title with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means.''; and

(B) in the final sentence, by striking ''on the date such notice or other information is received'' and inserting ''on the date notice of, or information related to, a primary plan's responsibility for such payment or other information is received''; and

(3) in subparagraph (B)(iii), as redesignated by subsection (a)(2)(B), by striking the first sentence and inserting the following: ''In order to recover payment made under this title for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The

United States may, in accordance with paragraph (3)(A) collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity.''.

(c) CLERICAL AMENDMENTS.—Section 1862(b) (42 U.S.C. 1395y(b)) is amended—

(1) in paragraph (1)(A), by moving the indentation of clauses (ii) through (v) 2 ems to the left; and

(2) in paragraph (3)(A), by striking ''such'' before ''paragraphs''.

Mr. ROCKEFELLER. Mr. President, this amendment ensures that the Medicare prescription drug benefit we are debating is, in fact, truly universal. It is a principle we have all espoused over the years.

The underlying bill, which we are debating, precludes Medicare beneficiaries who are eligible for Medicaid from enrolling in the Medicare drug benefit. That would be the first time ever that Medicare beneficiaries would be, in fact, precluded from being Medicare beneficiaries.

The group, which is referred to as dual eligibles, consists of those who are the poorest seniors. They are those who have incomes below 74 percent of poverty. If my colleagues are interested, that income level is $6,645. That is their total gross income. The majority of them are single. The majority of them are women who are in poor health and more likely to be over the age of 85.

Precluding these people is wrong, and my amendment would fix it. I am happy to say the amendment is budget neutral. I will explain that in a minute.

Prescription drugs are optional as a benefit under Medicaid. We all know that. States can limit the number of prescriptions they make available. Some allow two or three prescriptions per year. They can cap the benefits. They can charge any copayments they want. They can end it altogether.

So you have States, predictably, already in a situation with very different Medicaid levels. Because of our financial situation nationally, and in our States, Medicaid is always going to be the very first benefit which will be cut. It has already happened, and will happen substantially more over the coming years.

I remind, again, my colleagues these are the poorest of the poor, the oldest of the old, and the sickest of the sick we are talking about.

I strongly urge my colleagues to provide all of the seniors in their States with the benefit of a real Medicare drug benefit by supporting this amendment.

If a State gets to the position where it is simply unable to continue with prescription drugs under the Medicaid program, and they virtually eliminate it, that poor person, below 74 percent of poverty—which is just a little bit over $6,000 a year—has nowhere else to go. Always—including presently—that person can return to Medicare. This underlying bill would preclude that from happening. My amendment would fix that in a budget-neutral fashion.

I hope my colleagues will support this amendment which I consider one of the most moral and humane of amendments that has come before this body on this issue.

I thank the Presiding Officer.

Mr. GRASSLEY. Mr. President, I rise in opposition to this amendment. In S. 1, beneficiaries who are enrolled in both Medicaid and Medicare will continue to receive the generous drug coverage that they currently know through the Medicaid program.

Some of my colleagues have argued that by having dual eligibles remain in the Medicaid program, Congress is treating these vulnerable seniors as second-class citizens and subjecting them to a lower quality benefit.

This is not the case. In fact, this letter from the Long Term Care Pharmacy Alliance applauds S. 1 for keeping the duals in Medicaid.

Specifically, the letter states, ''This approach will preserve the time-tested safeguards designed to prevent medication errors and ensure quality care for the majority of these beneficiaries in the institutional setting.''

The policy decision to cover the drug cost for dual eligibles in Medicaid was not made in vacuum. These vulnerable citizens deserve the best benefit available, which is the benefit provided through Medicaid. I also remind my colleagues that the intent of this legislation is to expand prescription drug coverage to our senior citizens who do not have access to prescription drugs or who are faced with paying a large share of their income for their drug coverage.

This does not describe the current coverage experienced by those who are dually eligible.

These seniors currently have a drug benefit through the Medicaid program. In fact, many advocates and beneficiaries describe and know this benefit to be very generous.

Medicaid was created to assist individuals who do not have the means to pay for their share of health care costs. That is a responsibility shared between the Federal Government and the States. Medicaid pays for many benefits that Medicare does not.

We all know that the purpose of S. 1 is to provide prescription drugs to seniors that do not currently have access to drugs or are paying extremely high drug costs.

However, recognizing the costs associated with covering the cost of providing prescription drug coverage to the dual eligible population, S. 1 does provide nearly 18 billion in new Federal dollars to compensate States for some of these costs.

This is because S. 1 provides minimum standards that ensure that every aspect of the benefit provided through Medicaid is the same high quality that is provided through part D of the Medicare program.

I remind my colleagues that adoption of this amendment will not expand coverage at all; it will simply shift the cost to the Federal Government and in time to the other Medicare beneficiaries.

In closing, I remind my colleagues that S. 1 helps to deliver care that is consistent with current law and is familiar to vulnerable beneficiaries.

I urge my colleagues to defeat this amendment.

I ask unanimous consent to print the letter to which I referred in the RECORD.

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

LONG TERM CARE PHARMACY ALLIANCE,
Washington, DC, June 24, 2003.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on Finance, U.S. Senate, Dirksen Building, Washington, DC.

DEAR CHAIRMAN GRASSLEY: On behalf of the Long Term Care Pharmacy Alliance, I appreciate this opportunity to express our support for provisions of Medicare legislation you have advanced to protect the nation's frail elderly beneficiaries residing in nursing facilities. In particular, we are pleased that your legislation would allow dual eligible beneficiaries to retain their prescription drug coverage under Medicaid.

While most Medicare beneficiaries are able to walk into pharmacies to pick up their prescriptions or to receive vials of pills through the mail, a sizable percentage of beneficiaries cannot do so and need special services that retail and mail order pharmacies do not provide. Nursing home residents have specific diseases and multiple co-morbidities that require specialized pharmacy care.

To meet these needs, long-term pharmacies provide specialized packaging, 24-hour delivery, infusion therapy services, geriatric-specific formularies, clinical consultation and other services that are indispensable in the long-term care environment. Without such treatment, we cannot expect positive therapeutic outcomes for these patients. Failure to take into consideration the special pharmacy needs of the frail and institutionalized elderly will lead to a marked increase in medication errors and other adverse events.

In recognition of these concerns, your proposed legislation would retain the current system of Medicaid coverage to provide specialized pharmacy services to dual-eligible beneficiaries residing in nursing facilities. This approach will preserve the time-tested safeguards designed to prevent medication errors and ensure quality care for the majority of these beneficiaries in the institutional setting. Medicaid today provides generous benefits to dual eligible beneficiaries and has experience in addressing the special needs of nursing home patients. The proposed new Medicare Part D benefit does not contemplate the impact on nursing home residents which must be considered to protect these patients.

We are encouraged that Section 104 of the Senate bill requires the Secretary to provide recommendations to cover dual eligible beneficiaries by the new Medicare Part D benefit before statutorily mandating such action. Nevertheless, we strongly recommend additional language to address the special pharmacy needs of beneficiaries residing in nursing facilities who are not dually-eligible for Medicare and Medicaid. Such language would require the Secretary of Health and Human Services to review the current standards of practice for pharmacy services provided to patients in nursing facilities and to report to the Congress its

findings prior to implementation of the new prescription drug benefit. This report would include a detailed description of the Department's plans to implement the provisions of this Act in a manner consistent with applicable state and federal laws designed to protect the safety and quality of care of nursing facility patients. Such provisions were included in legislation approved by the House Ways and Means and Energy and Commerce Committees, and we would respectfully request that you adopt similar language.

We appreciate your leadership in carefully considering the multitude of complex issues related to the creation of a new Medicare prescription drug benefit. We are grateful for the chance to work constructively with you to protect patient safety and to ensure the continued provision of quality pharmacy services to the most vulnerable seniors.

If you have any questions or would like additional information, please feel free to contact me. Again, thank you for your efforts to ensure patient safety and promote quality care for Medicare beneficiaries residing in nursing facilities.

Sincerely,

PAUL BALDWIN,
Executive Director.

Mr. KENNEDY. One of the great strengths of Medicare is that it is for everyone. Rich and poor alike contribute to the system. Rich and poor alike benefit from it.

At bottom, Medicare is a commitment to every senior citizen and every disabled American that we will not have two-class medicine in America. When a senior citizen enters a hospital, Medicare pays the same amount for their care whether they are a pauper or a millionaire. When a senior citizen goes to a doctor, she has the peace of mind of knowing that Medicare has the same obligation to pay for her treatment no matter what her financial circumstances—and the doctor has no financial interest in rationing her care according to the contents of her bank account.

Through the Medicaid Program, we do try to provide extra help for those who are poor. But the fact that Medicaid provides extra assistance for the poor does not reduce Medicare's obligation to provide equal treatment for all. Medicare always has primary payment responsibilities for the service it covers. Medicaid is always supplementary.

Medicaid provides critical help to the poor and elderly, but it does not provide the same reliable guarantees of equal treatment that Medicare does. Under Medicaid, States have limited the number of days of hospital care they would provide or the number of doctor visits they will support. States have placed arbitrary limits on the number of prescriptions.

This legislation sets an undesirable precedent for treatment of poor senior citizens who are eligible for both Medicare and Medicaid. For every other benefit, these senior citizens enroll in Medicare, and Medicaid supplements Medicare's coverage. But for this benefit, the bill says that the poor are excluded from Medicare. The only benefits they get are from the Medicaid Program. Medicare is for all senior citizens who paid into the program during their working years—not just some senior citizens. And it should stay that way.

This amendment rights this wrong. It says we will not take away the Medicare that the poor have earned by a lifetime of hard work.

The PRESIDING OFFICER. Who yields time?

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from New Mexico?

Mr. BINGAMAN. Mr. President, I request that the manager allot me 5 minutes.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. I thank the Senator from Montana.

AMENDMENT NO. 1066

Mr. President, I would like to take this opportunity to explain amendment No. 1066, which is scheduled to be one of the amendments considered in this next block of amendments.

Mr. President, I am concerned that the prescription drug coverage included in S. 1 is not sufficient to fully meet the needs of our seniors and that those seniors who elect to participate in Part D and get this prescription drug benefit will be restricted from purchasing supplemental coverage.

The Kaiser Family Foundation estimates that in 2006—which is the year this legislation really takes effect, this benefit occurs—the average Medicare beneficiary will spend $3,160 per year on prescription drugs. Under the current plan, those individuals will have $1,700 that same year in out-of-pocket expenses in addition to the $420 they pay in Part D premiums. Therefore, the average Medicare beneficiary who elects Part D will have approximately $2,100 per year in out-of-pocket expenses. This translates, of course, into $175 a month. That is a significant expenditure for a lot of individuals and couples on a fixed income.

It would seem reasonable to allow these individuals who want to protect themselves against unpredictable and increasing prescription drug expenses to purchase supplemental insurance coverage that would allow additional prescription drugs to be purchased.

Medigap was designed to fill the gaps in Medicare. A sizable gap exists in the prescription drug benefit we are offering in this bill. Yet the current bill specifically prohibits seniors from filling that gap with a Medigap policy.

Section 103 of S. 1, which is the bill we are considering, explicitly prohibits people who elect Part D prescription drug coverage from purchasing additional prescription drug coverage as part of any Medigap plan.

Let me give you the quotation out of the bill. It says:

No Medicare supplemental policy that provides coverage of expenses for prescription drugs may be sold, issued, or renewed under this section to an individual who is enrolled under Part D.

So you essentially have a choice: Am I going to enroll in this new Part D and get this benefit and therefore forego any Medigap policy or am I going to stay out?

We are telling seniors whose cost burden, on average, will be $2,100 a year, and 10 percent of whom are likely to have out-of-pocket expenses of $4,000 or more per year, they will not be allowed to seek additional prescription drug relief.

The amendment I am offering would give seniors the option of purchasing more prescription coverage as part of a comprehensive Medigap plan. The amendment calls on the National Association of Insurance Commissioners to devise two new Medigap plans that would each offer prescription drug coverage to beneficiaries who elect Part D.

There are currently 10 standard Medigap plans. They are designated A through J, and they offer insurance to seniors. Of those, plans H, I, and J offer prescription drug coverage in addition to Part A and Part B wraparounds. Of these, H and J are the most commonly elected plans.

Under S. 1, the way it now stands, seniors who elect Part D would no longer qualify for H, I, or J. However, if the amendment is adopted, the two new policies designed by the National Association of Insurance Commissioners would be similar to the current Medigap policies of H and J, but their prescription drug coverage would be tailored to wrap around the Part D coverage. So seniors who are currently H or J subscribers would have the option of electing Part D and still maintaining a Medigap plan similar to what they have now.

The amendment would give the National Association of Insurance Commissioners 18 months to develop and report back on these two new plans. In my view, it would be a substantial improvement to the current bill.

As I said, my amendment will give the National Association of Insurance Commissioners 18 months to develop and report back on two new plans. The NAIC is the appropriate body to develop these plans because they have a system already in place for doing so with appropriate representation from all interested and affected parties. The NAIC can best determine how the benefits proposed in this amendment can be designed in order to avoid over-utilization and to coordinate with the existing medigap benefit packages. They were the body employed to develop the current Medigap plans A through J and they are the body best equipped to develop these two new plans.

This amendment is similar to language already included in the House version of the bill and thus already has a great deal of support in the House of Representatives.

This amendment also provides a provision to stabilize the Medigap market

during this time of transition. The current bill states that seniors who are enrolled in H, I, or J at the time when they elect Part D will be displaced from their current Medigap plans and given open enrollment into any other Medigap plan A–G offered in their State. Our amendment will still guarantee them the option of enrolling in substitute coverage without the risk of discrimination based on age, health status, utilization, etc. However, our amendment will reduce the chaos of this transition time by keeping the majority of Medigap subscribers with their current carriers.

Let me explain. Beneficiaries displaced from H, I, or J will have the option of choosing any other Medigap plan—A–G—that their carrier offers or one of the two new plans. If their current carrier does not choose to offer one of the new plans then they will have the option of switching carriers in order to obtain a medigap policy that includes prescription coverage. Thus, the majority of seniors will be staying with their current carriers and thus, those carriers will be better able to predict the affect of this shift and better able to ease the transition for their subscribers.

This is a simple amendment that should elicit very little controversy. People may raise concerns because it will be difficult to construct a standardized wrap around benefit to compliment Part D when Part D is not standardized. But this is not a reason to deny people access to supplemental coverage. Rather, we are giving the NAIC 18 months to put together such a plan.

Consumer groups such as the Consumer Union and Medicare Advocacy support our amendment because it provides much needed additional coverage options for our Nation's seniors. Likewise, insurance carriers like it because it allows them to continue to provide a service that they have been providing up until this point and yet it does not force them to offer these new plans if they do not see them as viable. The cost of the amendment should be negligible as it is not adding any additional Government expenditure nor expediting a beneficiary's trip to the catastrophic threshold. This amendment simply gives seniors an opportunity to continue to seek the insurance industry an opportunity to meet the needs of our seniors not met by Medicare Part D.

Mr. President, I ask my colleagues to review this amendment before they vote. I think it is an excellent amendment.

I ask them to join me in supporting it.

The PRESIDING OFFICER. Who yields time?

AMENDMENT NO. 1011

Mr. GRAHAM of Florida. Mr. President, I rise to speak on an issue that will come before the Senate shortly. That is an amendment to strike the language from this legislation which is found in section 605, the legal immigrant child health provision. Let me give the background on section 605.

What this legislation would do would be to allow States on a State option basis to elect to provide health care for pregnant women for the period of their pregnancy, plus 60 days thereafter, and immigrant children. In both categories we are talking about legal immigrants, not people who have arrived outside the system and undocumented. These are individuals who have come to the United States under all of the procedures that allow for legal immigration, with the most prominent category being for family reunification.

The restoration of this has already been considered by the Senate Finance Committee, first in 2001, then in June of 2002, and most recently in the consideration of this legislation. This provision was sustained in the chairman's mark, as it had been placed by Senator GRASSLEY and Senator BAUCUS, by a vote of 13 to 8. There has been both consideration and approval of this provision by the Finance Committee.

It has been alleged that the provision of these services to legal immigrants will encourage illegal immigration. We are talking exclusively about pregnant women and children who have entered the United States on a legal basis.

Prior to 1996, there was no restriction on health care benefits for legal immigrants. We are now carving out from the current exclusion for health care two categories, which are both humane and very much in the public interest, that pregnant women have adequate access to health care and that children grow up with adequate health care.

It has been alleged that there are a number of benefits which have also been made available to legal immigrants, including emergency medical services, Head Start programs, foster care, school lunches, and food stamps. Those can be debated on their own merits but they are no substitute for providing to legal immigrants, children, and pregnant women a place to get appropriate health care.

It has also been stated that this should be a responsibility of the sponsor.

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

Mr. GRAHAM of Florida. May I have 30 seconds to close?

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senator have 30 additional seconds.

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

Mr. GRAHAM of Florida. The Immigration and Naturalization Service under the current law has limited the kinds of public benefits that are relevant to the so-called public charge finding. INS officers place no weight on the receipt of noncash public benefits when determining whether an immigrant will be a public charge on society. This provision, section 605, is consistent with current national immigration policy. Therefore, I urge the defeat of this amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I believe our side has 2 minutes remaining. I ask unanimous consent for 4 minutes and yield the Senator from Alabama 2 minutes.

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

Mr. SESSIONS. Mr. President, included in the Medicare prescription drug reform bill in section 605 is a Medicaid reform of welfare benefits for noncitizens, reversing a policy adopted by this Senate in 1996 by a vote of 74 to 24. Section 605 is a very substantial change in our current policy. It will cost, according to CBO estimates, $500 million over just 3 years. It is not to be taken lightly. Frankly, we haven't had debate on it.

I have offered an amendment that would strike the existing language in section 605, along with a sense of the Senate that this matter go back to the Finance Committee for hearings this fall, the time when the Finance Committee plans to be addressing Medicaid welfare reform. That is what this is. This is Medicaid welfare reform, not Medicare senior citizens reform.

This is clearly unconnected to the purpose of the bill. It was slipped in as some sort of compromise. We ought not to allow that to happen, to erode a very important part of the 1996 Welfare Reform Act. The administration, which is very favorable to matters that would help immigrants in this country, opposes this change. They say it should be done, if at all, as part of the welfare reform of this fall.

That is why our sense of the Senate calls on the Finance Committee to reevaluate it as part of their requirement this fall on reform welfare. Millions of people come to this country legally. They come here with sponsors. Those sponsors say they will pay for the medical welfare needs of those people they sponsor. That is by affidavit and it should be honored, not undercut.

Mr. NICKLES. Mr. President, I wish to compliment Senator SESSIONS for his leadership. I urge my colleagues to vote in favor of the Sessions amendment to strike out this provision that does not belong in a Medicare bill.

This is a Medicaid provision. This is a welfare provision. We are going to reauthorize welfare later this summer. It should be considered at that time. This is part of the reforms that were made in 1996 when we passed the welfare reform act, one of the most successful bills we ever passed. If we are going to undermine that, do it with a little consideration. The administration opposes this because it doesn't belong here, and it is bad policy. This turns immigration policy on its head.

Let me read the current law on immigration policy. For a legal immigrant who comes into this country, it is required that the sponsor of that immigrant sign an affidavit of support to the U.S. Department of Justice which states:

By signing this form, you, the sponsor, agree to support the intending immigrant

and any spouse or children immigrating with him or her, and to reimburse any Government agency or private entity that provides these sponsored immigrants with Federal, State, or local means-tested public benefits.

This provision in the underlying bill would turn this law on its head and would basically take hundreds of millions of dollars away from Medicare recipients and give them to immigrants. So this is changing immigration law and Medicaid law. It needs to be dealt with in the Medicaid bill and welfare reform bill. It doesn't belong in this bill.

I urge my colleagues to vote in favor of the Sessions amendment.

Mrs. CLINTON. I rise to urge my colleagues to defeat this amendment.

In proposing this amendment, Senator SESSIONS argues that the restoration of health benefits to legal immigrants has not been fully reviewed or discussed. he also argues that SCHIP and Medicaid provisions are welfare reform measures and therefore not germane to the prescription drug bill. The amendment also states that Congress deliberately limited benefits available to legal immigrants when it removed these benefits in 1996.

I respectfully disagree with all of these three assertions.

First of all, the Senate Finance Committee has already extensively reviewed this issue. In 2001, the Finance Committee held a series of hearings on health coverage for the uninsured, including legal immigrants. During the TANF reauthorization mark-up in June 2002, there was a full debate on the restoration of health benefits to legal immigrants, and the Immigrant Children's Health Improvement Act passed as an amendment by a vote of 12 to 9. This year, during Finance Committee mark-up of the prescription drug bill, there was once again full debate on the restoration of health benefits to legal immigrants. Senator NICKLES offered an amendment to strike the immigrant children's health provision from the chairman's mark and that amendment failed by a vote of 8 to 13.

Second, I disagree with Senator SESSIONS' argument that Section 605 of the bill is not germane to Medicare prescription drug legislation. Every time this sort of provision comes to a vote, my colleagues on the other side of the aisle question the vehicle. When the immigrant child health provisions came up in committee last year, as part of the TANF reauthorization mark-up, Senator HATCH remarked that, ''If we start playing with health care policy, this bill isn't going to go through.'' This year, Senator SESSIONS is saying that TANF reauthorization is the appropriate vehicle. I ask my colleagues on the other side of the aisle then—which one is the appropriate vehicle?

In fact, the restoration of health benefits to legal immigrants is also a major component of the effort to add a prescription drug benefit under Medicare. Senators GRASSLEY and BAUCUS realized this when they included this provision in the prescription drug mark as part of a compromise agreement that included both Senator KYL's undocumented aliens provision to reimburse hospitals for the cost of treating undocumented aliens and Senator GRAHAM's legal immigrants provision.

Finally, benefits to legal immigrants were cut in 1996 as a cost-saving measure, not as a matter of welfare reform. Section 605 of the underlying bill is also consistent with other policies approved by President Bush. Last year, the President signed legislation restoring food stamp benefits for legal immigrant children. The immigrant child health provisions would make these same children eligible for Medicaid and SCHIP. In an interview with the Associated Press in May 2002, Tommy Thompson, Secretary of the Department of Health and Human Services, stated that he had no ''philosophical objection'' to lifting the ban on providing health care benefits to legal immigrants.

Senator SESSIONS' amendment also has significant dire consequences for women and children, and could add costs to the Medicaid program, which I am certain that Senator SESSIONS did not intend. Current restrictions prevent thousands of legal immigrant children and pregnant women from getting the same access to preventive health care services that they would have if they were U.S. citizens. As a result of the restrictions, immigrant children have fewer opportunities to see a pediatrician and receive treatment before minor illnesses become serious and life-threatening. Families who are unable to get basic preventive care for their children have little choice but to turn to emergency rooms—the least cost-effective place to provide care—when their children become sick. Similarly, without prenatal care, a woman may give birth to a baby with low-birth weight, placing the baby at risk and resulting in hundreds of thousands of dollars in neonatal intensive care costs.

Frankly, I am saddened that we must fight over a bipartisan, thoughtful and extensively reviewed provision that will protect the health of children who legally came to our country and had no control over the length of time they were legal immigrants. We must ensure that it is defeated.

Mr. DASCHLE. Mr. President, with all deference to my colleague from Alabama, I strongly oppose this amendment to strike the provisions that would allow States to cover legal immigrants under Medicaid and SCHIP. As health care measures, these provisions are an appropriate addition to this legislation, and I am grateful that the chairman of the Senate Finance Committee included them in his bill.

Legal immigrants were banned from receiving Federal benefits under a number of programs, including Medicaid, for 5 years. The argument was made that people shouldn't come to this country if they are going to be a public charge.

But the reality is that legal immigrants don't come here for our benefits. They come because they want to work so they can make better lives for themselves and for their children. They work hard and they make a vital contribution to our economy. Many are forced to take low-paying jobs. And many of these jobs do not provide health insurance.

Immigrant families need access to health insurance just as much as citizen families. They are also just as deserving of this coverage as citizen families. Immigrants work hard. They pay taxes. They contribute to their communities. Immigrant children are also required to register for the Selective Service when they turn 18. According to the American Immigrant Law Foundation, 60,000 legal immigrants are on active duty in the U.S. Armed Forces.

Now, when an immigrant woman becomes pregnant, or her child gets sick, she has few places to turn except to emergency care, which is the most expensive means of providing health care. Many States have realized that this is not an acceptable way to address the health care needs of these families. Some 20 States now provide health care services to legal immigrants using their own funds. So the burden of caring for these families has been transferred to States and hospitals.

To respond to this situation, Senator GRAHAM introduced S. 845, the Immigrant Children's Health Improvement Act, or ICHIA, which simply allows States to use Federal Medicaid and SCHIP funding to provide coverage for pregnant women and children who are legal immigrants. The chairman of the Finance Committee included this provision to give States this option for fiscal years 2005, 2006, and 2007. This proposal has strong bipartisan support in both the Senate and in the House. It was adopted on a bipartisan basis last year in the Finance Committee, and a bipartisan group of Finance Committee members voted against stripping this provision from this bill this year.

The administration has suggested that this proposal would somehow create a new burden on the States. In fact, the proposal only gives States the option to provide this coverage, and allows them to use Federal resources to do so, thus giving them significant fiscal relief. No new burden would be imposed on the States. The National Governors Association and the National Conference of State Legislatures both support restoring these benefits. Even Governor Bush of Florida has indicated he supports this proposal.

More than 5 million children live in poor or ''near-poor'' noncitizen families. That is more than one-quarter of the total population of poor or ''near-poor'' children. Almost half of all low-income immigrant children are uninsured and they are more than twice as likely to be uninsured as low-income citizen children with native-born parents.

Many of these children will eventually become American citizens. By denying all but emergency health care, we increase the risk that these children will suffer long-term health consequences, which could reduce their ability to learn and develop, and become productive, contributing citizens.

It is also worth noting that the Medicaid/SCHIP ban also affects citizen children living in immigrant families. As many as 85 percent of immigrant families have at least one child who is a citizen. Although many of these children are eligible for Medicaid and SCHIP, receipt among eligible citizen children of noncitizen parents is significantly below that for other poor children. Parents may be confused about their children's eligibility, or concerned that somehow claiming these benefits will affect the status of other family members.

Making sure that pregnant immigrant women, and their children, have access to health care, including preventive care, is an investment in the future workforce of this Nation. I believe providing health care for all of our citizens, including pregnant women and children who are immigrants, is vital for our future economic strength. It is also the right thing to do. For that reason, I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I know we have an agreement that the vote will start at about 5 o'clock. I ask unanimous consent to speak for 2 minutes.

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

AMENDMENT NO. 975, AS MODIFIED

Mr. BAUCUS. Mr. President, I will divide my 2 minutes between two issues. First is the dual-eligible issue, concerning the amendment offered by the Senator from West Virginia, Mr. ROCKEFELLER. I have a lot of sympathy for what he is trying to do. In fact, my preference would be that low-income senior citizens get benefits under Medicare, not Medicaid.

Regrettably, we tried to strike a balance at this time so that the money spent on the bill, the $400 billion, was spent more on seniors, other beneficiaries, so they get better benefits, rather than spending the money in States to, in effect, bail out the States for their responsibilities under Medicaid. When we go to conference, I plan to do what I can, along with the chairman, to work this issue out. I think the Senator from West Virginia made a very good point.

AMENDMENT NO. 1011

On the other issue, the Sessions amendment, this provision is a health care provision, not a welfare provision. It is whether legal immigrants should get Medicaid benefits. That is all it comes down to.

My view is that it is the right policy. It is not neat and tidy, or perhaps not on the right bill, but it is something that should be done. It is the right thing to do. I urge Senators to not vote in favor of the Sessions amendment.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that we delay the vote so I can do some amendments that have been agreed to—a bipartisan list of amendments—to get them out of the way at this time.

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

AMENDMENT NO. 1033, AS MODIFIED

Mr. GRASSLEY. Mr. President, I send a modification of Senator MIKULSKI's amendment to the desk on municipal health services and ask unanimous consent that it be modified.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 1033), as modified, is as follows:

At the end of title VI, add the following:

SEC. _____. EXTENSION OF MUNICIPAL HEALTH SERVICE DEMONSTRATION PROJECTS.

The last sentence of section 9215(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (42 U.S.C. 1395b–1 note), as previously amended, is amended by striking ''December 31, 2004'', and inserting ''December 31, 2006''.

AMENDMENT NO. 1067, AS MODIFIED

Mr. GRASSLEY. Mr. President, I send a modification to Senator LINCOLN's amendment No. 1067 on kidney disease to the desk and ask unanimous consent that it be modified.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is so modified.

The amendment (No. 1067), as modified, is as follows:

On page 510, after line 18, add the following:

SEC. ___. MEDICARE COVERAGE OF KIDNEY DISEASE EDUCATION SERVICES.

(a) COVERAGE OF KIDNEY DISEASE EDUCATION SERVICES.—

(1) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C.1395x) is amended—

(A) in subsection (s)(2)—

(i) in subparagraph (U), by striking ''and'' at the end;

(ii) in subparagraph (V)(iii), by adding ''and'' at the end; and

(iii) by adding at the end the following new subparagraph:

''(W) kidney disease education services (as defined in subsection (ww));''; and

(B) by adding at the end the following new subsection:

''Kidney Disease Education Services

''(ww)(1) The term 'kidney disease education services' means educational services that are—

''(A) furnished to an individual with kidney disease who, according to accepted clinical guidelines identified by the Secretary, will require dialysis or a kidney transplant;

''(B) furnished, upon the referral of the physician managing the individual's kidney condition, by a qualified person (as defined in paragraph (2)); and

''(C) designed—

''(i) to provide comprehensive information regarding—

''(I) the management of comorbidities;

''(II) the prevention of uremic complications; and

''(III) each option for renal replacement therapy (including peritoneal dialysis, hemodialysis (including vascular access options), and transplantation); and

''(ii) to ensure that the individual has the opportunity to actively participate in the choice of therapy.

''(2) The term 'qualified person' means—

''(A) a physician (as described in subsection (r)(1));

''(B) an individual who—

''(i) is—

''(I) a registered nurse;

''(II) a registered dietitian or nutrition professional (as defined in subsection (vv)(2));

''(III) a clinical social worker (as defined in subsection (hh)(1));

''(IV) a physician assistant, nurse practitioner, or clinical nurse specialist (as those terms are defined in subsection (aa)(5)); or

''(V) a transplant coordinator; and

''(ii) meets such requirements related to experience and other qualifications that the Secretary finds necessary and appropriate for furnishing the services described in paragraph (1); or

''(C) a renal dialysis facility subject to the requirements of section 1881(b)(1) with personnel who—

''(i) provide the services described in paragraph (1); and

''(ii) meet the requirements of subparagraph (A) or (B).

''(3) The Secretary shall develop the requirements under paragraph (2)(B)(ii) after consulting with physicians, health educators, professional organizations, accrediting organizations, kidney patient organizations, dialysis facilities, transplant centers, network organizations described in section 1881(c)(2), and other knowledgeable persons.

''(4) In promulgating regulations to carry out this subsection, the Secretary shall ensure that such regulations ensure that each beneficiary who is entitled to kidney disease education services under this title receives such services in a timely manner that ensures that the beneficiary receives the maximum benefit of those services.

''(5) The Secretary shall monitor the implementation of this subsection to ensure that beneficiaries who are eligible for kidney disease education services receive such services in the manner described in paragraph (4).''.

(2) PAYMENT UNDER PHYSICIAN FEE SCHEDULE.—Section 1848(j)(3) of such Act (42 U.S.C. 1395w–4(j)(3)) is amended by inserting '', (2)(W)'', after ''(2)(S)''.

(3) PAYMENT TO RENAL DIALYSIS FACILITIES.—Section 1881(b) of such Act (42 U.S.C. 1395rr(b)), as amended by section 433(b)(5), is further amended by adding at the end the following new paragraph:

''(13) For purposes of paragraph (7), the single composite weighted formulas determined under such paragraph shall not take into account the amount of payment for kidney disease education services (as defined in section 1861(ww)). Instead, payment for such services shall be made to the renal dialysis facility on an assignment-related basis under section 1848.''.

(4) ANNUAL REPORT TO CONGRESS.—Not later than April 1, 2004, and annually thereafter, the Secretary of Health and Human Services shall submit to Congress a report on the number of medicare beneficiaries who are entitled to kidney disease education services (as defined in section 1861(ww) of the Social Security Act, as added by paragraph (1))

under title XVIII of such Act and who receive such services, together with such recommendations for legislative and administrative action as the Secretary determines to be appropriate to fulfill the legislative intent that resulted in the enactment of that subsection.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2004.

N O T I C E

Incomplete record of Senate proceedings.

Today's Senate proceedings will be continued in the next issue of the Record.