

Kentucky; 7.5 percent in Minnesota; 12 percent higher in Texas; and 14 percent higher in Wisconsin. And so it goes. Researchers believe the bulk of these cost increases were a result of greater hospital costs.

This information was not available to the Congressional Budget Office when it did its cost estimate of the original Medicare select legislation. At that time, CBO was forced to rely on very preliminary research that was done by these same researchers. The information then was limited to case-study information and did not include actual analyses or a comparison of utilization data.

Mr. President, this is why I remain troubled about this legislation, this conference report, which will be passed tonight and then become the law of the land. Serious questions have been raised about the operation of the Medicare select program, yet a conference report is about to be passed that gives the green light to 3 years of taking this program to every single State.

It is maddening that just when there is all the railing about the Medicare trust fund and its solvency, some of my colleagues are so anxious to expand this program with a disregard for its potential drain on the part A trust fund.

There are all kinds of questions to answer before I would be comfortable expanding or extending this program. That is why Congress for this evaluation. That is why I believe we wait for the final report and take 3 hours out of our day in the Finance Committee to hold a hearing on what was learned. Instead, we are seeing this rush to pass a bill.

The independent researchers have a full year of data from 1994 and are currently in the process of analyzing this data. It will take them about a month to complete their analysis of this insurance data. The data cited previously mostly reflects Medicare's cost experience in 1993. While the researchers have already controlled for many variables, they plan to try to better pinpoint the reason for these very significant Medicare cost increases. This additional information—which will be available in only 1 month—would provide Congress with much better information and will tell us if the Medicare cost increases of Select enrollees are a one-time phenomena or a continuing trend. It would also help us figure out the reasons for the higher Medicare costs of beneficiaries enrolled in Medicare select plans. It would provide us with information which would make sure we didn't enact a major new expansion that primarily benefits insurance companies without making sure the Part A trust fund was not going to be drained of funds.

Are sick seniors merely signing up for Medicare select managed care products in record numbers? This would be an unexpected finding since people with serious health care problems normally avoid managed care plans, if

they can. Or, are sick seniors somehow being steered into Medicare-select plans by insurance companies and away from risk-based HMO's? In addition to analyzing 1994 utilization data, the research team is also completing work on beneficiary survey which will include beneficiaries' own stated reasons for signing up with the Medicare select plan.

Mr. President, it is not often that legislators are able to have research of this caliber available on a Medicare legislative initiative. Yet, we are choosing to ignore the red flag that these research findings have raised.

According to the Congressional Budget Office, the Medicare Program is currently overpaying HMO's by about 5.7 percent per person because of Medicare's payment methodology which does not take into account the tendency of healthier seniors to sign up with HMO plans. This legislation before us today could—because of the special advantages Medicare select insurers have been granted in obtaining discounts from hospitals—have a similar effect. Insurance companies make money while the Medicare Program loses money.

Mr. President, the legislation before us today is preferable to the House bill that was originally brought to the Senate floor. Instead of extending the Medicare select program to 50 States for 5 years, this legislation expands it to 50 States for 3 years. This is still longer than I would have liked. It is longer than the original Senate bill which was the result of a compromise reached between myself and the majority leader, Senator DOLE, and Senators PACKWOOD and CHAFEE. The legislation will also allow the HHS Secretary to discontinue the program if the Secretary determines that the Medicare select programs is resulting in higher premium costs to beneficiaries or in higher program costs to the Medicare Program.

Mr. President, I look forward to an oversight hearing in the Finance Committee on the Medicare select program which—under a prior agreement with Senators DOLE and PACKWOOD—will be held once the final evaluation study has been completed. And I am committed to working with the chairman of the Medicare Subcommittee, Senator DOLE, on any legislative modifications that may be necessary based on the committee's oversight hearing, the RTI study, or from the results of a GAO study—that was added to the Senate bill and retained in the conference agreement—that requires a study of the medical underwriting practices of Medigap insurance policies. Again, I hope I will never have to say "I told you so" on behalf of the Medicare Program and the senior citizens who count on us to look before we act.

Mr. President, I yield the floor.

MEDICARE SELECT POLICIES ACT—CONFERENCE REPORT

Mr. CHAFEE. Mr. President, I submit a report of the committee of conference on H.R. 483 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H.R. 483, a bill to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of June 22, 1995.)

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I ask unanimous consent the conference report be considered and adopted, the motion to reconsider be laid upon the table, and a statement by Senator PACKWOOD be included in the RECORD at the appropriate place.

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

The conference report was agreed to.

Mr. PACKWOOD. Mr. President, I am very pleased with the conference agreement on Medicare select. The agreement is very close to the bill passed by the Senate. The only major change is extending the program 3 years instead of 18 months. This is reasonable extension. It gives States sufficient time to take the necessary legislative or administrative actions to allow Medicare select policies to be sold in their states. It also allows insurers sufficient time to develop products, bring them to market, and accumulate enough experience for a meaningful evaluation of Medicare select policies.

This legislation will allow people in all the States to have access to very popular, lower cost type of Medicare supplemental insurance. Remember, Medicare supplemental insurance is private insurance that people buy with their own money to cover medical expenses not paid for by Medicare. There is no Federal money involved.

Some concerns have been raised about Medicare select. Since Medicare select is a new type of supplemental insurance and the full implications of Medicare select for the Medicare Program are not known, this legislation contains a safety valve. The Secretary of Health and Human Services is to study Medicare select. If the Secretary finds that Medicare select is saving seniors money on supplemental insurance, is not adding additional costs to the Medicare Program, and has not negatively affected quality or access to

health care, Medicare select automatically becomes a permanent option after 3 years. If, on the other hand, the Secretary finds serious problems with Medicare select, the program expires June 30, 1998.

This is a very sensible compromise. It protects the Government against unintended consequences while also allowing the program, if successful, to become permanent without having Congress take additional action.

CORRECTION IN THE ENROLLMENT OF H.R. 483

Mr. CHAFEE. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Senate Concurrent Resolution 19, submitted earlier today by Senator PACKWOOD.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 19) to correct the enrollment of the bill H.R. 483.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. CHAFEE. Mr. President, I ask unanimous consent the concurrent resolution be considered and agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (S. Con. Res. 19) was considered and agreed to as follows:

S. CON. RES. 19

Resolved by the Senate (the House of Representatives concurring). That, in the enrollment of the bill (H.R. 483) to amend title XVIII of the Social Security Act to permit medicare select policies to be offered in all States, and for other purposes, the Clerk of the House of Representatives shall make the following correction: Amend the title so as to read as follows: "An Act to amend the Omnibus Budget Reconciliation Act of 1990 to permit medicare select policies to be offered in all States."

Mr. CHAFEE. Mr. President, I thank the manager of the bill very much for permitting us to proceed like this.

Mr. SARBANES. If the Senator will yield, I think his thanks should really be directed to the distinguished Senator from California, who, under the unanimous consent request, was in order to offer her amendment and deferred from doing so in order to allow the Senator to proceed.

Mr. CHAFEE. The Senator from Maryland is absolutely correct. I stand admonished.

I thank the Senator from California for her kindness in letting me proceed as we did. Otherwise, I would have been here, hanging upon every word of her

amendment, but that might have taken me past important appointments at home.

So I thank the lovely lady from California. I count it fortunate that she is a member of the Environment and Public Works Committee, where she does distinguished service, and has ever since she has been in the Senate.

Mr. President, I thank the Senator from California, the distinguished Senator from Maryland, and the floor manager of the bill, the honorable Senator from New York.

The PRESIDING OFFICER. The distinguished Senator from California is recognized.

Mrs. BOXER. Mr. President, let me say to my chairman of the Public Works and Environment Committee, if I could get his attention, I greatly appreciate the kind words he said about me. If he votes for my amendment, I will appreciate it even more.

I hope he will do that because, Mr. President, I think I do have a good amendment.

PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1475

(Purpose: To establish procedures governing the appointment of lead plaintiffs in private securities class actions)

Mrs. BOXER. Mr. President, I send an amendment to the desk on behalf of myself and Senator BINGAMAN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself and Mr. BINGAMAN, proposes an amendment numbered 1475.

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

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

The amendment is as follows:

On page 98, strike line 3, and all that follows through page 100, line 22, and insert the following:

"(2) APPOINTMENT OF LEAD PLAINTIFF OR PLAINTIFFS.—Not later than 90 days after the date on which a notice is published under subparagraph (A) or (B) of paragraph (1), the court shall determine whether all named plaintiffs acting on behalf of the purported plaintiff class who have moved the court to be appointed to serve as lead plaintiff under paragraph (1)(A)(ii) have unanimously selected a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class, and—

"(A) if so, shall appoint such named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class; or

"(B) if not, after considering all relevant factors, including, but not limited to financial interest in the relief sought, work done to develop and prosecute the case, the quality of the claim, prior experience representing classes, possible conflicting interests, and exposure to unique defenses, shall select and appoint a named plaintiff or plain-

tiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class.

"(3) SELECTION OF LEAD COUNSEL.—The lead plaintiff or plaintiffs appointed under paragraph (2) shall, subject to the approval of the court, select and retain counsel to represent the class."

On page 102, strike line 3, and all that follows through page 104, line 22, and insert the following:

"(2) APPOINTMENT OF LEAD PLAINTIFF OR PLAINTIFFS.—Not later than 90 days after the date on which a notice is published under subparagraph (A) of (B) of paragraph (1), the court shall determine whether all named plaintiffs acting on behalf of the purported plaintiff class who have moved the court to be appointed to serve as lead plaintiff under paragraph (1)(A)(i) have unanimously selected a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class, and—

"(A) if so, shall appoint such named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class; or

"(B) if not, after considering all relevant factors, including, but not limited to financial interest in the relief sought, work done to develop and prosecute the case, the quality of the claim, prior experience representing classes, possible conflicting interests, and exposure to unique defenses, shall select and appoint a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class.

"(3) SELECTION OF LEAD COUNSEL.—The lead plaintiff or plaintiffs appointed under paragraph (2) shall, subject to the approval of the court, select and retain counsel to represent the class."

Mrs. BOXER. Mr. President, let me explain my amendment. My amendment deletes language in the bill which instructs the judge to make the largest investor in a securities class action suit the lead plaintiff in that suit. To me, on its face, as a nonlawyer, this is an amazing proposition. The richest investor gets to be the lead plaintiff.

My amendment is designed to give the little investor, people with IRA's, Keoghs, a 401-K plan, the chance to be the lead plaintiff.

My amendment is simple, reasonable, fair and, I believe, democratic. This bill assumes the wealthiest investor is somehow better suited to represent smaller investors in the suit.

Mr. President, class action securities lawsuits are supposed to protect the average and the small investor—not only the largest investor. Of course we want to protect them as well. But clearly we are concerned about the small investor. In fact, class action lawsuits are the only practical chance that the small investor has to recover if he or she has been defrauded.

Why do I say that? The small investor, let us say, has been defrauded out of \$500 or \$1,000 or \$5,000. That small investor simply cannot afford to bring an individual action against a fraudulent party. It would cost way more than even the \$5,000 to do so, maybe even more than the investor's total net worth, just to recover the small investment.

So in practical terms, class actions are the small and average investor's only chance to recover. This bill, S. 240, without my amendment, would